

IT-95-9/2-T
D23-D20
09 July 2002.

23
AT

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-95-9/2-T

Date: 9 July 2002

Original: English

IN TRIAL CHAMBER II

Before: Judge Florence Ndepele Mwachande Mumba, Presiding Judge
Judge Sharon A. Williams
Judge Per-Johan Viktor Lindholm

Registrar: Mr. Hans Holthuis

Order of: 9 July 2002

PROSECUTOR

v.

MILAN SIMIĆ

CONFIDENTIAL

DECISION ON ADMISSION OF WITNESS TESTIMONY

The Office of the Prosecutor:

Mr. Gramsci Di Fazio
Mr. Phillip Weiner
Ms. Aisling Reidy

Counsel for the Accused:

Mr. Slobodan Zecević
Ms. Catherine Baen

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 (“Tribunal”),

BEING SEISED of “Milan Simić’s Motion, Pursuant To Rule 92*bis*, To Admit Written Statement of Perica Mišić Obtained By The Office of the Prosecutor And Produced Pursuant To Rule 66 And Conditional Motion to Compel Appearance Of Perica Mišić To Testify Viva Voce” (“Motion”), filed by the defence of Milan Simić (“Defence”) on 27 June 2002;

NOTING that in the Motion, the Defence requests the “admission of two sworn statements of Perica Mišić” pursuant to Rule 92*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), or alternatively, “a subpoena to compel Perica Mišić’s appearance to testify to the exact same matters as are contained in said statements”;

NOTING that the only submission made by the Defence is that, “the statements and/or the witness’ live testimony are relevant and necessary for a fair determination of the gravity of the offence to which the Defendant pleaded guilty”;¹

NOTING the “Response Of The Prosecutor To Defence Motion Of 27 June 2002 Concerning Witness Testimony For Purposes Of Sentencing Hearing” (“Response”), filed by the Office of the Prosecutor (“Prosecution”) on 3 July 2002 wherein the Prosecution opposes the Motion on the grounds that, (i) “the Defence may not call witnesses to testify in any factual aspect of the agreed facts which are the basis of the plea of guilty” and (ii) “the witness statements cannot be admitted pursuant to the requirements of Rule 92*bis*”;

NOTING the Prosecution submission that the “statements of the Perica Mišić directly relate to the conduct of Milan Simić and his acts of torture perpetrated on the witness by the Accused”, and that “the statements also include evidence of the acts of the men who accompanied Milan Simić in conducting these acts of torture to which the Accused pleaded guilty on 15th May 2002”;²

NOTING the “Joint Motion For Consideration Of Plea Agreement Between Milan Simić And The Office Of The Prosecutor” together with the annexed Plea Agreement (“Plea Agreement”) filed on 13 May 2002;

¹ Motion, para 3.

² Response, para 7.

NOTING that the accused Milan Simić entered a plea of guilt to Counts 4 and 7 of the Fourth Amended Indictment based on the factual basis set out in the Plea Agreement and that the Trial Chamber, in accordance with Rule 62bis of the Rules, entered a finding of guilt with respect to the said counts on 15 May 2002;³

CONSIDERING that with respect to each conviction that rests upon a plea of guilt, a Trial Chamber evaluates the gravity of the offence on the basis of the details of the criminal conduct as set out in the Plea Agreement;

CONSIDERING that “it would be wrong to allow evidence in the sentencing proceedings which in any way put in issue the agreed facts”⁴ and that witness statements or testimony that address agreed facts and an accused person’s responsibility for crimes pled guilty to, should not be allowed;

CONSIDERING that, the Defence fails to provide further details in the Motion regarding the nature of the material or evidence which it seeks to rely on;

CONSIDERING FURTHER that in the Motion, the Defence fails to provide arguments in support of its application save that the “statements and/or the witness’ live testimony are relevant and necessary” and that the statements of Perica Mišić eluded to in the Response, would in all likelihood put into issue the agreed facts as set out in the Plea Agreement;

CONSIDERING ALSO that reliance by the Defence, *inter alia*, upon Rule 92bis of the Rules is misconceived;

PURSUANT TO Rule 73 of the Rules;

HEREBY DENIES THE MOTION.

³ T. 8012(Closed Session).

⁴ *Prosecutor v. Stevan Todorović*, Case no. IT-95-8-S, Sentencing Judgement, 13 November 2001, para 21.
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Done in English and French, the English text being authoritative.



Judge Florence Ndepele Mwachande Mumba
Presiding Judge

Dated this ninth day of July 2002
At The Hague
The Netherlands

[Seal of the Tribunal]