



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-02-54-T  
Date: 26 September 2002  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Richard May, Presiding  
Judge Patrick Robinson  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Order of:** 26 September 2002

**PROSECUTOR**

**v.**

**SLOBODAN MILOŠEVIĆ**

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**DECISION ON FIRST PROSECUTION MOTION FOR ADMISSION OF  
TESTIMONY AND STATEMENT PURSUANT TO 92 *bis*  
DURING THE CROATIA PHASE OF THE TRIAL**

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**The Office of the Prosecutor**

Ms. Carla Del Ponte  
Mr. Geoffrey Nice  
Mr. Dermot Groome

**The Accused**

Slobodan Milošević

**Amici Curiae**

Mr. Steven Kay, QC  
Mr. Branislav Tapušković  
Prof. Mischa Wladimiroff

**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 ("International Tribunal"),

**BEING SEISED** of the "First Prosecution Motion for Admission of Testimony and Statement Pursuant to 92 *bis* During the Croatia Phase of the Trial " filed on 17 September 2002 ("the Motion"), in which the Prosecution seeks the admission of certain material in connection with the evidence of Sjtepan Mesić, as follows:

- (a) The admission of portions of the transcript of the testimony of Sjtepan Mesić from the *Dokmanović* case and exhibits admitted during that testimony under Rule 92 *bis* (D);<sup>1</sup> and
- (b) The admission under Rule 92 *bis* (A) of a statement by Mr. Mesić (not yet in existence) authenticating a series of documents the Prosecution intends to lead through the witness but which, it states, do not go to the acts and conduct of the accused,

**Admission of the transcript Under Rule 92 *bis* (D)**

**NOTING** that Rule 92 *bis* (D) provides as follows:

- (D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.**

**NOTING** that whilst aspects of the transcript do go to the acts and conduct of the accused, the Prosecution have indicated clearly in the transcript that these passages are not relied upon for the purposes of this application; and that the passages that are relied upon concern the break-up of the former Yugoslavia, the international nature of the armed conflict in Croatia and relevant historical, political or military background,

**NOTING** Rule 92 *bis* (E) which states:

<sup>1</sup> The transcript of these proceedings comes from the proceedings before Trial Chamber II in the case of *Prosecutor v. Dokmanović*, open session proceedings of 20 March 1998. Transcript pages 1623 – 1781. The transcript has been disclosed to the parties and submitted to the Trial Chamber with the portions the Prosecution intends to rely upon marked in the margin.

- (E) Subject to Rule 127 or any order to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

NOTING that if the witness, Sjtepan Mesić, does not commence testifying until Tuesday, 1 October 2002, then the fourteen day requirement set out in paragraph (E) will have been satisfied,

CONSIDERING that whilst the material it is proposed should be admitted pursuant to Rule 92 *bis* (D) does not go to the acts and conduct of the accused, it does go to matters of potentially critical importance to the accused, the cross-examination of the witness in the *Dokmanović* proceedings does not deal adequately with the accused's interests in this case and the accused should have the opportunity of cross-examining the witness on all aspects of the testimony contained in the transcript and the exhibits admitted during that testimony,

**Admission of a statement by the witness Under Rule 92 *bis* (A)**

NOTING that the Prosecution seeks to admit, under Rule 92 *bis* (A), a statement by Sjtepan Mesić authenticating a series of documents the Prosecution intends to lead through the witness but which, it states, do not go to the acts and conduct of the accused,

NOTING Rule 92 *bis* (A) which states:

- (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

NOTING that the statement does not yet exist and that the Prosecution, according to a footnote contained in its Motion, expects to obtain the statement on or about 30 September 2002,

**CONSIDERING** that the Trial Chamber cannot rule upon the admissibility of a statement which has not been submitted for its consideration and which has not yet come into existence,


**CONSIDERING FURTHER** that if the statement were to be disclosed just prior to the witness's testimony it would not have been disclosed in accordance with the fourteen day requirement under Rule 92 *bis* (E) and no application for an abridgement of disclosure under Rule 127 has been made by the Prosecution,

**PURSUANT TO** Rule 92 *bis* of the Rules of Procedure and Evidence

**HEREBY ORDERS AS FOLLOWS:**

- (1) The portions of the transcript of the testimony of ~~S~~tepan Mesić from the *Dokmanović* case as marked in the copy of the transcript provided to the Trial Chamber on 17 September 2002, and the exhibits admitted during that testimony as also provided, shall be admitted under Rule 92 *bis* (D);
- (2) The accused shall have the opportunity to cross-examine the witness, ~~S~~tepan Mesić, on all aspects of the testimony contained in the transcript and the exhibits admitted during that testimony;
- (3) The application to admit the statement the Prosecution intends to submit under Rule 92 *bis* (A) is rejected as premature, the statement not yet being in existence.

Done in English and French, the English text being authoritative.

  
Richard May  
Presiding

Dated this twenty-sixth day of September 2002  
At The Hague  
The Netherlands

[Seal of the Tribunal]