



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-99-36-T  
Date: 19 December  
2002  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Ivana Janu  
Judge Chikako Taya

**Registrar:** Mr. Hans Holthuis

**Decision of:** 19 December 2002

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

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**DECISION ON PROSECUTION'S MOTION FOR ADMISSION  
OF TRIAL TRANSCRIPTS AND STATEMENTS PURSUANT  
TO RULE 92BIS-PRIJEDOR MUNICIPALITY**

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**The Office of the Prosecutor:**

Ms. Joanna Korner  
Mr. Andrew Cayley

**Counsel for the Accused:**

Mr. John Ackerman  
Mr. Milan Trbojević

**TRIAL CHAMBER II** (“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** the “Prosecution’s Motion for Admission of Trial Transcripts and Statements Pursuant to Rule 92*bis*- Prijedor Municipality” (“Motion”), “Confidential Annex A” and “Confidential Annex B” thereto (“Annex A” and “Annex B”), filed by the Office of the Prosecutor (“Prosecution”) on 21 October 2002, in which the Prosecution requests the Trial Chamber to admit into evidence, pursuant to Rule 92*bis* of the Rules of Procedure and Evidence (“Rules”), the trial transcripts and exhibits, or written statements and relevant attachments of 15 witnesses identified in Annex A and to grant protective measures for 6 witnesses identified in Annex B;

**NOTING** that, on 7 November 2002, the Presiding Judge orally directed the Defence to present its objections to the Motion and that, correspondingly, the Defence filed its “First Response to Prosecutor’s Rule 92*bis* Motion-Prijedor” (“Defence First Response”) on 22 November 2002, its “Second Response to Prosecutor’s Rule 92*bis* Motion-Prijedor” (“Defence Second Response”) on 2 December 2002, its “Third Response to Prosecutor’s Rule 92*bis* Motion–Prijedor” (“Defence Third Response”) on 16 December 2002, and an “Amended Third Response to Protector’s Rule 92*bis* Motion-Prijedor” (“Amended Defence Third Response”) on 17 December 2002.

**NOTING** the “Prosecution’s Reply to Brđanin’s Third Response to Prosecutor’s Rule 92*bis* Motion-Prijedor (“Prosecution’s Reply”), filed on 18 December 2002, in which the Prosecution agrees to the redactions proposed by the Defence of the transcripts of Witnesses 7.32 and 7.187 and further states that, in relation to Witness 7.35, after discussion between Counsel for the Prosecution and Defence, it is the Prosecution’s understanding that the Defence does no longer object to the admission of his transcript, provided that page 2039, line 15 through page 2051, line 24 are redacted – the Prosecution agrees to this redaction;

**NOTING** that, in its First Response, the Defence does not oppose the admission into evidence under Rule 92*bis* of the statements and relevant attachments of Witnesses 7.111, 7.222 (T.2495-2538) and 7.216 (T.6803-6843);

**NOTING** that, in its Second Response, the Defence does not oppose the admission into evidence under Rule 92*bis* of the statements and relevant attachments of Witnesses 7.138 (T.7050-7155, 1. 13), 7.183 (T.1043-1228), 7.201 (T.5202-5296), 7.50 (T.6202-6225, T.6236-6271 and T.6276-6324), 7.211 (T.2603-2664 and T.2727-2776) and 7.173 (T.6850-6930 and T.6943-7004 provided the Prosecution discloses the name of the Doctor mentioned in the Transcript between pages 6985 and 6988 to the Defence);

**NOTING** that, in its Amended Third Response, the Defence does not oppose the admission into evidence under Rule 92*bis* of the transcript of witness 7.32's evidence in the *Tadić* case (T 1591-1620 and 1623, line 32 throughout 1684) and of the transcript of witness 7.187's evidence in the *Stakić* case (T 3174-3280), if page 3194, line 8 through 3195, line 3 are redacted.

**CONSIDERING** however that, notwithstanding the absence of opposition by the Defence, the Trial Chamber has a duty to ensure that the requirements for the admission into evidence of witnesses' statements pursuant to Rule 92*bis* are met, and that the application of this Rule in the instant case does not prejudice the rights of the accused envisaged in Article 21 of the Statute of the Tribunal ("Statute");

**CONSIDERING** that the Trial Chamber is satisfied that the trial transcripts, exhibits, written statements and their attachments, as redacted by the Office of the Prosecutor, which the Prosecution requests to admit into evidence go to proof of matters other than the acts and conduct of Radoslav Brđanin ("Accused") as charged in the indictment and, further, that where there is any reference to the Accused, the Prosecution will not seek to rely on those portions of the evidence;

**FINDING** therefore that the requirements of Rule 92*bis* are met with respect to the above-mentioned witnesses;

**NOTING** that, in its First Response, the Defence opposes the admission into evidence under Rule 92*bis* of the transcript testimony of Witness 7.51;

**NOTING** that, in its Second Response, the Defence opposes the admission into evidence under Rule 92*bis* of the statements of Witness 7.208;

**NOTING** further that, in its Amended Third Response, the Defence opposes the admission into evidence under Rule 92*bis* of the statements of Witness 7.110 and 7.35 and that if determined that their statements are admitted into evidence under Rule 92*bis*, the witnesses be made available for cross-examination.

**FINDING** that it is in the interests of justice to admit the statements of Witnesses, 7.208 and 7.110 and the transcripts of Witnesses 7.51 and 7.35 into evidence but to call the Witnesses for cross-examination;

**CONSIDERING** the Trial Chamber's duty to analyse the protective measures sought and determine their compatibility with the rights of the Accused, and its duty to balance the right of the Accused to a public hearing against the need to grant victims and witnesses appropriate protection;

**NOTING** that the Prosecution justifies its request for protective measures on the basis that the witnesses either live in Prijedor or are required to travel to and from that area;

**CONSIDERING** that a different pseudonym is required for Witnesses 7.111, 7.222, 7.183, 7.50, 7.173, 7.211, 7.216, 7.208, 7.35, 7.187 and 7.32;

**NOTING** that additional protective measures sought for Witness 7.208 are the assignment of voice and image distortion;

**CONSIDERING** Rule 75(E)(i) of the Rules which provides that: "Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal ("the second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule."

**NOTING** that Witnesses 7.211, 7.35 and 7.187 were granted the assignment of closed session in a previous trial before the Tribunal and that their personal circumstances have not changed;

**NOTING** that Witness 7.216 was granted the assignment of closed session by this Trial Chamber in its "Decision on Prosecution's Eleventh Motion for Protective Measures for Victims and Witnesses" of 10 October 2002 and that his personal circumstances have not changed;

**CONSIDERING** that the equivalent protection of closed session protection for the admission of a written statement is to mark it confidential and under seal;

**PURSUANT TO** Articles 20, 21 and 22 of the Statute and to Rules 75, 79 and 92*bis* of the Rules;

**HEREBY ORDERS THAT:**

1. The written statements or transcripts of Witnesses 7.111, 7.222, 7.138, 7.183, 7.201, 7.50, 7.173, 7.32, 7.187, 7.51, 7.208 and 7.110 are admitted into evidence under Rule 92*bis* with the aforementioned restrictions;
2. The written statements or transcripts of Witnesses 7.211, 7.216, 7.35 and 7.187 are admitted into evidence under Rule 92*bis* with the aforementioned restrictions and marked confidential and under seal;
3. Witnesses 7.51, 7.208, 7.110 and 7.35 are called before the Trial Chamber for cross-examination;

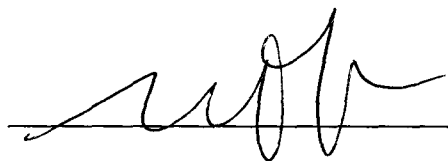
4. In each case where a Witness is required to appear for cross-examination, the Prosecution will be allowed to ask some introductory questions to the witness;
5. When called for cross-examination, Witness 7.208 is granted the requested protective measures, namely the assignment of voice and image distortion;
6. When called for cross-examination, Witness 7.35 is granted the requested protective measure, namely closed session;
7. The following witnesses are granted different pseudonyms: Witnesses 7.111 (“BT28”), 7.222 (“BT37”), 7.183 (“BT34”), 7.50 (“BT29”), 7.173 (“BT78”), 7.211 (“BT2”), 7.216 (“BT35”) 7.208 (“BT41”), 7.35 (“BT42”), 7.187 (“BT44”) and 7.32 (“BT38”).

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

Dated this nineteenth day of December 2002,

At The Hague

The Netherlands



**Carmel Agius**

**Presiding Judge**

**[Seal of the Tribunal]**