



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: 17 January 2003
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 17 January 2003

PROSECUTOR

v.

RADOSLAV BRĐANIN

**DECISION ON PROSECUTION'S MOTION FOR ADMISSION
OF STATEMENTS PURSUANT TO RULE 92BIS - BOSANSKI
NOVI MUNICIPALITY**

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 Statements Pursuant to Rule 92*bis*- Bosanski Novi Municipality” (“Motion”), “Confidential Annex A” and “Confidential Annex B” thereto (“Annex A” and “Annex B” respectively), filed by the Office of the Prosecutor (“Prosecution”) on 28 November 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 written statements or relevant attachments of 4 witnesses identified in Annex A and to grant protective measures for 1 witness identified in Annex B;

NOTING the “First Response to Prosecutor’s Rule 92*bis* Motion-Novi” (“Defence First Response”) filed by the Defence on 3 January 2003;

CONSIDERING that in the Response, the Defence opposes the admission into evidence under Rule 92*bis* of the statements of Witnesses 7.6, 7.95 and 7.98 and requests that these witnesses be made available for cross-examination;

CONSIDERING FURTHER that the Defence states that it cannot make any observations regarding the Rule 92*bis* proffer of witness 7.147 since Rule 92*bis* materials have not been made available to the Defence.

FINDING THEREFORE that, for the purposes of this Decision no decision on the admissibility of the statement of the witness 7.147 can be made;

CONSIDERING that the Trial Chamber has a duty to ensure that the requirements for the admission into evidence of witnesses’ statements and relevant attachments 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 written statements, as redacted, 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 3 witnesses;

FINDING that it is in the interests of justice to admit the statements of witnesses 7.6, 7.95 and 7.98 into evidence but to call the witnesses for cross-examination;

CONSIDERING that the Prosecution justifies its request in Annex B for protective measures in the form of a pseudonym, voice and image distortion for witness 7.6 (BT50) on the basis that the witness, a Bosniak, lives in a municipality in the Republika Srpska and is in the process of rebuilding his home and fears retaliation if his statement were to be made public;

NOTING the “Addendum to Prosecution’s Eleventh Motion for Protective Measures for Victims and Witnesses”, filed confidentially by the Prosecution on 12 September 2002 and related to the present security assessment in the municipalities covered by the Indictment, including the municipality of Bosanski Novi, in which it is stated there are considerable risks for a Bosniak testifying against a Serb;

CONSIDERING the submission by counsel for the Accused Brđanin during the hearing of 22 November 2002 that the Defence does not oppose any protective measures short of closed sessions;¹

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;

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”;

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 of witnesses 7.6, 7.95 and 7.98 are admitted into evidence under Rule 92*bis*;
2. Witnesses 7.6, 7.95 and 7.98 are called before the Trial Chamber for cross-examination;

¹ T. 12003.

3. 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;
4. When called for cross-examination, Witness 7.6 is granted the requested protective measures, namely the assignment of a pseudonym, voice and image distortion.

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

Dated this seventeenth day of January 2003,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]