



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: 7 February 2003
Original: English

IT-99-36-T
D10433-D10431
07 FEBRUARY 2003

10433 KB

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 7 February 2003

PROSECUTOR

v.

RADOSLAV BRĐANIN

**DECISION ON PROSECUTION'S MOTION FOR ADMISSION
OF ADDITIONAL TRIAL TRANSCRIPTS PURSUANT TO
RULE 92 *BIS* -PRIJEDOR 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 Additional Trial Transcripts Pursuant to Rule 92 *bis* –Prijeedor Municipality” and “Confidential Annex” thereto filed on 30 January 2003, in which the Office of the Prosecutor (“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, found in the Confidential Annex, of the evidence of two witnesses in the case of *The Prosecutor v Duško Tadić*¹, and the exhibits referred to therein;

NOTING the “Prosecution’s Motion for Rule 94 Judicial Notice” (“Judicial Notice Motion”), filed on 25 October 2002, in which the Prosecution requested the Trial Chamber to take judicial notice pursuant to Rule 94(B) of the findings on the Jaskići killings made by the Trial Chamber and the Appeals Chamber in the *Tadić* case;²

NOTING the “Response to Prosecution’s Motion for Rule 94 Judicial Notice”, dated 6 November 2002 and filed on 7 November 2002, in which the Defence sought a postponement of a decision on the matter until the Defence had had the opportunity to review the trial transcripts of the witnesses’ evidence relied upon in the *Tadić* Trial Judgement and the *Tadić* Appeals Judgement for the findings on the Jaskići killings;

NOTING the oral order rendered by the Trial Chamber on 8 November 2002, in which it directed the Prosecution to make the trial transcripts of the said witnesses’ evidence available to the Defence;³

NOTING the “Further Response to Prosecution’s Motion for Rule 94 Judicial Notice”, filed on 18 December 2002, in which the Defence opposed the Judicial Notice Motion but suggested instead to have the trial transcripts of the said witnesses’ evidence admitted pursuant to Rule 92 *bis* (D);

NOTING the Prosecution’s position that the said witnesses would not be available to appear for cross-examination by the Defence in the event that they were called to do so pursuant to

¹ *The Prosecutor v Duško Tadić*, Case IT-94-1-T and Case IT-94-1-A (“*Tadić* case”).

² *The Prosecutor v Duško Tadić*, Case IT-94-1-T, Opinion and Judgement, 7 May 1997, pars 344-350 (“*Tadić* Trial Judgement”); *The Prosecutor v Duško Tadić*, Case IT-94-1-A, Judgement, 15 July 1999, pars 230-234 (“*Tadić* Appeal Judgement”).

³ See Unofficial Trial Transcript (“T”), T 11655.

Rule 92 *bis* (E), and the agreement expressed orally on 14 January 2003 that the Defence would not be seeking to have them appear for cross-examination;⁴

CONSIDERING that Radoslav Brđanin (“Accused”) is charged under the Fifth Amended Indictment with the killing of a number of men in the village of Jaskići on or about 14 June 1992;⁵

CONSIDERING 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 a trial transcript 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;

CONSIDERING that the Trial Chamber is satisfied that the trial transcripts, found in the Confidential Annex, of evidence given by witnesses Draguna Jaskić and Senija Elkasović on 31 July 1996 and on 1 August 1996 respectively, before the Trial Chamber in the *Tadić* case go to proof of matters other than the acts and conduct of the Accused;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 89 and Rule 92 *bis* (D) of the Rules of Procedure and Evidence;

HEREBY DECIDES THAT:


The trial transcripts of evidence given by witnesses Draguna Jaskić and Senija Elkasović in the *Tadić* case, contained in the Confidential Annex, are admitted into evidence, as are the exhibits referred to therein. Confidential Exhibit P 285, which in the *Tadić* case was admitted under seal, will be admitted under seal in this case.

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

Dated this seventh day of February 2003,

At The Hague,

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

⁴ See T 12858-12860.

⁵ *The Prosecutor v Radoslav Brđanin*, Case IT-99-36, Fifth Amended Indictment, 7 Oct 2002, par 38.