



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: 7 October 2003
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 7 October 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTIONS FOR THE ADMISSION OF EVIDENCE
PURSUANT TO RULE 92BIS**

The Office of the Prosecutor

Mr. Geoffrey Nice

The Accused

Slobodan Milošević

Amicus Curiae

Mr. Steven Kay
Mr. Branislav Tapušković
Mr. Timothy McCormack

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 (“the International Tribunal”),

BEING SEISED of the following motions filed by the Office of the Prosecutor (“Prosecution”):

- (i) Partially Confidential Prosecution’s Consolidated Motion for the Addition of Witnesses to the Witness List and the Admission of Evidence Pursuant to Rule 92bis(D), filed on 8 August 2003 (“Consolidated Motion”), seeking, *inter alia*, the admission of the transcripts of testimony, given in the *Galić* Trial, of Carl Harding, witness B-1345, Milan Mandilović, John Hamill, Jeremy Hermer, and Eldar Hafizović without cross-examination, and conceding that the *Galić* Trial’s transcripts of testimony of Francis Roy Thomas, David Fraser, and Mirsad Kućanin, should be admitted with cross-examination,
- (ii) Partially Confidential Prosecution’s Motion for the Admission of Evidence Pursuant to Rule 92bis(A), filed on 22 August 2003 (“Motion”), seeking the admission of the statement of Joseph Rousseau without cross-examination, and conceding that the statements of Mehmed Musić, B-1787 and B-1788 should be admitted with cross-examination,

NOTING the following responses filed by the *Amici Curiae* (“Amici”):

- (i) Confidential *Amici Curiae* Reply to Prosecution Consolidated Motion for the Addition of Witnesses to the Witness List and the Admission of Evidence Pursuant to Rule 92bis(D) Dated 8 August 2003, filed on 2 September 2003 (“Amici Reply to Consolidated Motion”), submitting, *inter alia*, that the transcripts of testimony of Francis Roy Thomas, David Fraser, Mirsad Kućanin, witness B-1345 and Jeremy Hermer should be admitted with cross-examination,
- (ii) Confidential *Amici Curiae* Reply to Partially Confidential Prosecution’s Motion for the Admission of Evidence Pursuant to Rule 92bis(A) Dated 22 August 2003, filed on 4 September 2003, submitting, *inter alia*, that the witness statements of Joseph Rousseau should be admitted with cross-examination, and that Mehmed Musić, B-1787 and B-1788 should be heard *viva voce*;

NOTING that Rule 92*bis* provides:

- (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.

[...]

- (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 conducts of the accused,

NOTING Articles 20 and 21 of the Statute,

CONSIDERING the Accused's general opposition to the admission of Rule 92*bis* evidence and assuming the same in regard to the present motions,

CONSIDERING that the evidence presented in the motions does not go to proof of the acts and conduct of the Accused and chiefly crime base, and is therefore admissible under Rule 92*bis*,

CONSIDERING that the cumulative nature of the testimony is only one factor in favour of admitting a statement under Rule 92*bis*(A),

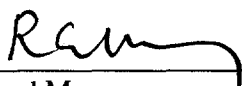
CONSIDERING that the Rule 92*bis*(D) evidence relating to Mirsad Kućanin, witness B-1345, Jeremy Hermer, Francis Roy Thomas, and David Fraser does go to matters which may be of critical importance to the defence of the Accused and that some of the earlier cross-examinations did not adequately cover those matters,

PURSUANT TO Rule 92*bis* of the Rules,

HEREBY ORDERS as follows:

- (i) The Consolidated Motion: the transcripts of testimony and accompanying exhibits of Mirsad Kućanin, witness B-1345, Jeremy Hermer, Francis Roy Thomas, and David Fraser, shall be admitted, subject to the witnesses being available for cross-examination by the Accused, and the transcripts of testimony and accompanying exhibits of Carl Harding, Milan Mandilović, John Hamill, and Eldar Hafizović shall be admitted without cross-examination, Judge Robinson dissenting to the decision on Carl Harding, Milan Mandilović, and Eldar Hafizović;
- (ii) The Motion: the statements of Mehmed Musić, B-1787, B-1788 and Joseph Rousseau, except for paragraphs 5-7 which will be heard *viva voce*, shall be admitted subject to the witnesses being available for cross-examination;
- (iii) The Accused shall not be limited in his cross-examination of the above witnesses.

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



Richard May
Presiding

Dated this seventh day of October 2003
At The Hague
The Netherlands

[Seal of the Tribunal]