

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-54-T

Date: 16 December 2003

Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 16 December 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
TRANSCRIPTS PURSUANT TO RULE 92BIS(D),
FILED 03 DECEMBER 2003**

Office of the Prosecutor:

Mr. Geoffrey Nice
Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groome

Amici Curiae:

Mr. Steven Kay
Mr. Branislav Tapušковиć
Prof. Timothy McCormack

The Accused:

Mr. Slobodan Milošević

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 a confidential “Prosecution Motion for the Admission of Transcripts Pursuant to Rule 92bis(D)”, filed by the Office of the Prosecutor (“Prosecution”) on 03 December 2003 (“Motion”), requesting that the Trial Chamber, pursuant to Rule 92bis(D) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), admit into evidence without cross-examination the transcripts and related exhibits of the following three crime-base witnesses whose testimony relates to the takeover of the Srebrenica safe-area: B-1397, B-1395, and B-1401,

CONSIDERING the Prosecution’s argument, with respect to all three witnesses, (1) that the transcripts and related exhibits should be admitted because they contain information that is crime-base evidence that does not go to the acts and conduct of the Accused and is not pivotal to the Prosecution case; and (2) that cross-examination is not necessary because all three witnesses, in the prior proceedings, were cross-examined by defence counsel and examined by the Trial Chamber and did not testify about the Yugoslav People’s Army or paramilitaries,

NOTING that Rule 92bis(D) and (E) of the Rules provides that the Trial Chamber (1) may admit a transcript of evidence given by a witness in proceedings before the International Tribunal that goes to proof of a matter other than the acts and conduct of the Accused and (2) shall decide whether to admit the transcript in whole or in part and whether to require the witness to appear for cross-examination,

NOTING Articles 20 and 21 of the Statute of the International Tribunal,

CONSIDERING the Accused’s general opposition to the admission of Rule 92bis evidence,

CONSIDERING that the information in the transcripts and related exhibits of the three witnesses does not go to proof of the acts and conduct of the Accused and is therefore admissible under Rule 92bis(D) of the Rules,

CONSIDERING that the three witnesses were subjected to cross-examination by defence counsel and examination by the Trial Chamber in *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T,

CONSIDERING that the Trial Chamber finds that, in the present proceedings and pursuant to Rule 92bis(E) of the Rules,

(1) it is appropriate that Witness B-1401 be subject to cross-examination,

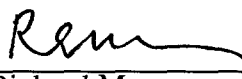
(2) but not necessary that Witnesses B-1397 and B-1395 be subject to cross-examination
[Judge Robinson dissenting],

PURSUANT to Rule 92*bis*(D) and (E) of the Rules,

HEREBY ORDERS as follows:

1. The transcripts and related exhibits of Witnesses B-1397 and B-1395 shall be admitted into evidence, without them being required to appear for cross-examination [Judge Robinson dissenting].
2. The transcript and related exhibits of Witness B-1401 shall be admitted into evidence, subject to Witness B-1401 being made available for cross-examination by the Accused.

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


Richard May
Presiding

Dated this sixteenth day of December 2003
At The Hague
The Netherlands

[Seal of the Tribunal]