



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: 18 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 of: 18 December 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION APPLICATION UNDER RULE 89 (F) TO ADMIT THE
STATEMENT OF WITNESS HRVOJE SARINIC IN EVIDENCE**

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice
Mr. Dermot Groome

The Accused

Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Mr. Branislav Tapušković
Prof. Timothy L.H. 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 a “Prosecution Application Under Rule 89 (F) to Admit the Statements of Witness Hrvoje Sarinic in Evidence”, seeking the admission of two statements of that witness dated 6 December and 9 December 2003 under Rule 89 (F) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

NOTING Rule 89 (F), which provides as follows: “A Chamber may receive the evidence of a witness orally or, where interests of justice allow, in written form”,

NOTING the decision of the Appeals Chamber, which held that Rule 89 (F) allows for the admission of a written witness statement when the witness:

- (a) is present in court;
- (b) is available for cross-examination and any questioning by the judges; and
- (c) attests that the statement accurately reflects his or her declaration and what he or she would say if examined,¹

CONSIDERING that the determination of whether the interests of justice favour the admission of a written statement under Rule 89 (F) as evidence-in-chief is made by the Trial Chamber in relation to each individual witness, in light of not only the surrounding circumstances, but also the evidence to be given by the witness,²

NOTING that areas of the two statements go to the acts and conduct of the Accused himself, but that it is in the interests of justice to admit those parts of the statements which do not under Rule 89 (F), subject to fulfilment of the criteria set out by the Appeals Chamber,

¹ *Prosecutor v. Slobodan Milošević*, “Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements,” Case No. IT-02-54-AR73.4, 30 September 2003, p.11.

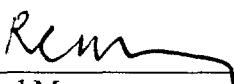
² *Ibid.*, para. 21.

PURSUANT TO Rules 89 (F) of the Rules,

HEREBY ORDERS as follows:

- (1) Those parts of the written statements of witness Hrvoje Sarinic dated 6 December and 9 December 2003 that do not concern the meetings at which the Accused was said to be present, shall be admitted pursuant to Rule 89 (F) subject to the following:
 - (a) appearing in court for cross-examination and any questioning by the Judges;
and
 - (b) attesting that his statements accurately reflect the evidence each witness would give if examined.

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


Richard May
Presiding

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

[Seal of the Tribunal]