

IT-02-54-T
D 28049 - D 28047
13 January 2004

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**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: 13 January 2004

Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 13 January 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
TRANSCRIPTS PURSUANT TO RULE 92BIS(D) FOR
WITNESSES B-1032, B-1034, AND B-1083**

Office of the Prosecutor:

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

Amici Curiae:

Mr. Steven Kay
Mr. Branislav Tapušković
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) in Relation to Events in Prijedor”, filed by the Office of the Prosecutor (“Prosecution”) on 12 December 2003 (“Motion”), requesting, *inter alia*, that the Trial Chamber, pursuant to Rule 92bis(D) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), admit into evidence the transcripts and related exhibits of Witnesses B-1032 and B-1034 without requiring them to appear for cross-examination and of B-1083 (cross-examination conceded by the Prosecution) whose testimony relates to events in Prijedor,

CONSIDERING the Prosecution’s argument that the evidence should be admitted because it (1) is crime-base evidence that does not go to the acts and conduct of the Accused and (2) is not so pivotal to the Prosecution case or so proximate to the Accused that the Trial Chamber should exercise its discretion to exclude the transcripts,

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,

CONSIDERING that the information in the transcripts and related exhibits 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 Witness B-1032 was subjected to cross-examination by defence counsel in the prior proceeding and the information in the transcript and related exhibits goes to matters that may be of critical importance to the Accused’s defence, but these matters were adequately covered in the prior cross-examination [Judge Robinson dissenting], except with respect to references to the JNA (or any subdivisions thereof) in the prior testimony and related exhibits,

CONSIDERING the Prosecution’s representations in the Motion that Witness B-1034’s “lack of firsthand knowledge leaves room for doubt” as to the credibility of his testimony in the prior proceeding,

CONSIDERING that the Prosecution has conceded that Witness B-1083 should be required to appear for cross-examination,

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

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

PURSUANT to Rules 54 and 92*bis*(D) and (E) of the Rules,

HEREBY ORDERS as follows:

1. The transcript and related exhibits of Witness **B-1032** shall be admitted into evidence, without the witness being required to appear for cross-examination, provided that the portions of the transcript and related exhibits referring to the JNA (or any subdivisions thereof) are redacted [Judge Robinson dissenting]; otherwise, the witness must be made available for cross-examination.
2. The transcript and related exhibits of Witness **B-1034** shall not be admitted into evidence.
3. The transcript and related exhibits of Witness **B-1083** shall be admitted into evidence, provided that the witness is made available for cross-examination.

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



Richard May
Presiding

Dated this thirteenth day of January 2004
At The Hague
The Netherlands

[Seal of the Tribunal]