

21-02-54-T
D 28384 - D 28382
21 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: 21 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: 21 January 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR ADMISSION
UNDER RULE 89(C) OF WRITTEN EVIDENCE PRODUCED BY
WITNESS MELIKA MALEŠEVIĆ**

Office of the Prosecutor:

Mr. Geoffrey Nice
Ms. Hildegard 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 Written Evidence Produced by Witness Melika Malešević Under Rule 89(C) of the Rules of Procedure and Evidence”, filed by the Office of the Prosecutor (“Prosecution”) on 12 December 2003 (“Motion”), requesting that the Trial Chamber, pursuant to Rule 89(C) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), admit into evidence certain documentation relating to the testimony of Witness Melika Malešević (“additional documentation”),

CONSIDERING the Prosecution’s arguments, as set forth during the hearing on 10 March 2003¹ and in the Motion,

HAVING CONSIDERED the Accused’s opposition to the admission of the additional documentation, as set forth during the hearing on 10 March 2003,²

CONSIDERING the “Amici Curiae Reply to Confidential Prosecution Motion for the Admission of Written Evidence Produced by the Witness Melika Malešević Under Rule 89(C) of the Rules of Procedure and Evidence [sic] Dated 12 December 2003”, filed 17 December 2003, which cites Article 21 of the Statute of the International Tribunal and Rule 85 of the Rules and argues that Rule 89(C) of the Rules is “not an appropriate means for the introduction of evidence by the witness *in lieu of oral testimony*”, but rather a rule of “general application relating to the condition for admissibility of evidence, without in any sense being proscriptive upon the rights of the other parties in respect of challenge”,

NOTING that Rule 89(C) of the Rules provides that a Chamber of the International Tribunal may admit any relevant evidence that it deems to have probative value,

NOTING Article 21 of the Statute of the International Tribunal and Rule 85 of the Rules,

HAVING ORALLY GRANTED the Prosecution’s request for the admission of the additional documentation,

CONSIDERING that further cross-examination regarding the additional documentation is appropriate,

¹ T. 17484.


² T. 17484-17485.

PURSUANT to Rules 54 and 89(C) of the Rules,

HEREBY CONFIRMS its oral Order and **FURTHER ORDERS** that the additional documentation shall be admitted into evidence, provided that (1) the witness appear for further cross-examination regarding the additional documentation and (2) any of the additional documentation tendered as evidence is accompanied by an English translation.

HEREBY REQUESTS the Registry of the International Tribunal to change the status of the Motion from confidential to public.

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


Richard May
Presiding

Dated this 21st day of January 2004
At The Hague
The Netherlands

[Seal of the Tribunal]