

IT-02-54-T
D28432-D28430
22 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: 22 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: 22 January 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
TRANSCRIPTS PURSUANT TO RULE 92BIS(D) FOR
WITNESSES B-1585 AND B-1764**

Office of the Prosecutor:

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

Amici Curiae:

Mr. Steven Kay
Mr. Branislav Tapušević
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 19 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 the transcripts and related exhibits of Witnesses B-1585 and B-1764 (“witnesses”) without requiring them to appear for cross-examination,

CONSIDERING the Prosecution’s arguments that (1) the evidence should be admitted because it does not go to the acts and conduct of the Accused and is highly relevant, but 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 and (2) additional cross-examination is not necessary because both witnesses were adequately cross-examined in the prior proceedings by defence counsel for accused who had a substantially similar interest to the Accused in the present case; were examined by the Trial Chamber about central parts of their testimony; and did not give testimony containing references to either the JNA-VJ or paramilitaries,

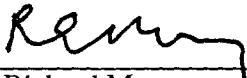
CONSIDERING the confidential “Amici Curiae Reply to Prosecution Motion for the Admission of Transcripts Pursuant to Rule 92BIS(D) Dated 19 December 2003”, filed 31 December 2003, opposing the Motion and arguing that the witnesses should be required to give their evidence *viva voce* and appear for cross-examination on the bases that (1) the potential evidence of the witnesses is linkage evidence and (2) the interests of justice require that the Accused have the opportunity to cross-examine witnesses giving evidence not only relating to his acts and conduct, but also evidence that is circumstantial and relates to allegations against him,

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 significant portions of the intercepted communications, which the Prosecution seeks as part of the Motion to have admitted into evidence, have not been translated into English and that the Trial Chamber is unable to assess their relevance or probity,

CONSIDERING therefore that the Trial Chamber is unable to determine the merit of the Motion,
PURSUANT to Rules 54 and 92*bis*(D) and (E) of the Rules,
HEREBY DENIES the Motion.

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



Richard May
Presiding

Dated this 22nd day of January 2004
At The Hague
The Netherlands

[Seal of the Tribunal]