



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: 23 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 of: 23 January 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION APPLICATION UNDER RULE 89 (F) TO RECEIVE THE
EVIDENCE-IN-CHIEF OF WITNESS DIEGO ARRIA IN WRITTEN FORM**

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 Tapušковиć
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 Receive the Evidence-In-Chief of Witness Diego Arria in Written Form”, seeking the admission of an unsigned and undated statement of that witness 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

CONSIDERING that the Trial Chamber may, under Rule 89 (C) admit any relevant evidence that it deems to have probative value, and that this provision effects a determination of whether it is in the interests of justice to admit a particular statement pursuant to Rule 89 (F),

NOTING that the statement of this witness is unduly long and insufficiently relevant to the crimes charged in the indictment to be admitted in the interests of justice,

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 DENIES THE MOTION.

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



Richard May
Presiding

Dated this twenty-third day of January 2004
At The Hague
The Netherlands

[Seal of the Tribunal]