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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: 06 February 2004

Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 06 February 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
STATEMENT PURSUANT TO RULE 92BIS(A) FOR
WITNESS AMOR MASOVIĆ**

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 a Ruling on the Admission of the Written Statement of Witness B-1076 Under Rule 92 *bis* (A)”, filed by the Office of the Prosecutor (“Prosecution”) on 28 January 2004 (“Motion”), requesting the Trial Chamber to make a provisional ruling under Rules 54 and 92*bis*(A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) (pending receipt of a duly-signed declaration under Rule 92*bis*(B) of the Rules) that the written statement; the written report; and twelve annexes (collectively “statement”) of Witness Amor Masović¹ (“witness”) shall be admitted into evidence without cross-examination,

CONSIDERING the following representations and arguments set forth in the Motion:

- (1) the witness’ statement was only finalised on 09 January 2004;
- (2) the Motion was made prior to the attestation requirement under Rule 92*bis*(B) of the Rules being fulfilled, in the interest of expediting the Motion;
- (3) the statement should be admitted because it
 - a. is primarily crime-base evidence that does not go to the acts and conduct of the Accused;
 - b. is not so proximate to the Accused that the Trial Chamber should exercise its discretion to exclude it;
 - c. is cumulative in that it supplements the testimony of crime-base witnesses who have already given their evidence live before the Trial Chamber; and
 - d. is of a statistical nature and therefore admissible under Rule 92*bis*(A)(i)(c) of the Rules;
- (4) there is no overriding public interest in having the witness’ evidence presented orally;

¹ The witness identified in the Motion by the pseudonym “B-1076” is not a protected witness.

- (5) allowing the witness' evidence to be admitted in written form will allow the Prosecution to further demonstrate the widespread and systematic nature of the crimes committed in Bosnia and Herzegovina;
- (6) there is no reason to believe that the evidence is unreliable or that its prejudicial effect outweighs its probative value; and
- (7) cross-examination should not be required because
 - a. the witness' evidence is not a critical part of the Prosecution's case; and
 - b. the Accused's examination of crime-base witnesses in the Bosnia phase of the trial has focused on the involvement of the JNA and paramilitaries from Serbia, rather than on the specific incidents described in their testimony.

NOTING that the statement, which the Prosecution seeks to have admitted into evidence, contains references to the JNA,²

NOTING the "Amici Curiae Reply to Confidential Prosecution Motion for a Ruling on the Admission of the Written Statement of Witness B-1706 [sic] Under Rule 92 *bis*(A) Dated 28 January 2004", filed 03 February 2004 ("Response"),

CONSIDERING the arguments set forth in the Response, including the following:

- (1) there is no reason for the Prosecution to have made the Motion confidentially;
- (2) the description of the evidence sought to be admitted by the Prosecution is not crime-base evidence because the number of deceased, mass graves, and ethnic backgrounds of bodies exhumed are important issues and cannot be considered statistical information;
- (3) the importance of the information to the Prosecution's case is demonstrated by the fact that the Prosecution is moving its admission into evidence;
- (4) it is in the public interest for important evidence to be heard *viva voce*; and
- (5) the Accused should have the opportunity to cross-examine the witness so he can deal with the case against him.

² See the report of the witness attached to the Motion, at para. 44 ("In some mass graves in the Zvornik Municipality several hundred victims were buried in black plastic body bags used before and during the war exclusively by the former JNA") and para. 64 ("Save for a few cases, all exhumations took place within the territory that had been under the control of the former JNA and the Bosnia Serb Army at the times of the disappearances or executions").

NOTING that the witness is an unprotected witness and the statement is not confidential, except for annexes F, H, and L,³

NOTING that Rule 92bis(A) and (E) of the Rules provides that the Trial Chamber (1) may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony that goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment and (2) shall decide whether to require the witness to appear for cross-examination,

CONSIDERING that the information in the statement does not go to proof of the acts and conduct of the Accused and is therefore admissible under Rule 92bis(A) of the Rules,

CONSIDERING HOWEVER that it is appropriate for the witness to appear for cross-examination,

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

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

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

HEREBY ORDERS as follows:

1. The statement of the witness shall be provisionally admitted into evidence, provided that
 - a. the Prosecution comply with the requirements of Rule 92bis(B) and (E); and
 - b. the witness is made available for cross-examination.
2. The Accused shall be permitted forty-five (45) minutes for cross-examination of the witness.
3. The Prosecution may not call the witness prior to 12 February 2004.

³ The supporting materials to the Motion were served on the Trial Chamber, Accused, and *Amici Curiae*, but not filed.

HEREBY REQUESTS the Registry of the International Tribunal to change the status of the Motion from confidential to public, except for annexes F, H, and L, which shall remain confidential.

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



Patrick Robinson
Judge

Dated this sixth day of February 2004
At The Hague
The Netherlands

[Seal of the Tribunal]