

IT-02-54-T
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09 FEBRUARY 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: 09 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: 09 February 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

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

SECOND DECISION ON WITNESS TORE SOLDAL

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 partially confidential “Prosecution Motion for a Ruling on the Admission of the Written Statement of Witness Tore Soldal Under Rule 92 bis (A) with *Confidential Annexe*”, filed by the Office of the Prosecutor (“Prosecution”) on 03 February 2004 (“Motion”), requesting that the Trial Chamber make a provisional ruling under Rules 54 and 92bis(A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) (pending receipt of a duly-signed declaration under Rule 92bis(B) of the Rules) that the written statement of Tore Soldal (“witness”) shall be admitted into evidence without cross-examination,

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

- (1) the Motion was made prior to the attestation requirement under Rule 92bis(B) of the Rules being fulfilled, in the interest of expediting the Motion;
- (2) the statement should be admitted because it does not offer any observations regarding the acts and conduct of the Accused and contains information that is corroborative;
- (3) none of the factors against admitting evidence in written form set forth in Rule 92bis are applicable to the Motion;
- (4) there is no overriding public interest in having the witness’s evidence presented orally;
- (5) there is no reason to believe that the evidence is unreliable or that its prejudicial effect outweighs its probative value; and
- (6) cross-examination should not be required because the information in the statement is not a critical part of the Prosecution’s case and is not so proximate to the Accused as to require cross-examination,

NOTING the “Amici Curiae Reply to Confidential Prosecution Motion for a Ruling on the Admission of the Written Statement of Witness Tore Soldal Under Rule 92 bis (A) with *Confidential Annexe*”, filed 04 February 2004, in which the *Amici Curiae* submit, *inter alia*, that the witness should be required to attend for cross-examination by the Accused because “[t]he overall extent of the reliability of [the information in the statement] has not been satisfied by the Prosecution”,

NOTING that Rule 92*bis*(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 statement that the Prosecution seeks to have admitted into evidence has already been granted admission under Rule 89(F) of the Rules pursuant to the Trial Chamber's "Decision on Prosecution Motion for Admission of Witness Declaration of Tore Soldal Pursuant to Rule 89(F)", issued on 09 December 2003; and it is appropriate for the witness to appear for cross-examination,

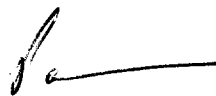
NOTING Articles 20 and 21 of the Statute of the International Tribunal,

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

PURSUANT to Rules 54 and 92*bis* of the Rules,

HEREBY DENIES the Motion and **ORDERS** that the Accused may cross-examine the witness on the contents of the statement for no longer than twenty (20) minutes.

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



Patrick Robinson
Judge

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

[Seal of the Tribunal]