

IT-02-54-T
D28779-028976
12 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: 12 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: 12 February 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

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

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 “Prosecution Motion for the Admission of the Witness Statement of Ms. Jeri Laber in Lieu of Viva Voce Testimony Pursuant to Rule 92*bis* And Annex A”, filed by the Office of the Prosecutor (“Prosecution”) on 05 February 2004 (“Motion”), requesting that the Trial Chamber admit into evidence without cross-examination, under Rule 92*bis*(A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), a statement and related materials (“proposed evidence”) of Witness Jeri Laber (“witness”),

NOTING that (1) the witness testified before the Trial Chamber on 10 December 2002 regarding alleged human rights violations with respect to the Kosovo and Croatia phases of the trial¹ and (2) the witness’s proposed evidence, which the Prosecution seeks to have admitted via the Motion, relates to the Bosnia phase of the trial,

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

- (1) the proposed evidence should be admitted because it (a) does not go to the acts and conduct of the Accused, (b) is not proximate to the Accused, and (c) is cumulative of other evidence already before the Trial Chamber;
- (2) none of the factors against admitting evidence in written form set forth in Rule 92*bis* are applicable to the Motion; and
- (3) cross-examination should not be required because the Accused has already had the opportunity to cross-examine the witness during the Croatia phase of the trial,

NOTING the “Amici Curiae Reply to Prosecution Motion for the Admission of the Witness Statement of Ms. Jeri Laber in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis* Dated 5 February 2004”, filed 09 February 2004, in which the *Amici Curiae* submit that the witness should be required to give her evidence *viva voce* and attend for cross-examination for the following reasons:

- (1) the issue of the Accused’s knowledge is a central issue in the case;
- (2) the proposed evidence is used to establish the Accused’s responsibility for acts and conduct of others;

- (3) the proposed evidence goes to the issue of whether the Accused had knowledge – or should have had knowledge – of crimes that allegedly were to be or were committed by his subordinates;
- (4) the proposed evidence goes to the issue of whether the Accused failed to take reasonable steps to prevent these alleged crimes or to punish those who committed them;
- (5) the proposed evidence is proximate to the Accused; and
- (6) the Accused should be allowed to cross-examine the witness on issues raised by the proposed evidence that relate to the Bosnia Indictment,

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 proposed evidence 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 that the proposed evidence goes to matters that may be of critical importance to the Accused's defence, *e.g.*, notice and knowledge, and that it is therefore appropriate for the witness to appear for cross-examination,

PURSUANT to Rules 54 and 92bis of the Rules,

HEREBY ORDERS as follows:

1. The statement and related materials of the witness shall be admitted into evidence, provided that the witness is made available for cross-examination.

¹ See T. 14236, *et seq.*

2. The Prosecution may not call the witness prior to 19 February 2004.

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



Patrick Robinson
Judge

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



[Seal of the Tribunal]