

**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: 18 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: 18 February 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**SECOND DECISION ON PROSECUTION MOTION FOR ADMISSION OF
TRANSCRIPT PURSUANT TO RULE 92BIS(D) FOR WITNESS B-1132**

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 Transcripts of Witness B-1132 pursuant to Rule 92 Bis (D)”, filed by the Office of the Prosecutor (“Prosecution”) on 13 February 2004 (“Motion”), requesting that the Trial Chamber, pursuant to Rule 92*bis*(D) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), admit into evidence the transcript and related exhibits (“proposed evidence”) of Witness B-1132 without requiring the witness to appear for cross-examination,

NOTING the Trial Chamber’s “Decision on Prosecution Motion for Admission of Transcript Pursuant to Rule 92*bis*(D) for Witness B-1132”, issued 27 January 2004, denying the Prosecution’s prior applications for admission into evidence of the proposed evidence,¹

CONSIDERING the representations made by the Prosecution in the Motion that the deficiencies in the prior applications have been cured,

CONSIDERING the following arguments, as set forth by the Prosecution in the prior applications:

- (1) the proposed evidence should be admitted because it (a) is crime-base evidence that does not go to the acts and conduct of the Accused and (b) 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) cross-examination is not necessary because (a) the witness was adequately cross-examined in the prior proceeding before the International Tribunal by defence counsel for accused who had a substantially similar interest to the Accused in the present case; (b) the testimony of the witnesses is largely corroborative of the testimony of another witness in the present case; and (c) the witness gives minimal evidence regarding the activities of the JNA and specified paramilitary groups associated with Serbia and the Accused,

¹ Confidential “Prosecution Motion for the Admission of Transcripts Pursuant to Rule 92*bis*(D) in Relation to Events in Prijedor”, filed by the Prosecution on 12 December 2003; confidential “Prosecution’s Corrigendum to ‘Prosecution’s Motion for the Admission of Transcripts Pursuant to Rule 92 BIS (D) in Relation to Events in Prijedor’”, filed 22 January 2004 (collectively “prior applications”).

NOTING that Rule 92*bis*(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,

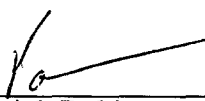
CONSIDERING that the proposed evidence does not go to proof of the acts and conduct of the Accused and is therefore admissible under Rule 92*bis*(D) of the Rules,

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

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

HEREBY ORDERS that the transcript and related exhibits (as identified in paragraph 6 of the Motion) of the witness shall be admitted into evidence, provided that the witness is made available for cross-examination.

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



Patrick Robinson
Judge

Dated this 18th day of February 2004
At The Hague
The Netherlands

[Seal of the Tribunal]