

**UNITED
NATIONS**



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-04-74-PT
Date: 4 April 2006
Original: ENGLISH

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge Jean-Claude Antonetti

Registrar: Mr. Hans Holthuis

Decision: 4 April 2006

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PARTLY CONFIDENTIAL

**DECISION ON THE ADMISSION OF RULE 92 *BIS*
WITNESS TRANSCRIPTS**

Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Daryl Mundis

Counsel for Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Peter Murphey for Bruno Stojić
Mr. Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak
Ms. Vesna Alaburić for Milivoj Petković
Mr. Tomislav Jonjić for Valentin Čorić
Mr. Fahrudin Ibrišimović for Berislav Pušić

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 (“Tribunal”),

BEING SEIZED of the “Prosecution Motion for the Admission of Transcripts pursuant to Rule 92 *bis* (D)”, filed confidentially on 30 June 2005 (“First Prosecution Motion”), and of the “Prosecution Motion for admission of evidence pursuant to Rule 92 *bis* (A), (C) and (D)”, filed confidentially on 5 December 2005 (“Second Prosecution Motion”), in which the Office of the Prosecutor (“Prosecution”) requests: (i) the admission of redacted transcripts of testimonies of 48 witnesses, of which two witnesses are deceased (“first request”); (ii) the admission of exhibits presented during the testimony of the aforementioned witnesses (“second request”); (iii) an order for continued application of protective measures previously accorded by other Trial Chambers and an order according aforementioned witnesses with “all protective measures generally entered by the Trial Chamber in the present case” (“third request”),¹ and (iv) where pseudonyms were used in the previous case, new pseudonyms for the purposes of present case (“fourth request”),²

NOTING “Jadranko Prlić’s Initial Limited Response to Prosecution Motion for the Admission of Transcripts pursuant to Rule 92 *bis* (D)”, filed confidentially on 26 September 2005; “Mr. Slobodan Praljak’s Notice of Joinder in Jadranko Prlić’s Initial Limited Response to Prosecution Motion for the Admission of Transcripts pursuant to Rule 92 *bis* (D) filed on 26 September 2005”, also filed on 26 September 2005; “The Accused Valentin Ćorić’s Notice of Joinder to Jadranko Prlić’s Initial Limited Response to Prosecution Motion for the Admission of Transcripts pursuant to Rule 92 *bis* (D)”, filed on 27 September 2005; “The Accused Milivoj Petković’s Response to Prosecution’s Motion for Admission of Transcripts pursuant to Rule 92 *bis* (D)”, filed on 28 September 2005; “Jadranko Prlić’s Response to Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A), (C), and (D)”, filed confidentially on 19 December 2005; the “Response of Slobodan Praljak to the Prosecutor’s Motion for the Application of Rule 92 *bis*”, filed confidentially on 20 December 2005; “Jadranko Prlić’s Corrigendum to Response to Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A), (C) and (D)”, filed confidentially on 27 December 2005; the “Response of the Defence for the Accused Petković to Prosecution’s Motion for Admission of Transcripts pursuant to Rule 92 *bis* (D) of 5 December 2005”, filed confidentially on 27 December 2005; the “Response on behalf of Berislav Pusić to the Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A), (C) and (D)”, filed confidentially on 27 December 2005; and

¹ First Prosecution Motion, para. 4; Second Prosecution Motion, para. 14.

“The Accused Valentin Ćorić’s Notice of Joinder to the Jadranko Prlić’s Response to Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A), (C) and (D)”, filed on 27 December 2005 and made confidential by Defence notice D20242–D20241 of 29 December 2005,

NOTING the “Prosecution Request for Leave to File a Reply and Reply to Response of the Defence for the Accused Petković to Prosecution’s Motion for Admission of Transcripts pursuant to Rule 92 *bis* (D) of 5 December 2005”, filed confidentially on 3 January 2006,

NOTING the Trial Chamber’s “Order Granting an Extension of Time”, dated 18 January 2006, extending the deadline for all of the Accused to respond to all Rule 92 *bis* motions filed by the Prosecution until 22 February 2006,

NOTING the “Prosecution Notification concerning Motions filed under 92 *bis*”, filed on 24 January 2006, in which the Prosecution requests leave from the Trial Chamber to answer all the Defence Responses in one consolidated Reply after 22 February 2006,³

NOTING “Slobodan Praljak’s Request for Urgent Submission of Translations of the Witness Statements Mentioned in the Prosecution Motion of 5 December 2005”, filed confidentially on 30 January 2006 and “Slobodan Praljak’s Response to Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A), (C) and (D) of 5 December 2005”, filed on 7 February 2006,⁴

NOTING the “Response of the Defence for the Accused Petković to Prosecution’s (three) Motions filed pursuant to Rule 92 *bis* on 30 June 2005, 5 December 2005 and 27 December 2005”, filed confidentially on 22 February 2006, which contains *inter alia* a request to exceed the page limit set out in the Practice Direction on the Length of Briefs and Motions, as the proposed filing is a consolidated response to three Prosecution motions,

NOTING that the Prosecution “considers it unlikely” that any of the 48 witnesses included in confidential annexes of the First and Second Prosecution Motion at trial will “give *viva voce* evidence as to the acts and conduct of the Accused”,⁵

² Prosecution Second Motion, para. 14.

³ The Trial Chamber notes that the Prosecution has not filed a consolidated Reply after 22 February 2006, and that the Trial Chamber has not pronounced itself on the request for leave to file a Reply.

⁴ The Trial Chamber notes that the Accused Praljak had not received translations of the 92 *bis* witness transcripts when he filed his response on 7 February 2006, opposing the Second Prosecution Motion.

⁵ Second Prosecution Motion, paras 4 and 6.

CONSIDERING that, given the large number of witnesses that will be called by the Prosecution and by the Accused in this case, it may be necessary to admit certain witness statements or transcripts of witness testimonies pursuant to Rule 92 *bis* of the Rules,

CONSIDERING, however, that the precise parameters of the Prosecution case, including the number of witnesses it will call at trial, has not been fully determined yet,

CONSIDERING, further, that the Trial Chamber has not received from the Prosecution the means to assess, with regard to each individual Accused, which witnesses will testify to which incident alleged in the indictment,⁶ and that it is therefore unable to assess whether or not the information in the transcripts of the witness testimonies is of “a cumulative nature,” which is one of the factors in favour of admitting evidence in the form of a written statement listed in Rule 92 *bis*(A)(i) of the Rules,⁷

CONSIDERING FURTHER, in relation to the crimes charged pursuant to Article 7(3) of the Statute, that this Trial Chamber is unable to assess at this stage of the proceedings whether alleged subordinates were so proximate to the Accused that their acts would have such a direct bearing on the Accused’s own acts and conduct that it would be unfair to admit this evidence in the form of a transcript of a witness testimony,⁸

CONSIDERING that, with regard to the Prosecution’s second request, it will be appropriate to admit an exhibit only where the proposed transcript or written statement to which this exhibit relates is to be admitted pursuant to Rule 92 *bis*,

NOTING, concerning the third request, that where witnesses have been granted protective measures by another Trial Chamber, those measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal unless and until they are rescinded, varied or

⁶ See *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić*, Case No. IT-04-74-PT, Order on Guidelines for Drawing Up the List of Witnesses and Exhibits, 30 November 2005; *Prlić et al.*, Order Directing the Prosecution to Comply with the Provisions of Ordinary Proceedings, 17 January 2006; *Prlić et al.*, Prosecution Submission pursuant to the Pre-Trial Judge’s Order Dated 24 January 2006, 30 January 2006.

⁷ See also *Prosecutor v. Brđanin & Talić*, IT-99-36-T, “Decision on ‘objection and/or consent to Rule 92 *bis* admission of witness statements number one’ filed by Brđanin on 16 January 2002 and ‘Opposition du général Talić à l’admission des dépositions recueillies en application de l’article 92 B du Règlement’ filed by Talić on 21 January 2002”, filed confidentially on 30 January 2002 (“*Brđanin Decision*”), para. 30: “However, a party is expected to give some general information about which other witnesses will give similar evidence and the nature of the overlap. The prosecution has not done that in this case. In the absence of such information, the Trial Chamber is left with little means of assessing the prosecution’s claim that this witness will give “repetitive evidence”. The Trial Chamber emphasizes that a party seeking to rely on Rule 92 *bis* (as well as parties objecting to Rule 92 *bis* statements) should assist the Trial Chamber by adequately addressing the relevant factors specified in the Rule”.

⁸ *Brđanin Decision*, para. 17. See also *Galić Decision*, para. 15.

augmented in accordance with the procedure set out in Rule 75 of the Rules,⁹ and that in the absence of an application of a party to vary, rescind or augment those protective measures it is unnecessary for a Trial Chamber to order their continuation,

NOTING further that in the present case, no specific measures to rescind, vary or augment the previously ordered protective measures have been proposed and no arguments in support of this have been advanced in the Motions,

CONSIDERING that while it would be premature to admit the proposed evidence at the present stage of proceedings under Rule 92 *bis* of the Rules, the Prosecution may tender all or some of the proposed transcripts of witness testimonies, as well as the exhibits presented during aforementioned witness testimonies, as evidence at trial, in the usual manner, or it may seek again to have some or all of the proposed evidence admitted pursuant to Rule 92 *bis* at a later stage when there has been clarification of the matters referred to above,

CONSIDERING further that in order to ensure the expeditious conduct of the proceedings it will be appropriate for the Trial Chamber to grant new pseudonyms for the proposed witnesses at this stage of the proceedings,

FOR THE FOREGOING REASONS, pursuant to Rules 54, 75 and 89 (C) and 92 *bis* of the Rules,

GRANTS Petković's request to exceed the page limit

GRANTS the forth request of the Prosecution Motions and **ORDERS** as follows

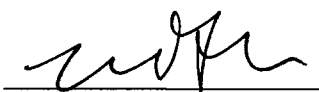
- 1) Witnesses 'UU', 'S', 'BB', 'AC', 'CC', 'FF', 'AB', 'RR', 'PP', 'Q', 'WW', 'AV', 'OO', 'NO', 'U', 'D', 'AF', 'W', 'AI', 'X', 'Y', 'H', 'II', 'AU', 'TT', 'HH', 'NN', 'LL', 'JJ', 'O', 'W' and 'A' shall be given new pseudonyms for the more convenient conduct of this trial. These differ from those granted to these witnesses in other proceedings before the Tribunal. The new pseudonym for each witness is listed in *Confidential Annex I* attached to this decision. These pseudonyms shall be used whenever referring to the witnesses in question in this trial and related proceedings before the Tribunal and in discussions among parties to the trial.

⁹ See Rule 75(F)(i) of the Rules.

- 2) The name, address, whereabouts of, and identifying information concerning each of the witnesses identified in *Confidential* Annex I of this decision shall not be disclosed to the public and shall not be included in any public records of the Tribunal.

DENIES the first, second and third requests of the First and the Second Prosecution Motions.

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



Judge Carmel Agius
Presiding

Dated this fourth day of April 2006
At The Hague
The Netherlands

[Seal of the Tribunal]