



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-95-13/1-T
Date: 5 October 2006
Original: English

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07764-07762
06 October 2006

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IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: Mr Hans Holthuis

Decision: 5 October 2006

PROSECUTOR

v.

**MILE MRKŠIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN**

**DECISION ON THE MOTION OF THE DEFENCE OF THE
ACCUSED VESELIN ŠLJIVANČANIN FOR ADMISSION OF
WRITTEN STATEMENTS IN LIEU OF VIVA VOCE TESTIMONY
PURSUANT TO RULE 92bis, WITH ANNEXES 1 AND 2**

The Office of the Prosecutor:

Mr Marks Moore
Mr Philip Weiner
Mr Vincent Lunny
Ms Meritxell Regue
Mr Alexis Demirdjian

Counsel for the Accused:

Mr Miroslav Vasić and Mr Vladimir Domazet for Mile Mrkšić
Mr Borivoje Borović and Ms Mira Tapušković for Miroslav Radić
Mr Novak Lukić and Mr Momčilo Bulatović for Veselin Šljivančanin

1. This decision of Trial Chamber II is in respect of the “Motion by the Defence of the Accused Veselin Šljivančanin for Admission of Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92bis, With Annexes 1 and 2” (“Motion”), filed confidentially on 25 September 2006. The Defence for Veselin Šljivančanin (“Defence”) seeks the admission, pursuant to Rule 92bis(A)(i)(e) of the Rules of Procedure and Evidence (“Rules”), of the written statements of Kasim Medović and Ištvan Pap, in lieu of their oral testimony. In the Defence’s submission, the proposed statements are admissible without cross-examination under the Rule, as they go exclusively to the character of the Accused.

2. On 4 October 2006, the Prosecution filed a “Prosecution’s Response to Motion by the Defence of the Accused Veselin Šljivančanin for Admission of Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92bis”, whereby it indicated that it does not object to the admission of the proposed statements without the witnesses appearing for cross-examination.

3. For a written statement to be admitted into evidence in lieu of oral testimony, it must go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Chamber recalls that it has discretion in deciding whether to admit a written statement. Relevant to this determination is the proximity to the accused of any acts and conduct of his subordinates described in the written statements, and the cumulative nature of the evidence sought to be admitted in written form. In determining whether the witness should be available for cross-examination, the Chamber will consider whether the evidence in question relates to a critical and live issue between the parties as opposed to a peripheral or marginally relevant issue.

4. Both written statements sought to be admitted relate to the character of the Accused Veselin Šljivančanin. Kasim Medović worked as a physician with the Guards Brigade from 1981 onwards and became acquainted with the Accused in this capacity. His statement is limited to observations he made on the character of the Accused in this context and does not relate to any acts and conducts of the Accused which may be relevant to the charges brought against him. Ištvan Pap has been an officer with the Guards Brigade since 1988 and has previously served under the command of the Accused. His statement is a record of his observations of the Accused as a commander and does not touch upon the events directly relevant to this trial. Thus, the Chamber is satisfied that neither statements go to proof of the acts and conduct of the Accused and relate to a critical and live issue between the parties. They are therefore admissible without requiring the witnesses to appear for cross-examination.

5. Finally, the Defence informally indicated that despite having filed the Motion confidentially, it was not seeking or intending to seek protective measures for any of the two witnesses concerned. The Chamber therefore sees no reason for its decision not to be public.

For the foregoing reasons, pursuant to Rules 89 and 92*bis* of the Rules, the Chamber

GRANTS the Motion and **DECIDES** that the written statements of Kasim Medović and Ištvan Pap will be provisionally admitted into evidence, without requiring the witnesses to be called for cross-examination. The admission of the statements is subject to compliance with the Rule 92*bis*(B) certification procedure.

Done in English and French, the English version being authoritative.



Judge Kevin Parker
Presiding

Dated this fifth day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]