IT-98-29/1-T
D 3567 - D 3564
14 MARCH 2007

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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-98-29/1-T

Date: 14 March 2007

Original: English

IN TRIAL CHAMBER III

Before: **Judge Patrick Robinson, Presiding**
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: **Mr. Hans Holthuis**

Decision of: **14 March 2007**

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

DECISION ON PROSECUTION'S MOTION TO ADD A WITNESS AND FOR EVIDENCE TO BE ADMITTED VIA RULE 92 *BIS*

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

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TRIAL CHAMBER III 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 SEISED of the Office of the Prosecutor's ("Prosecution") Motion to Add a Witness and for Evidence to be Admitted via Rule 92 *bis* ("Motion"), which was filed with a confidential Annex, on 12 February 2007;

NOTING that the Prosecution requests an additional witness, Dr Šefik Bešlić, to be added to its list of witnesses and to have the witness's evidence admitted via Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules"), pursuant to Rules 73 (A) and 73 *bis* (F);

NOTING furthermore, the Prosecution's submissions that Dr Šefik Bešlić is in a position to comment on the medical records of Dženana Sokolović, which were discussed and admitted into evidence during her cross-examination;[1]

NOTING the Defence response filed on 26 February 2007,[2] in which the Defence opposes the Motion on the grounds that the Prosecution could have obtained a statement from Dr Šefik Bešlić closer to the time that he performed surgery on Dženana Sokolović, not twelve years later;[3]

NOTING furthermore, the Defence submission that another witness, Dr Bakir Nakaš, confirmed the authenticity of the medical record compiled by Dr Šefik Bešlić,[4] and that it would not be in the interests of justice to admit Dr Šefik Bešlić's statement;[5]

NOTING that the Prosecution filed a Reply on 2 March 2007;[6]

CONSIDERING that pursuant to Rule 73 *bis* (F) of the Rules, after the commencement of the trial, the Prosecutor may file a motion to vary the number of witnesses that are to be called, and the Trial Chamber may grant the request if satisfied that this is in the interests of justice;

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[1] Motion, paras 5,6,10.
[2] Submission in Response to Prosecution's Motion to Add a Witness and for Evidence to be Admitted via Rule 92 *bis*, 26 February 2007, "Response".
[3] Response, para. 10.
[4] Response, para. 6.
[5] Response, para. 13.
[6] Prosecution Reply to Defence Submission in Response to Prosecution's Motion to add a Witness and for Evidence to be Admitted via Rule 92 *bis*, 2 March 2007.

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CONSIDERING that Dr Šefik Bešlić may provide evidence to assist the Trial Chamber to determine the trajectory of the bullet that wounded Dženana Sokolović, which may be relevant in ascertaining the origin of fire, an important issue in the proceedings;

CONSIDERING that the additional witness would neither prolong the Prosecution's case, nor unfairly prejudice the Defence;

FINDING that it would be in the interests of justice to add the witness to the Prosecution's witness list;

CONSIDERING that Rule 92 *bis* of the Rules permits a Trial Chamber to admit written statements in lieu of oral testimony if it goes to proof of a matter other than the acts and conduct of the accused and that if the Chamber decides to require a witness to appear for cross-examination the provisions of Rule 92 *ter* apply;

CONSIDERING that Rule 92 *ter* of the Rules provides for the admission of evidence of a witness in the form of a written statement if certain conditions are met, namely, that the witness is present in court; that the witness is available for cross-examination and any questioning from the Judges; and that the witness attests that the written statement accurately reflects the witness's declaration and what the witness would say if examined;

CONSIDERING that the evidence of Dr Šefik Bešlić does not go to the acts and conduct of the Accused, and that it is cumulative to the testimony of another witness;

FINDING that the witness should appear for cross-examination as the evidence he is to provide concerns an important issue in the case;

CONSIDERING that 20 minutes would be ample time for the Defence to conduct its cross-examination;

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FOR THE FOREGOING REASONS,

PURSUANT TO Rules 73, 73 *bis*, 92 *bis*, 92 *ter* and 126 *bis* of the Rules,

HEREBY GRANTS leave to the Prosecution to file its Reply, and

GRANTS the Motion, and

ORDERS that

1. the written statement of Dr Šefik Bešlić, be admitted into evidence subject to the fulfilment of the requirement of Rule 92 *ter* of the Rules:

2. the Prosecution provide the Registrar with an electronic version of the written statement;

3. the examination-in-chief of Dr Šefik Bešlić shall not exceed 15 minutes and that the cross-examination shall not exceed 20 minutes and both shall be limited to matters addressing Dženana Sokolović's injuries;

Requests the Registrar to assign an exhibit number to the written statement upon fulfilment of the requirements of Rule 92 *ter* of the Rules.

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

Judge Patrick Robinson
Presiding

Dated this fourteenth day of March 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

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