



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: 3 April 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: 3 April 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR
ADMISSION OF WITNESS STATEMENTS PURSUANT
TO 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

TRIAL CHAMBER III (“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 SEISED of “Prosecution Motion for Admission of Written Statements Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence with Confidential Annexes A-L”, filed confidentially on 28 February 2007 (“Motion”), in which the Prosecutor requests the Trial Chamber to admit into evidence the written statements of Witnesses W-74, W-77, W-108, W-109, W-139 and W-146, without requiring the witnesses to appear for cross-examination;

NOTING the Defence “Submission in Response to Prosecution Motion for Admission of Written Statements”, filed 12 March 2007;

RECALLING the Trial Chamber’s “Decision on Prosecution Motion for Admission of Witnesses Written Statements Pursuant to Rules 92 *bis* and *ter* of the Rules of Procedure and Evidence with Confidential Annex A”, dated 27 February 2007, in which the Trial Chamber set out the law on admission of statements pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”);

NOTING that the Defence does not object to admission of the statement of Witness W-74 pursuant to Rule 92 *bis* of the Rules;

NOTING that the Defence submits that the last paragraph in the statement of Witness W-77, dated 21 November 1995, contains an opinion as to the origin of fire;

CONSIDERING that the statement of Witness W-77 is admissible, provided that the last paragraph of the statement is deleted;

NOTING that the Defence submits that Witness W-108, before providing her statement, worked for the Prosecution as interpreter and that in that capacity, she has heard the statements of several witnesses in the present case;

NOTING that the Defence submits that Witness W-108 should be called for cross-examination;

CONSIDERING that the statement of Witness W-108 dated 9 and 11 March 1997 contains conclusions by the witness on origin of fire, but only insofar as it pertains to incidents occurring before the Indictment period;

CONSIDERING that insofar as the evidence concerning origin of fire pertains to incidents during a period for which the Accused does not stand trial, it is not “of substantial importance to the

Prosecution case” as it cannot be “the vital link in demonstrating that the shell [...] was fired from a gun emplacement manned by immediately proximate subordinates of the accused.”¹

CONSIDERING that Witness W-108 acted as an interpreter for the Prosecution in the period preceding and following her statement dated 9 and 11 March 1997 and in that capacity interpreted the statements of several witnesses in the present case;

CONSIDERING therefore, that a question may be raised as to the disinterestedness of this witness and that it is appropriate that the witness appears for cross-examination;

CONSIDERING that the statement of Witness W-108, dated 21 August 1997 and contained in Annex F to the Motion is not relevant to the present case and thus should not be admitted;

CONSIDERING that the Defence does not object to the admission of the statement of Witness W-109;

NOTING that the Defence objects to the admission of the medical documents pertaining to three alleged victims tendered with the statement of Witness W-109, because, according to the Defence, these three alleged victims are not mentioned in the Indictment;

CONSIDERING that the documents to which the Defence objects in relation to Witness W-109 are already admitted through the testimony of a prior witness as exhibits P403, P458 and P461;

CONSIDERING that the Defence does not object to the admission into evidence of the documents with 65 *ter* numbers 60 and 82;

CONSIDERING that those two documents are relevant and have probative value;

NOTING that the Defence submits that Witness W-139 should be made available for cross-examination, because the statements of that witness contain many opinions of the witness as to the origin of fire and other important aspects of the Prosecution’s case;

CONSIDERING that the statement of Witness W-139, dated 4 October 2002 and contained in Annex J, does not contain an opinion as to the origin of fire, but the first sentence of paragraph 17 of the statement contains an opinion as to the civilian nature of the tram depot and as such should be redacted from the statement;

¹ *Prosecutor v. Stanislav Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June

CONSIDERING furthermore that the last sentence of paragraph 7 of the statement of Witness W-139, dated 5 July 2006 and contained in Annex K, pertains to the presence of military facilities in targeted areas, a critical element in the Prosecution case and as such should be redacted from the statement;

CONSIDERING that the above statements of Witness W-139 are admissible if redacted as specified above;

NOTING that the Defence submits that the statement of Witness W-146, dated 25 February 1996 and contained in Annex L, contains an opinion of the witness as to the origin of fire in the first and in the last paragraph, but that the statement can be admitted pursuant to Rule 92 *bis* of the Rules if these paragraphs are redacted;

CONSIDERING that the statement of Witness W-146 does not contain an opinion as to the origin of fire;

CONSIDERING that the last paragraph of the statement of Witness W-146 contains an opinion as to the civilian status of the area in which a shell landed and the lack of military activity in that area, both critical elements of the Prosecution case;

CONSIDERING, however, that the statement of Witness W-146 is admissible if the last paragraph is redacted from the statement;

CONSIDERING that the statements contained in Annexes A-E and G-L are relevant and probative;

CONSIDERING that the statements contained in Annexes A-E and G-L do not go to the acts and conduct of the Accused, or to the acts and conduct of his proximate subordinates and do not reveal any vital links to the Accused or his immediate subordinates;

CONSIDERING that there is no need to cross-examine the witnesses on their statements;

PURSUANT TO RULE 92 *bis* of the Rules,

HEREBY GRANTS IN PART the Motion, and

ADMITS into evidence:

The statement of Witness W-74, contained in Annex B;

2002, para. 18.

The statement of Witness W-77, contained in Annex C, in redacted form, as specified above and the statement of Witness W-77, contained in Annex D;

The statement of Witness W-109, contained in Annex G and the accompanying witness attestation contained in Annex H;

The documents with 65 *ter* numbers 60 and 82, contained in Annex I;

The statement of Witness W-139, contained in Annex J, and the statement of Witnesses W-139, dated 5 July 2002, both in redacted form, as specified above; and

The statement of Witness W-146, in redacted form, as specified above; and

ADMITS the statement of Witness W-108, dated 9 and 11 March 1997 and contained in Annex E to the Motion, subject to the witness appearing for cross-examination and otherwise meeting the requirements of Rule 92 *ter*, and order that the examination-in-chief of this witness shall not exceed 30 minutes and cross-examination of this witness shall not exceed 45 minutes;


REQUESTS the Registrar to:

Assign exhibit numbers to the statements of Witnesses W-74, W-77, W-109, W-139 and W-146 upon fulfilment of the requirements of Rule 92 *bis* (B);

Assign an exhibit number to the statement of Witness W-108 upon fulfilment of the requirements of Rule 92 *ter*; and

Assign exhibit numbers to the documents with 65 *ter* numbers 60 and 82, contained in Annex I.

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



Judge Patrick Robinson
Presiding

Dated this third day of April 2007

At The Hague

The Netherlands

[Seal of the Tribunal]