



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-04-83-T

Date: 11 December 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 11 December 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON SIXTH PROSECUTION MOTION
FOR ADMISSION OF EVIDENCE
PURSUANT TO RULE 92 *BIS***

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Matthias Neuner
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

TRIAL CHAMBER I (“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”) is seised of the “Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*” filed publicly with a confidential annex on 4 December 2007 (“Motion”) and hereby renders its Decision.

I. SUBMISSIONS

A. Prosecution

1. In its Motion, the Prosecution requests the Trial Chamber to admit the certified written statement of Vjekoslav Vuković, along with five documents authenticated in the statement (“Proposed Exhibits”) and part of the certified written statement of Ivan Negovetić (collectively: “Proposed Statements”) and dispense with the need for these witnesses to appear for cross-examination pursuant to Rule 92 *bis* of the Rules.¹

2. The Prosecution submits that both Proposed Statements contain evidence that goes exclusively to proof of a matter other than the acts and conduct of the Accused as charged in the indictment.² Specifically, the Prosecution argues that:

- a) The evidence of Vjekoslav Vuković focuses on the structure and history of the Commission for Reviewing Citizenship of Naturalised Persons in Bosnia and Herzegovina, relates to “relevant political and historical background” and would be cumulative to the expected testimony of Witness Aiman Awad as far as it relates to “the circumstances by which foreign Mujahedin fighters came to acquire BiH citizenship”;³
- b) The evidence of Ivan Negovetić focuses exclusively “on the impact of crimes upon the victims” and is cumulative to the testimonies of, *inter alia*, witnesses Berislav Marijanović, Zdravko Pranješ and Željko Pušelja;⁴
- c) None of the factors against the admission of written statements applies to the Proposed Statements, the evidence contained therein is reliable and relevant to the charges in the

¹ Motion, paras 1,15. The Prosecution submits that the written statement of witness Ivan Negovetić should be redacted in the following parts: the last sentence of paragraph 7; the last sentence of paragraph 11; the first sentence of paragraph 12; the last sentence of paragraph 21; and paragraphs 25 and 46 in their entirety, *id*.

² Motion, para. 4.

³ Motion para. 7.

⁴ Motion, para. 6.

indictment, and its probative value is not substantially outweighed by the need to ensure a fair trial.⁵

3. The Prosecution further submits that it is appropriate to admit into evidence the Proposed Exhibits because they have been authenticated in line with the Trial Chamber's evidentiary guidelines and a relation has been established between the witness and each exhibit.⁶

4. Finally, the Prosecution submits that it is not necessary for the witnesses to appear for cross-examination as the reasons justifying their admission demonstrate at the same time that the Accused's rights will not be infringed by dispensing with cross-examination.⁷ The Defence should only be granted an opportunity for cross-examination if it can make a "bona fide and particularized" showing that it is necessary and worthwhile that the witness be called.⁸

B. Defence

5. On 10 December 2007, the Defence filed publicly the "Defence Response to Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis" ("Response"). In its Response, the Defence does not object to the admission of the statement of Vjekoslav Vuković pursuant to Rule 92 bis without cross-examination.⁹ However, it opposes the remainder of the Motion and requests that Ivan Negovetić attend for cross-examination for the following reasons:¹⁰

- a) The evidence provided in paragraph 35 of his statement claiming that the Mujahedin were stationed in the school in Mehurići during June 1993 is not cumulative and touches upon a "live and important issue between the parties, as opposed to a peripheral or marginally relevant issue";¹¹
- b) The part of the statement concerning the readiness of a local ABiH commander to attack the Mujahedin if ordered so by the Supreme Command touches upon the issue of effective control over the Mujahedin, as well as the availability of "necessary and reasonable measures"; and as a consequence the Defence should be permitted to "test this evidence, particularly to see whether the commander can be identified";¹²

⁵ Motion, paras 9-10.

⁶ Motion, para. 11, referring to *Prosecution v Rasim Delić*, Case No. IT-04-83-T, Decision on Third Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis and Motion for Protective Measures, 26 November 2007, para. 10.

⁷ Motion, para. 12.

⁸ Motion, para. 13.

⁹ Response, paras 2, 12.

¹⁰ Response, paras 2, 7, 12.

¹¹ Response, para. 9.

¹² Response, para. 10.

- c) The Defence should be permitted to enquire as to the steps taken by the witness at that time to convey to the relevant authorities the information contained in his statement claiming that “Mujahedin had attacked a Croat village nearby, killed some of inhabitants, and arrested survivors”.¹³

II. DISCUSSION

6. The Trial Chamber recalls the requirements for the admission of a written statement under Rule 92 *bis* of the Rules as set out in previous Decisions of this Trial Chamber.¹⁴

7. Having carefully reviewed the Proposed Statements, the Trial Chamber makes the following determinations.

1. Vjekoslav Vuković

8. The statement of Vjekoslav Vuković describes the structure and history of the Commission for Reviewing Citizenship of Naturalised Persons in Bosnia and Herzegovina. The Trial Chamber finds that his evidence does not go to proof of acts and conduct of the Accused as charged in the indictment. Moreover, the statement focuses on the procedures governing the process of granting citizenship and as such, falls within the category of “relevant political and historical background”. Considering that there are no factors militating against the admission of this statement, the Trial Chamber admits the statement of Vjekoslav Vuković into evidence pursuant to Rule 92 *bis*. The Trial Chamber is also satisfied that the Prosecution has established that the five Proposed Exhibits form an inseparable part of the witness’ statement and therefore admits them into evidence as well.

2. Ivan Negovetić

9. The statement of Ivan Negovetić concerns his observations as a member of the Joint Humanitarian Commission for Monitoring Release of all Prisoners. His evidence touches upon the conduct of the Mujahedin group in Mehurići as well as the execution of some 50 Croats in a village close to Mehurići. The Trial Chamber notes that the statement in its redacted form, as proposed by the Prosecution, does not go to proof of acts and conduct of the Accused as charged in the indictment. Moreover, the evidence of Ivan Negovetić is partly cumulative to the evidence of

¹³ Response, para. 11.

¹⁴ Decision on Second Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis*, 6 November 2007; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 13 November 2007; Decision on Third Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* and Motion for Protective Measures, 26 November 2007; Decision on Fourth Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis*, 5 December 2007; Decision on Fifth Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* and Motion for Protective Measures, 5 December 2007.

several other witnesses, including Berislav Marijanović, Zdravko Pranješ and Željko Pušelja. However, having said that, the Trial Chamber also concurs with the Defence in observing that the statement of this witness touches upon several “live and important issues between the parties” including that of the alleged participation of Mujahedin in attack on Maline in June 1993. Therefore, in view of the overriding obligation to ensure a fair trial, the Trial Chamber finds it appropriate to admit into evidence the statement of Ivan Negovetić pursuant to Rule 92 *bis*, subject to the redactions suggested by the Prosecution and the witness’ appearance for cross-examination.

III. DISPOSITION

10. For the reasons set out above, and pursuant to Articles 20 and 21 of the Statute and Rules 54, 89, 92 *bis* and 92 *ter* of the Rules, the Trial Chamber hereby

GRANTS the Motion **IN PART**,

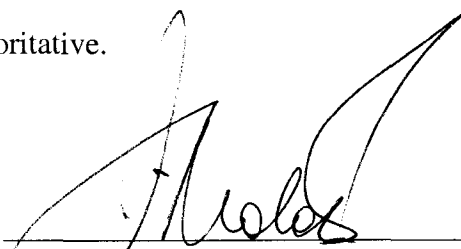
DECIDES as follows:

1. The statement of Vjekoslav Vuković is admitted into evidence together with the five Proposed Exhibits;
2. The statement of Ivan Negovetić is admitted into evidence subject to his appearance for cross-examination and the following redactions made by the Prosecution: the last sentence of paragraph 7; the last sentence of paragraph 11; the first sentence of paragraph 12; the last sentence of paragraph 21; and paragraphs 25 and 46 in their entirety;

REQUESTS the Registry to assign exhibit numbers to the statements and associated exhibits admitted into evidence and

DENIES the remainder of the Motion.

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



Judge Bakone Justice Moloto
Presiding

Dated this eleventh day of December 2007

At The Hague

The Netherlands

[Seal of the Tribunal]