

**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-98-32/1-T  
Date: 22 August 2008  
Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Christine Van den Wyngaert  
Judge Pedro David

**Registrar:** Mr. Hans Holthuis

**Decision of:** 22 August 2008

**PROSECUTOR**

**v.**

**MILAN LUKIĆ  
SREDOJE LUKIĆ**

***PUBLIC***

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

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**The Office of the Prosecutor**

Mr. Dermot Groome  
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**Counsel for the Accused**

Mr. Jason Alarid for Milan Lukić  
Mr. Đuro Čepić and Mr. Jens Dieckmann for Sredoje Lukić

**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”) is seised of the “Confidential Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* with Confidential Annexes A and B, and Confidential and *Ex Parte* Annexes C and D”, filed confidentially and *ex parte* on 15 February 2008 (“Motion”).

### 1. Procedural history

1. The Prosecution requests the Trial Chamber to allow the admission into evidence of the transcripts and associated exhibits of six witnesses from the case of the *Prosecutor v. Vasiljević*,<sup>1</sup> pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”): witnesses VG-005, VG-021, VG-022, VG-116, Mesvud Poljo, Amor Masović and Miršad Tokača.<sup>2</sup>

2. By decision of 8 July 2008, the Trial Chamber did not allow the addition of witness VG-005 onto the Prosecution’s Rule 65 *ter* witness list.<sup>3</sup> Moreover, on 11 April 2008, the Prosecution expressed its intention to call witness VG-022 as a Rule 92 *ter* witness, thereby modifying the mode of testimony of this witness.<sup>4</sup> On 22 April 2008, the Trial Chamber granted this request.<sup>5</sup> The Trial Chamber notes further that witnesses VG-021 and VG-116 no longer appear on the latest Rule 65 *ter* witness list filed on 17 July 2008 (“Rule 65 *ter* Witness List”). The Chamber concludes that the Prosecution dropped these two witnesses from its case.<sup>6</sup> Finally, the application with respect to Miršad Tokača is the subject of another decision of this Trial Chamber. Therefore, the applications with respect to witnesses VG-005, VG-021, VG-022, VG-116 and Miršad Tokača no longer form part of the Motion.

3. The Trial Chamber notes, finally, that Mevsud Poljo appears as a Rule 92 *ter* witness on the Rule 65 *ter* Witness List.<sup>7</sup> However, in footnote 7 of the Annex attached to that list, the Prosecution stresses that it “applied under Rule 92 *bis* that [his] testimony be taken entirely in written form” and explains that “[i]n recognition of the reasonable possibility that the [his] appearance here pending a decision from the Trial Chamber”.<sup>8</sup> Therefore, the application with respect to this witness is still part of the Motion.

<sup>1</sup> *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T.

<sup>2</sup> Motion, para. 27.

<sup>3</sup> Decision in relation to Prosecution proposed witnesses, filed confidentially on 8 July 2008.

<sup>4</sup> Prosecution’s motion to amend 65 *ter* witness list, 11 April 2008, para. 5.

<sup>5</sup> Decision on Prosecution’s motion to amend Rule 65 *ter* witness list and on related submissions, 22 April 2008.

<sup>6</sup> Prosecution’s submission of witness list pursuant to order of 9 July 2008, with confidential Annex A, 17 July 2008.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.* Annex A, footnote 7.

4. On 28 February 2008, the Defence of Sredoje Lukić responded (“Sredoje Lukić Response”).<sup>9</sup> On 6 March 2008, the Prosecution requested leave to reply and submitted its reply (“Reply”).<sup>10</sup> The Trial Chamber grants the Prosecution’s request for leave to reply.

5. After being granted an extension of time for filing its response,<sup>11</sup> the Defence of Milan Lukić responded (“Milan Lukić Response”) on 28 March 2008.<sup>12</sup> On 4 April 2008, the Prosecution requested leave to reply and submitted its reply (“Additional Reply”).<sup>13</sup> The Trial Chamber grants the Prosecution’s request for leave to file an additional reply.

## 2. Submissions

### (a) Motion

6. The Prosecution seeks to have admitted into evidence pursuant to Rule 92 *bis* the transcripts of Mevsud Poljo and Amor Masović, together with the exhibits associated with those transcripts.<sup>14</sup> The Prosecution submits that the proposed evidence “satisfies all aspects of Rule 92 *bis*”<sup>15</sup> as it does not go to proof of the acts and conduct of the Accused and as it “does not address or draw any conclusions as to the identity of the perpetrators of any crimes, nor does it refer to either of the Accused”.<sup>16</sup> In particular, according to the Prosecution, the testimony consists of crime-base evidence, evidence of a cumulative nature, statistics related to the composition of the population of the places referred to in the indictment and evidence concerning the impact of crimes on victims.<sup>17</sup>

7. In addition, the Prosecution submits that these two witnesses have already been “fully cross-examined by a competent defence counsel with similar interests to counsel for the Accused in the present case” during the *Vasiljević* trial.<sup>18</sup> It argues that, since under Rule 92 *bis* of the Rules the right to cross-examine is not an absolute right, the Trial Chamber “should only consider allowing

<sup>9</sup> Response of defence counsel for Sredoje Lukić to “Confidential Prosecution motion for the admission of evidence pursuant to Rule 92 *bis* with confidential Annexes A and B, and confidential and *ex parte* Annexes C and D”, filed confidentially on 28 February 2008.

<sup>10</sup> Prosecution motion for leave to reply to the “Response of defence counsel for Sredoje Lukić to the confidential Prosecution motion for the admission of evidence pursuant to Rule 92 *bis* with confidential Annexes A and B, and confidential and *ex parte* Annexes C and D” and reply, filed confidentially on 6 March 2008.

<sup>11</sup> Status Conference, 12 March 2008.

<sup>12</sup> Response of defence counsel for Milan Lukić to “Confidential Prosecution first motion for the admission of evidence pursuant to Rule 92 *bis* with confidential Annexes A and B, and confidential and *ex parte* Annexes C and D”, filed confidentially on 28 March 2008.

<sup>13</sup> Response of defence counsel for Milan Lukić to the “Confidential Prosecution first motion for the admission of evidence pursuant to Rule 92 *bis* with confidential Annexes A and B, and confidential and *ex parte* Annexes C and D” and Reply, filed confidentially on 4 April 2008.

<sup>14</sup> Motion, para. 27.

<sup>15</sup> Motion, paras 6-8.

<sup>16</sup> Motion, para. 10.

<sup>17</sup> Motion, para. 11.

<sup>18</sup> Motion, para. 21.

cross-examination of a particular witness on a specific showing by the Defence that cross-examination is necessary and appropriate as to that particular witness”.<sup>19</sup>

(b) Sredoje Lukić and Milan Lukić Responses

8. Both the Defence of Sredoje Lukić and the Defence of Milan Lukić reject the Prosecution’s argument that the proposed evidence does not go to the acts or conduct of the Accused. Moreover, citing Rule 92 *bis*(A)(ii)(b), they argue that the admission of such evidence would have a prejudicial effect outweighing the evidence’s probative value, since these transcripts “give the impression as if the Accused had been involved in those criminal acts described”.<sup>20</sup>

9. The Defence of Sredoje Lukić and the Defence of Milan Lukić also submit that by seeking to have these transcripts admitted “the Prosecution pushes the Accused to reveal essential aspects of his Defence case prior to the Pre-Trial Conference and prior to the examination of the Prosecution’s witnesses by the Defence”.<sup>21</sup> Therefore, they argue that the evidence sought to be admitted would violate the right of the Accused to a fair trial under Articles 20 and 21 of the Statute and request the opportunity to cross-examine each witness, should any of the proposed evidence be admitted.<sup>22</sup> In relation to the right to cross-examination, they contend that this is a fundamental right under the International Covenant on Civil and Political Rights and under Articles 20 and 21 (4)(e) of the Statute and that these provisions should be taken into consideration when deciding whether a witness should be called for cross-examination.<sup>23</sup>

10. The Defence of Sredoje Lukić and the Defence of Milan Lukić further submit that “the allegations contained in these statements are all pivotal to the Prosecution case” and the alleged liability of the Accused, and thus, none of the evidence should be admitted.<sup>24</sup> Moreover, adverting to the Accused having pleaded not guilty to all the charges in the indictment and having denied their alleged membership in the paramilitary group of the “White Eagles”, the Defence of Sredoje Lukić and the Defence of Milan Lukić challenge the “truthfulness and accuracy of the information contained in those statements” that refer to acts alleged to have been committed by this paramilitary group.<sup>25</sup>

11. Finally, the Defence of Sredoje Lukić and the Defence of Milan Lukić oppose the admission of the exhibits associated with the transcripts, arguing that, according to Rule 92 *bis*, “only the

<sup>19</sup> Motion, paras 21-23.

<sup>20</sup> Sredoje Lukić Response, para. 7; Milan Lukić Response, para. 7.

<sup>21</sup> Sredoje Lukić Response, para. 8; Milan Lukić Response, para. 8.

<sup>22</sup> Sredoje Lukić Response, paras 8-9; Milan Lukić Response paras 8-9.

<sup>23</sup> Sredoje Lukić Response, paras 11-13; Milan Lukić Response, paras 15-17.

<sup>24</sup> Sredoje Lukić Response, para. 14; Milan Lukić Response, para. 19.

<sup>25</sup> Sredoje Lukić Response, para. 16; Milan Lukić Response, para. 20.

evidence of a witness in the form of a written statement or a transcript of evidence [...] can be admitted by the Trial Chamber”.<sup>26</sup>

(c) Prosecution Reply

12. The Prosecution reiterates that the proposed evidence of Mevsud Poljo and Amor Masović “does not go to proof of the acts and conduct of the Accused”.<sup>27</sup> In particular, as regards the prejudicial effect that the proposed evidence would have on the Accused, it submits that this Trial Chamber is composed of a professional bench that “can always be expected to deal appropriately with evidence of a prejudicial nature”.<sup>28</sup>

13. Addressing the allegation that the Prosecution is “pushing the Accused to reveal essential aspects” of their defence cases, the Prosecution submits that there is no merit in such an allegation, and that the Motion is a “legitimate and proper implementation of Rule 92 *bis*”.<sup>29</sup>

14. With regard to the references of the “White Eagles” in the transcripts of the two witnesses, the Prosecution submits that the Responses fail to identify the relevant passages of evidence about the “White Eagles” or “how they affect the question of admissibility”. It also reiterates that “the proposed evidence has been redacted, and accordingly there is no connection between the Accused and any reference to the ‘White Eagles’”.<sup>30</sup>

3. Applicable law

15. Any evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admissibility of evidence, as set out in Rule 89(C) and (D), namely that the evidence is relevant and has probative value and such probative value must not be substantially outweighed by the need to ensure a fair trial.<sup>31</sup> Therefore, the Trial Chamber must find that the evidence contained in the proposed transcripts is relevant to the charges in the indictment. It is for the Prosecution to demonstrate the relevance.<sup>32</sup>

<sup>26</sup> Sredoje Lukić Response, para. 17; Milan Lukić Response, para. 19.

<sup>27</sup> Reply paras 4-9; Additional Reply, paras 4-9.

<sup>28</sup> Reply, paras 11-12; Additional Reply, paras 11-12.

<sup>29</sup> Reply, para. 14; Additional Reply, para. 14.

<sup>30</sup> Reply, paras 30-31; Additional Reply, paras 30-31.

<sup>31</sup> *Prosecution v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on interlocutory appeal concerning Rule 92 *bis*(C), 7 June 2002 (“*Galić Appeal Decision*”), para. 12 (considering that the “intention of Rule 92*bis* is to qualify the previous preference in the Rules for live, in court’ testimony, and to permit evidence to be given in written form where the interests of justice allow provided that such evidence is probative and reliable”); *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution motion for admission of written statement pursuant to Rule 92 *bis* and *ter* of the Rules of Procedure and Evidence with confidential Annex A, 27 February 2007 (“*Dragomir Milošević Decision*”), para. 7.

<sup>32</sup> *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution’s motion for admission of written statements in lieu of viva voce testimony pursuant to Rule 92 *bis*”, 5 April 2006, (“*Bošković Decision*”), para. 8.

16. Rule 92 *bis*(A) allows for the admission of the evidence of a witness in the form of written statements or transcripts *in lieu* of oral testimony, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. In the case law of the Tribunal the terms “acts and conduct” have been interpreted as an expression that must be given its ordinary meaning: deeds and behaviour of the accused.<sup>33</sup> If a statement meets these requirements, it is for the Trial Chamber to use its discretion in determining whether the admission of such evidence in written form is appropriate. However, even where the admission of evidence pursuant to Rule 92 *bis* is deemed appropriate, the Trial Chamber may nevertheless require that the witness be called for cross-examination.

17. The Appeals Chamber in *Galić* drew a clear distinction between “(a) the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of those others.”<sup>34</sup> The Appeals Chamber found that evidence pertaining to the latter is inadmissible under Rule 92 *bis*,<sup>35</sup> such as evidence on which the Prosecution seeks to rely to establish:

- (a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself; or
- (b) that he planned, instigated or ordered the crimes charged; or
- (c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes; or
- (d) that he was a superior to those who actually did commit the crimes; or
- (e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates; or
- (f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.<sup>36</sup>

18. Rule 92 *bis*(A) of the Rules sets out a non-exhaustive list of factors in favour of or against the admission of evidence in written form. Factors in favour of admission include whether the evidence is of a cumulative nature; relates to relevant historical, political or military background; consists of a general or statistical analysis of the ethnic composition of the population; concerns the impact of crimes upon victims; relates to issues of the character of the accused; or relates to factors

<sup>33</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s request to have written statements admitted under Rule 92 *bis*, 21 March 2002 (“*Slobodan Milošević* Decision”), para. 22. *Dragomir Milošević* Decision, para. 8.

<sup>34</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution’s motions for the admission of evidence pursuant to Rule 92 *bis* of the Rules, 16 January 2006, para. 8.

<sup>35</sup> *Galić* Appeal Decision, paras 9, 10.

<sup>36</sup> *Galić* Appeal Decision, para. 10.

to be taken into account in determining sentence.<sup>37</sup> By contrast, factors against admission include whether there is an overriding public interest in the evidence in question being presented orally; a party objecting demonstrates that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or any other factors which make it appropriate for the witness to attend for cross-examination.<sup>38</sup>

19. Rule 92 *bis* does not exclude the admission of written statements that go to proof of the “acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible.”<sup>39</sup> A written statement that goes to proof of the acts and conduct of an accused’s alleged subordinate, or of some other individual for whose acts an accused is charged with responsibility, is relevant to the exercise of the Trial Chamber’s discretionary power whether to admit the statement in full, in part, or to require the witness to appear for cross-examination. In exercising this discretion, the proximity of such acts and conduct to the accused is relevant for the Trial Chamber determination.<sup>40</sup> If the Trial Chamber determines that the incidents described in the statement are so proximate to the accused or the evidence is pivotal to the Prosecution’s case, it may decide that it would be unfair to the accused to admit such evidence in written form.<sup>41</sup>

20. In determining whether to require a witness whose statement is admitted under Rule 92 *bis* to appear for cross-examination the Trial Chamber should consider, *inter alia*, its obligation to ensure a fair trial under Articles 20 and 21 of the Statute.<sup>42</sup> The case law of the Tribunal provides for a number of criteria to be taken into account in making such a determination, including whether a statement touches upon “a live and important issue between the parties, as opposed to a peripheral or marginally relevant issue”;<sup>43</sup> the cumulative nature of the evidence;<sup>44</sup> whether the evidence is “crime-base” evidence;<sup>45</sup> and the proximity of the accused to the acts and conduct described in the written statement, the latter being a factor relevant for both the question of admissibility of evidence and the question of whether a witness should be called for cross-examination.<sup>46</sup>

<sup>37</sup> Rule 92 *bis*(A)(i).

<sup>38</sup> Rule 92 *bis*(A)(ii).

<sup>39</sup> *Galić* Appeal Decision, para. 13.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on the admission of Rule 92 *bis* statements, 1 May 2002, para. 14.

<sup>42</sup> *Dragomir Milošević* Decision, para. 11.

<sup>43</sup> *Slobodan Milošević* Decision, paras 24-25.

<sup>44</sup> *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution’s motion for admission of transcripts and written statements pursuant to Rule 92 *bis*, filed confidentially on 21 October 2005, (“*Mrkšić* Decision”), para. 9. See also *Slobodan Milošević* Decision, para. 23 and *Boškoski* Decision, para. 19.

<sup>45</sup> *Mrkšić* Decision, para. 8. See also *Boškoski* Decision, para. 19.

<sup>46</sup> *Galić* Appeal Decision, para. 15. See also *Boškoski* Decision, para. 19.

21. With regard to the associated exhibits, it is well established in the case law of the Tribunal that admission of such documents is permissible.<sup>47</sup> It has been found that “exhibits accompanying written statements or transcripts form an inseparable and indispensable part of the testimony and can be admitted along with statements or transcripts”.<sup>48</sup> However, each document referred to in the evidence of a witness does not necessarily form an “inseparable and indispensable part” of such evidence. One way of making this determination is to ascertain whether the document has been the subject of comment by the witness either in the statement itself or during his testimony in a previous case. In the absence of the admission of such document, the statement or prior testimony may become incomprehensible and lose some of its probative value.<sup>49</sup> The argument by the Defence that according to Rule 92 *bis*, “only the evidence of a witness in the form of a written statement or a transcript of evidence [...] can be admitted by the Trial Chamber”,<sup>50</sup> is dismissed.

#### 4. Discussion

##### (a) Mevsud Poljo

22. The testimony of Mevsud Poljo pertains to the recovery of several bodies from the Drina River. The exhibit attached to the transcript of his testimony consists of an aerial photograph of the Drina River. The evidence meets the requirements of Rule 92 *bis*, in that it does not go to the acts and conduct of the Accused and is cumulative in nature. Furthermore, the evidence is relevant and of probative value.

##### (b) Amor Masović

23. Amor Masović is the director of the State Commission for Tracing Missing Persons of Bosnia and Herzegovina. His evidence concerns the exhumation of human remains from 14 grave-sites, including in the Žepa area. The exhibits attached to the transcript of his testimony consist of a binder of documentation material, a map of exhumations, three lists of persons still missing from the Višegrad area, a video tape of different exhumations sites, a chart of the exhumations conducted in the Višegrad area and the transcript of the witness’ testimony in the case of the *Prosecutor v.*

<sup>47</sup> See *e.g. Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Prosecution motion for admission of transcript of evidence pursuant to Rule 92 *bis* of the Rules, 28 September 2006, para. 24, where it was held that “even though rule 92 *bis* of the Rules does not provide for it, the admission of such exhibits is justified in the interests of justice and a fair trial if they were argued during the witness testimony”.

<sup>48</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on admission on written statements, transcripts and associated exhibits pursuant to Rule 92 *ter*, 22 February 2007, p. 3; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-PT, Decision regarding Prosecutor’s notice of intent to offer transcripts under Rule 92 *bis*(D), 9 July 2001, para. 8.

<sup>49</sup> *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on Prosecution’s motion for admission of written statements and associated exhibits pursuant to Rule 92 *bis* of the Rules (two witnesses), 18 March 2008, paras 20-21.

<sup>50</sup> Sredoje Lukić Response, para. 17; Milan Lukić Response, para. 19.



*Milorad Krnojelac*.<sup>51</sup> The Trial Chamber finds that the evidence meets the requirements of Rule 92 *bis*, in that it does not go to the acts and conduct of the Accused and is cumulative in nature. Furthermore, the evidence is relevant and of probative value.

(c) Cross-examination

24. As regards the question of whether the three witnesses should appear for cross-examination, the Trial Chamber stresses, first of all, that the Statute of the Tribunal guarantees to each Accused the right “to examine, or have examined, the witnesses against him”.<sup>52</sup> As the Prosecution correctly points out, “in the context of Rule 92 *bis* the right to cross-examine witnesses is not an absolute right”.<sup>53</sup> However, Rule 92 *bis* does not place an explicit burden on the party seeking cross-examination to make any particular showing of the necessity of such cross-examination. Rather, Rule 92 *bis* gives discretion to the Trial Chamber whether to decide if cross-examination is appropriate under the circumstances, regardless of any particular showing from the cross-examining party.<sup>54</sup>

25. Having examined the arguments of the parties and reviewed the content of the transcripts, the Trial Chamber finds that the evidence of Mevsud Poljo and Amor Masović does not bear directly upon the Accused’s responsibility. Moreover, the Trial Chamber finds no merit in the Defence’s submissions that the transcripts “give the impression as if the Accused had been involved in those criminal acts described”. However, the evidence of both witnesses goes to the identity of victims and methods and means of identification. The Trial Chamber finds that this is a matter of sufficient importance to the case that cross-examination should be allowed. As the witnesses should appear for cross-examination, they are to provide their testimony in accordance with Rule 92 *ter* of the Rules. Each Defence counsel shall be allowed a period of forty-five (45) minutes to cross-examine each witness. Defence counsel may decide on another division of the time allotted between themselves. As the Prosecution has indicated that it will not be necessary to introduce the evidence of these witnesses in court, it will be allowed five minutes to introduce the evidence, in order to fulfil the requirements of Rule 92 *ter* of the Rules.

(d) Associated exhibits

26. The Trial Chamber reviewed the exhibits listed in the Motion and examined whether they formed an “inseparable and indispensable part” of the testimony of Amor Masović and Mevsud

<sup>51</sup> *Prosecutor v. Krnojelac et al.*, Case No. IT-97-25-T, Hearing, 20-22 March 2001.

<sup>52</sup> Article 21(4)(e) of the Statute.

<sup>53</sup> Motion, para. 22.

<sup>54</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution’s Rule 92 *bis* motion, 4 July 2006, para. 11, citing, *inter alia*, *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, First decision on Prosecution’s motion for admission of witness statements and prior testimony pursuant to Rule 92 *bis*, 12 June 2003, para. 14.

Poljo. The Trial Chamber also examined whether the exhibits listed in the Motion were the same as those commented upon by the witnesses during their testimonies and whether the exhibits appear on the Rule 65 *ter* Exhibit List in the current proceedings.<sup>55</sup>

27. As for the exhibits submitted along with Amor Masović's transcript, the Trial Chamber considers that parts of the transcript of his testimony in the *Krnojelac* trial are of limited relevance, in particular the parts that concern with the Foča municipality. However, the transcript of Amor Masović's testimony in *Krnojelac* as a whole, with the witness describing matters such as the process of identification of deceased and exhumations, is relevant and of probative value.<sup>56</sup> The Prosecution and the Defence in the *Vasiljević* case discussed this transcript on several occasions during Amor Masović's testimony in that case. Therefore, the *Krnojelac* transcript forms an inseparable and indispensable part of the evidence of Amor Masović. The other associated exhibits also form an inseparable and indispensable part of the evidence and are relevant and of probative value to the current proceedings.

28. The Trial Chamber finds that the exhibit submitted along with Mevsud Poljo's transcript is relevant and has probative value. It also forms an inseparable and indispensable part of his evidence.

29. Therefore, all the associated exhibits along with the transcripts of the testimony of Amor Masović and Mevsud Poljo fulfil the requirements for admission into evidence.

##### 5. Disposition

30. For the foregoing reasons, and pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, the Trial Chamber **GRANTS** the Motion and **ORDERS** as follows:

- i. The transcripts of the testimony of Mevsud Poljo and Amor Masović in the *Prosecutor v. Vasiljević* will be admitted into evidence upon fulfilment of the requirements of Rule 92 *ter*;
- ii. The associated exhibits tendered for admission along with the transcripts of the testimony of Mevsud Poljo and Amor Masović are admitted into evidence upon fulfilment of the requirements of Rule 92 *ter*;

<sup>55</sup> Prosecution's list of exhibits pursuant to Rule 65 *ter*(E)(iii), 14 March 2008. The documents appear in the list with the following entries: for Mevsud Poljo entries 112, 113, 114; for Amor Masović entries 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51.

<sup>56</sup> The document appears in the Rule 65 *ter* List with the entry 46.

- iii. The Prosecution shall introduce the evidence of each of these witnesses within a time frame of five minutes and each Defence shall be allowed forty-five minutes to cross-examine each witness.

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



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Judge Patrick Robinson  
Presiding

Dated this twenty-second day of August 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**