



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-95-5/18-PT

Date: 11 August 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 11 August 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION REQUESTS FOR LEAVE TO REPLY:
RULE 92 *QUATER* MOTIONS**

Office of the Prosecutor

Mr. Alan Tiger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

THIS 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 the “Prosecution Request for Leave to Reply to the ‘Response to Prosecution 92 *quater* Motion: Witness KDZ446”, filed on 6 August 2009 (“Motion Re. KDZ446”), the “Prosecution Request for Leave to Reply to the ‘Response to Prosecution 92 *quater* Motion: Miroslav Deronjić”, filed on 6 August 2009 (“Motion Re. Deronjić”), and the “Prosecution Request for Leave to Reply to the ‘Response to Prosecution 92 *quater* Motion: Milan Babić”, filed on 6 August 2009 (“Motion Re. Babić”), (together “Motions”);

CONSIDERING that, in the Motion Re. KDZ446, the Office of the Prosecutor (“Prosecution”) states that its proposed reply would address the following issues raised by the Accused’s “Response to Prosecution 92 *quater* Motion: Witness KDZ446”, filed on 3 August 2009: (i) the allegation that Rule 92 *quater* violates his rights under Article 21(4)(e) of the Statute of the Tribunal and that the cumulative effect of the Prosecution’s Rule 92 *bis* and *quater* motions, and motions for judicial notice of adjudicated facts, is to shift the burden of proof; (ii) the claim that important aspects of witness KDZ446’s evidence are uncorroborated; (iii) the Trial Chamber’s assessment of witness KDZ446’s evidence in *Popović*; (iv) the claim that significant parts of witness KDZ446’s evidence relate to acts and conduct of the Accused and critical issues, which is prejudicial to the Accused and weighs against the admission of his evidence; and (v) the claim that the Trial Chamber should rule on the admission of individual elements of the material separately;

CONSIDERING that, in the Motion Re. Deronjić, the Prosecution states that its proposed reply would address the following issues raised by the Accused’s Response to Prosecution 92 *quater* Motion: Miroslav Deronjić”, filed on 4 August 2009: (i) the allegation that Rule 92 *quater* violates his rights under Article 21(4)(e) of the Statute of the Tribunal and that the cumulative effect of the Prosecution’s Rule 92 *bis* and *quater* motions, and motions for judicial notice of adjudicated facts, is to shift the burden of proof; (ii) the claim that Deronjić’s evidence is unreliable as a result of his guilty plea, the presence of inconsistencies and contradictions in his evidence, and the lack of corroborative evidence; (iii) the argument that the Trial Chamber should attach additional weight in opposition where evidence “goes directly to the acts and conduct of the accused” and “pertain[s] to critical issues of the Prosecution’s case”; (iv) the allegation that the Prosecution misapplied the jurisprudence of the Tribunal and erred in relying

on the decisions issued in *Perišić* and *Popović*; and (v) the claim that the Trial Chamber should rule on the admission of individual elements of the material separately;

CONSIDERING that, in the Motion Re. Babić, the Prosecution states that its proposed reply would address the following issues raised by the Accused's Response to Prosecution 92 *quater* Motion: Milan Babić", filed on 4 August 2009: (i) the allegation that Rule 92 *quater* violates his rights under Article 21(4)(e) of the Statute of the Tribunal and that the cumulative effect of the Prosecution's Rule 92 *bis* and *quater* motions, and motions for judicial notice of adjudicated facts, is to shift the burden of proof; (ii) the Accused's interpretation of and reliance on the *Šeselj* case; (iii) the Accused's assertions as to the unreliability of Milan Babić; and (iv) the claim that the Trial Chamber should rule on the admission of individual elements of the material separately;

NOTING that issues that have already been addressed by the Prosecution need not be reiterated in the replies, and that only new issues that arise from the Accused's Responses should be addressed in the Prosecution's replies;

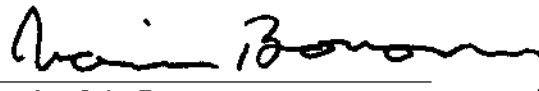
NOTING that the Prosecution need only address once the issues raised under (i) above in each of the three replies;

CONSIDERING that it would be in the interests of good case management to allow the Prosecution to reply to the responses to the Motions filed by the Accused;

PURSUANT TO Rules 54, 65 *ter*, and 126 *bis* of the Rules of Procedure and Evidence,

HEREBY GRANTS the Prosecution leave to reply with regard to each of the Motions, by no later than 14 August 2009.

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



Judge Iain Bonomy
Presiding

Dated this eleventh day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]