



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-T

Date: 17 December 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 17 December 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF SUPPLEMENT TO
WITNESS STATEMENT OF GUNNAR WESTLUND**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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”) is seised of the Accused’s “Motion for Admission of Supplement to Witness Statement of Gunnar Westlund”, filed on 14 December 2009 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 2 November 2009, the Trial Chamber issued its “Decision on the Prosecution’s Sixth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*: Hostage Witnesses” (“Decision on Sixth Motion”), and provisionally admitted, *inter alia*, Gunnar Westlund’s written statement without requiring the witness to appear for cross-examination, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. The Accused now seeks to provisionally admit a supplemental statement given by Gunnar Westlund during an interview with the Accused’s legal intern on 8 December 2009.² The Accused submits that “the information is relevant to the case” and should be admitted.³ The Accused further requests that the “Registry be directed to obtain the necessary certification from the witness that the information is true and correct.”⁴ In the event that the Trial Chamber does not accept the supplemental statement, the Accused requests that the Trial Chamber modify the Decision on Sixth Motion, and require Gunnar Westlund to appear for cross-examination.⁵

3. On 15 December 2009, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Motion for Admission of Supplement to Witness Statement of Gunnar Westlund” (“Response”) in which it does not oppose the admission of the supplemental statement.⁶ The Prosecution also notes that Gunnar Westlund’s statement, which was provisionally admitted in the Decision on Sixth Motion, will be certified on 22 December 2009, and that the Prosecution “is willing to facilitate the certification of the supplemental information on this date if the Defence and the Trial Chamber wishes it to do so.”⁷

¹ Decision on Sixth Motion, para. 30.

² Motion, para. 3, Annex A.

³ Motion, para. 3.

⁴ Motion, para. 3.

⁵ Motion, para. 4.

⁶ Response, para. 2.

⁷ Response, para. 2.

II. Discussion

4. The Chamber has set out the law applicable to motions filed pursuant to Rule 92 *bis* of the Rules in the “Decision on the Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)” (“Decision on Third Motion”), and will not further recount it in this Decision.⁸

5. Gunnar Westlund’s written statement is summarised in the Decision on Sixth Motion, and it is not necessary to recall its substance here.⁹ The supplemental statement, which the Accused now seeks admission into evidence, provides as follows: (i) during his time in Sarajevo, Gunnar Westlund was aware that many Serb civilians and soldiers were shot by snipers, and he would verify their injuries at the local hospitals; (ii) whenever the United Nations Military Observers (“UNMOs”) went to the Bosnian Muslim-controlled areas they were “searched, accused, and harassed”; and (iii) one time in April 1995, a United Nations vehicle filled with people who appeared to be UN personnel was parked near Gunnar Westlund’s building, but when he approached to see who they were, they drove away without identifying themselves.¹⁰

6. The Chamber considers that the supplemental statement appears to be only marginally relevant to the present case. However, it also notes that the Prosecution does not oppose the admission into evidence of the supplemental statement, and that it has even offered to facilitate its certification on 22 December 2009, when it will be certifying Gunnar Westlund’s previously admitted written statement. Accordingly, the Chamber will provisionally grant the admission into evidence of the supplemental statement, subject to the Rule 92*bis*(B) certification requirements being fulfilled.

7. In the Motion, the Accused requests the Trial Chamber to order the Registry to obtain the Rule 92*bis*(B) certification for the supplemental statement. The Chamber notes that, ordinarily, once a statement has been provisionally admitted, it is incumbent upon the offering party to provide the requisite certification. However, in this instance, the Prosecution has offered to obtain the necessary certification. As such, the Chamber sees no need to further consider whether an order to the Registry as requested by the Accused should be issued.

⁸ See Decision on Third Motion, paras. 4–11.

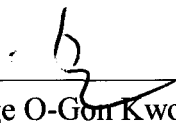
⁹ Decision on Sixth Motion, para. 11.

¹⁰ Motion, Appendix A.

III. Disposition

8. For these reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber hereby **GRANTS** the Motion and provisionally admits into evidence the supplemental statement of Gunnar Westlund, subject to the fulfilment of the requirements of Rule 92 *bis*(B) of the Rules.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]