



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: 10 May 2010

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: 10 May 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S REQUEST FOR
ADMISSION OF EXHIBITS P53 AND P54**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby 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 “Prosecution’s Request for Admission of Exhibits P53 and P54”, filed on 22 April 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 2 November 2009, the Trial Chamber issued its “Decision on Prosecution’s Sixth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*: Hostage Witnesses” (“Rule 92 *bis* Decision”), wherein it admitted into evidence, *inter alia*, witness statements given by Joseph Gelissen, Gunnar Westlund, Hugh Nightingale, Griffiths Evans, Michael Cornish, KDZ112, and KDZ259 pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). The Chamber determined that the statements of the above witnesses would “only be provisionally admitted by the Trial Chamber, pending their receipt in a form which strictly complies with the requirements of Rule 92 *bis* (B).”¹

2. In the Motion, the Prosecution requests that the statements of KDZ259 and KDZ112 (“Witnesses”), which were assigned exhibit numbers P53 and P54 respectively, be finally admitted without any further formalities being required under Rule 92 *bis* (B) of the Rules, because they were taken by the French judicial authorities. The Prosecution contends that both statements should be fully admitted on the basis that the “manner in which the statements were taken by the French judicial authorities meets the strict procedural requirements of Rule 92 *bis* (B)” and that the “nature of the statement-taking process in France makes it unnecessary for these two witnesses to again make a declaration in conformity with Rule 92 *bis* (B).”² In addition to stating that the nature of the process before a French *Tribunal de Grande Instance* meets the requirements of Rule 92 *bis* (B), the Prosecution relies on a decision in the *Gotovina et al.* case, in which a witness statement which was taken before the *Tribunal de Grande Instance* in Paris was admitted by the Trial Chamber pursuant to Rule 92 *ter*.³

3. On 26 April 2010, the Accused filed his “Response to Prosecution Request for Admission of Exhibits P53 and P54”, stating that he has no objection to the Motion.

¹ Rule 92 *bis* Decision, para. 30.

² Motion, para. 2.

³ *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Reasons for the Addition of a Witness to the Prosecution’s Witness List and Admission into Evidence of Two Documents, 27 February 2009 (“*Gotovina et al.* Decision”).

II. Applicable Law

4. Rule 92 *bis* of the Rules allows for the admission of written evidence in lieu of oral testimony from a witness in certain circumstances. Where a Chamber decides to exercise its powers to admit such written evidence, Rule 92 *bis* (B) requires that there is attached to the statement a declaration by the person making it as to the truth and accuracy of its contents, to the best of his knowledge and belief. This declaration must be witnessed by “a person authorised to witness such a declaration in accordance with the law and procedure of a State” or “a Presiding Officer appointed by the Registrar of the Tribunal for that purpose.” That authorised person or Presiding Officer must verify in writing:

- (a) that the person making the statement is the person identified in the said statement;
- (b) that the person making the statement stated that the contents of the written statement are, to the best of the person’s belief and knowledge, true and correct;
- (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
- (d) the date and place of the declaration.

It is permissible for a Chamber to provisionally admit a written witness statement under Rule 92 *bis*, pending completion of the formal requirements of Rule 92 *bis* (B), but the witness statement is not fully admitted until those requirements are met.⁴

III. Discussion

5. Having analysed P53 and P54, the Chamber is satisfied that the Witnesses appeared for interview by a senior public prosecutor at the *Tribunal de Grande Instance* upon a request for co-operation by the Prosecution, at which time their statements were recorded. The date and location of the interviews are reflected in the statements. In the statements the Witnesses are identified by name, date of birth, parentage, and address. The Witnesses also swore to tell the truth, which is recorded on the first page of each statement. Both statements are signed and stamped on each page by the senior public prosecutor, as well as being signed by the Witnesses. While there is no record of the Witnesses being told that if the content of their statements is not

⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis*, 12 September 2006, paras. 19-21; *Prosecutor v. Martić et al.*, Case No. IT-95-11-T, Decision on Prosecution’s Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, paras. 11, 37.

true then they may be subject to proceedings for giving false testimony, the Chamber accepts that it is implied in the taking of an oath before the *Tribunal de Grande Instance* that a person may be subject to proceedings in France if they make a false statement.

6. The Prosecution submits that the manner in which the statements were recorded satisfies the requirement that the person making a Rule 92 *bis* statement declares that its content is true and accurate, to the best of his knowledge and belief, and that the procedure followed was in accordance with the law of the Republic of France for witnessing such declarations. The Prosecution's reference to the *Gotovina et al.* Decision does not provide assistance in this regard, as the statement at issue in the *Gotovina* case was considered for admission pursuant to Rule 92 *ter*, and the decision did not deal with the requirements of Rule 92 *bis* (B). Nonetheless, the Chamber is satisfied that the procedure for recording the statements contained in P53 and P54 was in accordance with the relevant French law, and that the requirements of Rule 92 *bis* (B) have been met.

IV. Disposition

7. Accordingly, the Trial Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby **GRANTS** the Motion and **REQUESTS** the Registry to record that P53 and P54 are admitted into evidence, under seal, without any further formalities being required.

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



Judge O-Gon Kwon
Presiding

Dated this tenth day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]