



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: 15 June 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: 15 June 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION SUBMISSION AND MOTION CONCERNING THE
CERTIFIED RULE 92 *BIS* STATEMENTS OF GUNNAR WESTLUND**

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 Submission and Motion Concerning the Certified Rule 92 *bis* Statements of Witness Gunnar Westlund”, filed on 7 June 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 The witness statement of Gunnar Westlund (“Witness”) was provisionally admitted as exhibit P49.

2. On 17 December 2009, the Trial Chamber issued its “Decision on Accused’s Motion for Admission of Supplement to Witness Statement of Gunnar Westlund”, in which it provisionally admitted the supplemental statement given by the Witness during an interview with the Accused. The Chamber noted that the Office of the Prosecutor (“Prosecution”) did not oppose the admission into evidence of the supplemental statement and that the Prosecution offered to facilitate its certification on 22 December 2009 when it planned to obtain certification of the Witness’s previously admitted written statement.² The Witness’s supplemental statement was provisionally admitted as exhibit D306.

3. In the Motion, the Prosecution requests that the Witness’s statements, which have been certified by the local Swedish authorities pursuant to Rule 92 *bis* (B) of the Rules, be admitted into evidence. The Prosecution submits that both the Witness’s written statement, which was given to the Prosecution on 22 November 1995, as well as the supplementary statement of 8 December 2009, submitted by the Accused, were certified by the Swedish authorities in a court proceeding on 22 December 2009, and are available in court.³ The Prosecution further

¹ Rule 92 *bis* Decision, para. 30.

² Prosecution Response to Motion for Admission of Supplement to Witness Statement of Gunnar Westlund, 15 December 2009, para. 2; Decision on Accused’s Motion for Admission of Supplement to Witness Statement of Gunnar Westlund, 17 December 2009, paras. 6–8.

³ Motion, para. 2.

submits that while “the Declaration and Certification of the Witness Declaration” omits explicit mention of the supplementary statement submitted by the Accused, the Witness clearly attested to the truth of both statements during the certification procedure. This is evidenced by the minutes of the 22 December 2009 court proceeding, its video recording, confirmation from the police inspector present at the proceedings, and the initials of the authorised official on both statements.⁴

4. On 10 June 2010, the Accused filed the “Response to Motion for Admission of Gunnar Westlund Statements”, stating that he has no objection to the Motion.

II. Applicable Law

5. 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 or her 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.

6. 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.⁵

⁴ Motion, para. 3.

⁵ *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.

III. Discussion

7. The Chamber has analysed the Witness's certified statements and accompanying materials from the Swedish authorities,⁶ and is satisfied that both the witness statement and the supplemental statement adhere to the formal requirements of Rule 92 *bis* (B). In both statements, the Witness is identified by name, and the witness statement contains his date of birth. Both statements are signed and stamped on each page by the authorised official, Presiding Judge Anders Johnson. Additionally, the Witness was informed by the Presiding Judge that if the content of his statements is not true, he may be subject to proceedings for giving false testimony. The Witness declared that the contents of the written statement submitted by the Prosecution are, to the best of his knowledge, true and correct, and he signed each page of this statement.

8. However, as the Prosecution admitted in the Motion, the supplementary statement submitted by the Accused was not explicitly mentioned in "Certification of the Witness Declaration", and the Chamber notes that the Witness did not sign the supplementary statement, as he did with the Prosecution's statement. Nonetheless, the Chamber notes the letter submitted by the Swedish police inspector who participated in the certification procedure, in which he refers to both the witness statement of 22 November 1995, and the supplemental statement of 8 December 2009, and confirms that the Witness examined both documents, was given the opportunity to note errors and make any necessary changes, and did not wish to make any changes to either statement. Furthermore, upon review of the minutes and video recording of the 22 December 2009 court proceeding, the Chamber is satisfied that the certification procedure encompassed both statements and that the Witness attested to the truth of both statements therein. Finally, the date and location of the certification procedure, 22 December 2009 in Linköping, Sweden, are reflected in the materials submitted by the Swedish authorities. For the foregoing reasons, the Chamber is satisfied that the certification procedure fulfils the requirements of Rule 92 *bis* (B) with respect to both of the Witness's statements.

⁶ The Chamber notes that the Prosecution tenders both statements under one Rule 65 *ter* number, 90177.

IV. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby **GRANTS** the Motion, and:

- 1) **REQUESTS** the Registry to record that the witness statement and supplementary statement of Gunnar Westlund are admitted into evidence, without any further formalities being required;
- 2) **ORDERS** the Prosecution to upload into ecourt the certified witness statement for Gunnar Westlund and the accompanying materials from the Swedish authorities, as exhibit P49; and
- 3) **ORDERS** the Accused to upload into ecourt the certified supplementary statement for Gunnar Westlund and the accompanying materials from the Swedish authorities, as exhibit D306.

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



Judge O-Gon Kwon
Presiding

Dated this fifteenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]