



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: 11 January 2011

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: 11 January 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR ADMISSION OF SUPPLEMENTAL STATEMENT OF
RULE 92 *BIS* WITNESS ANDJA GOTOVAC**

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 Accused’s “Motion for Admission of Supplemental Statement of Rule 92 *bis* Witness Andja Gotovac”, filed on 7 December 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 5 March 2010, the Trial Chamber issued the “Decision on Prosecution’s Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Siege Witnesses” (“Fourth Rule 92 *bis* Decision”), in which it admitted the statement and transcripts of prior testimony of Ms. Andja Gotovac (“Witness”) in the *Dragomir Milošević* and the *Momčilo Perišić* cases, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ In that Decision, the Trial Chamber recalled that the during the Pre-Trial Conference held on 6 October 2009, the Pre-Trial Judge had informed the Accused that, should the Chamber admit the evidence of a witness under Rule 92 *bis* whose evidence the Accused wished to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.²

2. In the Motion, the Accused requests the admission, pursuant to Rule 92 *bis*, of a “supplemental statement” (“Statement”) which was recorded during an interview conducted with the Witness on 23 November 2010 by members of his defence team, at which a representative of the Office of the Prosecutor (“Prosecution”) was present.³ He notes that the Statement is yet to be certified in accordance with Rule 92 *bis* (B).⁴ Alternatively, should the Statement not be admitted, the Accused requests that the Witness be called for cross-examination so that the information contained in the Statement can be elicited.⁵

3. On 21 December 2010, the Prosecution filed its “Prosecution Response to ‘Motion for Admission of Supplemental Statement of Rule 92 *bis* Witness Andja Gotovac’” (“Response”), in which it opposes the Accused’s request. The Prosecution submits that the Statement is “unsuitable for provisional admission” and that the Accused has failed “to satisfy the requirements for reconsideration of the Trial Chamber’s decision to admit the statement of

¹ Fourth Rule 92 *bis* Decision, paras. 56, 66, 77 (C) (vii).

² Fourth Rule 92 *bis* Decision, para. 8. *See also* Pre-Trial Conference, T. 489–490 (6 October 2009).

³ Motion, paras. 1, 3 and Annex “A”.

⁴ Motion, para. 4.

⁵ Motion, para. 5.

Andja Gotovac pursuant to Rule 92 *bis*.⁶ The Prosecution asserts that the Statement was prepared by the Accused based on information provided to him from his legal interns who conducted the interview with the Witness, and that he does not explain either how that interview was recorded or how the Statement was prepared to ensure that it accurately reflects her evidence.⁷ It further contends that the Statement contains details which were not recorded by the Prosecution representative present at the interview as having been said by the Witness and that when it subsequently contacted her, the Witness showed some reservations regarding certain aspects of it.⁸ The Prosecution argues that the Statement is unsuitable for admission pursuant to Rule 92 *bis* in light of the fact that it was not prepared by the Witness and she has not been afforded the opportunity to review it, clarify its content, or adopt it.⁹

4. Regarding the Accused's alternative request that the Witness be called for cross-examination, the Prosecution submits that the Accused has failed to address the standard for reconsideration, namely that there was "a clear error of reasoning in the Decision or that reconsideration is necessary to prevent an injustice."¹⁰

II. Discussion

5. On 15 October 2009, the Trial Chamber issued its "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)" ("Third Rule 92 *bis* Decision"), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*.¹¹ As noted by the Chamber, "[a]ny evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admission of evidence, as set out in Rule 89(C) and (D) of the Rules, namely, the evidence must be relevant and have probative value, and its probative value must not be substantially outweighed by the need to ensure a fair trial."¹²

6. The Chamber recalls that it is for the party seeking the admission of evidence to demonstrate its relevance and probative value. In the Motion, the Accused submits that the additional evidence elicited from the Witness during the interview is "relevant to show that the shell which caused [Ms. Gotovac's] injuries may have been aimed at the television station" and that "[o]ther evidence will show that the BH television station ... may well have been a

⁶ Response, para. 1.

⁷ Response, para. 2.

⁸ Response, para. 3.

⁹ Response, para. 4.

¹⁰ Response, para. 7.

¹¹ Third Rule 92 *bis* Decision, paras. 4–11.

¹² Third Rule 92 *bis* Decision, para. 4.

legitimate military target. Therefore, even if the shell was found to have been fired by the Bosnian Serbs, it would not have been a crime.”¹³ The Chamber is satisfied as to the relevance of this kind of evidence.

7. However, the Chamber is not satisfied as to the probative value of the Statement, taking into account its form and content. While the Chamber has previously indicated that the Accused can seek to tender supplemental statements from witnesses whose evidence has been admitted pursuant to Rule 92 *bis*, it is concerned that any statements taken from such witnesses be recorded in a proper manner. The Statement is merely four lines, divided into two bullet points, with no indication of whether the words therein are those of the Witness herself or a summary prepared by someone else. Indeed, the Prosecutions submits that the Statement contains details which were not recorded by the Prosecution representative present at the interview as having been said by the Witness and the record of a subsequent telephone conversation between representatives of the Prosecution and the Witness raises questions as to the accuracy of the Statement.¹⁴ There is no signature on the Statement, nor indeed any indication of the manner in which it was recorded or prepared. Without such information, the Chamber would be unable to rely upon the Statement as a piece of evidence. For this reason, the basic requirements of Rule 89(C) are not satisfied and the Statement will not be admitted.¹⁵

8. In addition, and taking into account the information contained in the Statement, the Chamber is not satisfied that there is a proper basis for it to reconsider its earlier decision to admit the Witness’s evidence pursuant to Rule 92 *bis*.

¹³ Motion, para. 4.

¹⁴ See, Response, Confidential Appendix A.

¹⁵ Further, where necessary, the Accused may consider whether there are alternative ways to obtain the information sought and to tender it into evidence. Indeed, the information contained in the Statement would seem to be the type of information which could be gathered from other witnesses or sources able to testify to possible military targets in Sarajevo and the extent to which they were targeted.

III. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rule 89(C) of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this eleventh day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]