



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-08-91-T
Date: 21 October 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 21 October 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING ŽUPLJANIN MOTION TO
CHANGE THE MODE OF TESTIMONY OF
NIKOLA VRAČAR**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. PROCEDURAL BACKGROUND

1. Trial Chamber II (“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 “Župljanin motion to change the mode of testimony of witness SZ-012, with annexes”, filed confidentially on 30 September 2011 (“Motion”), whereby the Defence of Stojan Župljanin (“Župljanin Defence”) seeks to change the mode of testimony for Nikola Vračar from *viva voce* to admission in written form pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”). The Župljanin Defence further seeks to add the transcript of his testimony of 18 December 2003 from the *Brdanin* case to its Rule 65 *ter* exhibit list prior to admission.¹ The Župljanin Defence does not tender any of the documents associated with the prior testimony as accompanying exhibits.

2. On 4 October 2011, bearing in mind the advanced stage of the proceedings and the potential impact of this Motion on the scheduling of witnesses, the Trial Chamber directed the Prosecution and the Defence for Mićo Stanišić to respond to the Motion by 10 October 2011.²

3. On 5 October 2011, the Prosecution responded stating that while it challenges part of the prior evidence of the witness, it does not object to the Motion provided the transcript of his evidence in the *Brdanin* case is admitted in full together with all accompanying documents (“Response”).³ The Prosecution also noted that the Župljanin Defence had not given any reason for filing the Motion confidentially but that the Prosecution assumed that the Župljanin Defence had done so on the basis that the Motion included medical information relating to a witness.⁴ Accordingly the Prosecution filed its response confidentially as well.⁵ The Defence for Mićo Stanišić did not file a response.

4. On 7 October 2011, the Trial Chamber orally directed the Prosecution to file the full transcript and associated documents of Nikola Vračar’s testimony in the *Brdanin* case that it wished to have considered for admission into evidence.⁶ On 10 October 2011, the Prosecution filed a notice indicating that the transcript of 18 December 2003 submitted by the Župljanin Defence not only includes the full testimony of Nikola Vračar’s in the *Brdanin* case but that it also includes material

¹ Župljanin Motion to change the mode of testimony of witness SZ-012, with annexes, confidential, 30 Oct 2011, para. 1. The transcript tendered comes from Prosecutor v. Brdanin, Case No. IT-99-36-T, Nikola Vračar, 18 Dec 2003, pp 23828-23909.

² Order for expedited responses to Župljanin motion to change the mode of testimony of witness SZ-012, confidential, 4 Oct 2011.

³ Prosecution response to Župljanin motion to change the mode of testimony of witness SZ-012, confidential, 5 Oct 2011, para. 1.

⁴ Response, para. 2.

⁵ *Ibid.*

not related to the testimony of this witness and further identified two other exhibits used with or tendered through the witness during his testimony as additional material for which the Prosecution sought admission (“Notice”).⁷

5. As a preliminary matter, the Trial Chamber notes that no protective measures have been sought for this witness. As such, it understands the Motion as having been filed confidentially solely to protect his right to privacy in relation to health matters. The Trial Chamber has been mindful not to make any direct reference to the details of his medical condition and, hence, issues this Decision publicly. The Trial Chamber also notes that the submissions of the parties are such that a public redacted version of each filing could be prepared and will order the parties to file such redacted versions accordingly.

II. SUBMISSIONS

6. The Župljanin Defence recalls that Nikola Vračar was designated as a *viva voce* witness on its Rule 65 *ter* witness list in relation to the municipality of Ključ with a time estimate of four hours for examination-in-chief.⁸ The Župljanin Defence now seeks to have the prior testimony of the witness in the *Brdanin* case admitted pursuant to Rule 92 *bis* owing to his health, in support of which it provides certain medical documents.⁹ The Župljanin Defence submits that the evidence of Nikola Vračar meets the criteria for admission under Rule 92 *bis* and is reliable and sufficiently probative for the purposes of Rule 89(C) since it was given under oath at the Tribunal and was tested in cross-examination.¹⁰ The Župljanin Defence states that there is no need for further cross-examination in the present trial as the evidence “does not touch upon a critical element of the Prosecution’s case or go to a live and important issue between the parties”.¹¹ It adds that Nikola Vračar’s testimony does not go to the acts and conduct of the Accused as charged in the indictment as it “relates solely to events in Ključ, and, primarily, to an ambush on his reserve police unit which took place at a roadblock on 27 May 1992”.¹² The Župljanin Defence notes that this event is not charged against Stojan Župljanin and is not mentioned in the indictment.¹³ Moreover, according to

⁶ Hearing, 7 Oct 2011, T. 24689-24690.

⁷ Prosecution notice in relation to the Župljanin motion to change the mode of testimony of witness SZ-012, confidential, 10 Oct 2011, paras 3-4.

⁸ Motion, para. 2.

⁹ *Id.*, para. 3.

¹⁰ *Id.*, paras 4-5.

¹¹ *Id.*, para. 5.

¹² *Ibid.*

¹³ Motion, para. 4.

the Župljanin Defence, there is no overriding public interest in hearing the evidence of the witness live.¹⁴

7. The Župljanin Defence further seeks leave to add the transcript of the testimony of 18 December 2003 from the *Brdanin* case to its Rule 65 *ter* exhibit list.¹⁵ It asserts that this would be in the interests of justice in that granting leave would be consistent with the need to allow a certain level of flexibility in complex, multi-accused trials.¹⁶ Moreover, the transcript is *prima facie* relevant and of sufficient importance to justify its late addition to the exhibit list.¹⁷

8. Whilst the Prosecution challenges Nikola Vračar's evidence on the events of 27 May 1992 in Ključ, it does not object to changing the mode of testimony for the witness, provided that the entire transcript of this testimony, including all the accompanying exhibits in the *Brdanin* case, is admitted.¹⁸ The Prosecution notes that the Motion does not fully address the enumerated factors in favour of admission of the evidence pursuant to Rule 92 *bis*, but in light of its "qualified assent to the proposed change, it takes no point on this omission".¹⁹ Based on the Rule 65 *ter* summary provided by the Župljanin Defence, the Prosecution accepts that the evidence the witness is expected to give in this case is similar to his testimony in the *Brdanin* case, where he was subjected to cross-examination.²⁰

9. The Prosecution notes that many of the documents accompanying the testimony of the witness are already in evidence in this case.²¹ The Prosecution seeks the admission of two further exhibits from that case, namely Prosecution exhibits P2721 and P2722, which were "used with or tendered through" the witness in the *Brdanin* case and to which it assigns Rule 65 *ter* numbers 20279 and 20280.²²

III. DISCUSSION

10. The Trial Chamber refers to the applicable law on Rule 92 *bis* set out in its decision of 2 November 2010.²³ The Trial Chamber further refers to the requirement for addition of documents

¹⁴ Motion, para. 5.

¹⁵ *Id.*, para. 6.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Response, paras 1 and 7.

¹⁹ *Id.*, para. 3.

²⁰ *Id.*, para. 6.

²¹ Notice, para. 4.

²² *Id.*, para. 4. Rule 65 *ter* document 20279 was admitted as P2721, Nikola Vračar, 18 Dec 2003, pp. 23862-23863. Rule 65 *ter* document 20280 was admitted as P2722, Nikola Vračar, 18 Dec 2003, pp. 23864-23866.

²³ Written reasons for oral decision of 4 Sep 2009 admitting evidence of 24 witnesses pursuant to Rule 92 *bis*, 2 Nov 2010, paras 27-35.

to a party's Rule 65 *ter* list as set out in Guideline 6 of the Second Amended Guidelines.²⁴ The Župljanin Defence seeks to have the transcript of Nikola Vračar's testimony from the *Brđanin* case added to its Rule 65 *ter* exhibit list for its admission pursuant to Rule 92 *bis* due to his inability to travel to the Tribunal to testify, whereas it originally intended to call the witness *viva voce*.²⁵ Accordingly, the Trial Chamber considers that the Župljanin Defence has demonstrated good cause for seeking to have the transcript added to its exhibit list at this late stage.²⁶ The transcript is sufficiently important and relevant to issues in the case to justify its addition in the interests of justice.

11. Nikola Vračar, a Serb by ethnicity, was a reserve police officer who was mobilised in Ključ in April 1992.²⁷ The witness confirmed that he signed an oath of loyalty "to the new Serbian Republic" on 7 May 1992, along with all other police officers in Ključ, following which most Muslim officers left.²⁸ He narrates the incident of 27 May 1992, when about 12 or 13 Serb police officers in a patrol had been sent to Peć, a village near Ključ.²⁹ Their police vehicles were stopped on the way at a barricade at the village of Krasulje, where they came under gunfire.³⁰ The individuals firing at the patrol were in camouflage and not recognisable.³¹ All the policemen were wounded in the process, some fatally.³² Nikola Vračar was able to escape.³³ During cross-examination, the witness stated he had heard about the massacre of "some 60-odd Muslims" at the Biljani school in Ključ.³⁴ He also stated that he heard beatings during interrogations at the Ključ police station.³⁵

12. The witness's testimony is *prima facie* relevant to events in Ključ and sufficiently important to assist the Trial Chamber's understanding of those events. The proposed evidence does not go to proof of the acts and conduct of the Accused nor does it represent a pivotal element of the Prosecution's case. The Trial Chamber notes that the Prosecution challenges the witness's version of the events of 27 May 1992, but does not seek further cross-examination on the matter.³⁶ The Trial Chamber is satisfied that no prejudice arises to the Prosecution from the admission of the

²⁴ Order further amending guidelines on the admission and presentation of evidence, 19 Aug 2011 ("Second Amended Guidelines"), Annex A.

²⁵ Motion, para. 3.

²⁶ Decision granting in part the Mićo Stanišić's motion for leave to amend his Rule 65*ter* exhibit list, 19 Jul 2011, para. 23.

²⁷ Nikola Vračar, 18 Dec 2003, pp. 23843, 23861, 23865-23868.

²⁸ *Id.*, pp. 23871-23872.

²⁹ *Id.*, pp. 23846, 23867-23868, 23872-23875, 23881-23882.

³⁰ *Id.*, pp. 23849, 23876.

³¹ *Id.*, pp. 23850, 23877, 23880.

³² *Id.*, pp. 23849-23853, 23877-23879.

³³ *Id.*, pp. 23852, 23854, 23880.

³⁴ *Id.*, pp. 23887-23889.

³⁵ *Id.*, pp. 23890-23892.

³⁶ Response, para. 6.

evidence under Rule 92 *bis*. The Trial Chamber is further satisfied that the admission without cross-examination is not substantially outweighed by the need to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal ("Statute").³⁷ The Trial Chamber is satisfied that the testimony of Nikola Vračar meets the formal requirements of Rule 92 *bis*(B) as the tendered evidence comes from his testimony in the *Brdanin* case which was given under oath before this Tribunal.

13. The Trial Chamber notes that most of the documents accompanying the testimony of Nikola Vračar are already in evidence in this case.³⁸ Of the two documents tendered for admission, Rule 65 *ter* document 20279 is related to a list of active and reserve police members assigned to SJB Ključ and Rule 65 *ter* document 20280 concerns the plan of War Time Strength, Organisation and Systematisation, both of which were discussed in relation to the service of the witness as a reserve police officer.³⁹ The Trial Chamber considers that, in light of the testimony, the two documents form an inseparable and indispensable part of the witness's testimony without which the relevant portion of the transcript would have lesser probative value. Accordingly, the two accompanying documents will be admitted along with the transcript of his evidence.

IV. DISPOSITION

14. For the above reasons and pursuant to Articles 20 and 21 of the Statute and Rules 54, 89(C) and 92 *bis* of the Rules, the Trial Chamber:

GRANTS the Motion;

ADMITS into evidence the transcript of Nikola Vračar's prior testimony from the *Brdanin* case from pages 23838 to 23896, along with the two accompanying documents admitted in that case with exhibit numbers P2721 and P2722;

ORDERS the Registrar to assign exhibit numbers to the evidence admitted by this decision; and

³⁶ Response, para. 6.

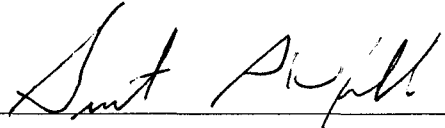
³⁷ 2010 Decision on Rule 92 *bis*, para. 34; *Prosecutor v. Sikirica et al.*, Case No. IT-95-8-T, Decision on Prosecution's application to admit transcripts under Rule 92 *bis*, 23 May 2001, para. 4.

³⁸ Notice, para. 4 and Annex A.

³⁹ *Id.*, Annex A.

ORDERS both the Župljanin Defence and the Prosecution to file public redacted versions of their respective filings within fifteen days of the date of this Decision.

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



Judge Burton Hall
Presiding

Dated this twenty-first day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]