



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: 13 March 2012

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: 13 March 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION TO CALL WITNESS
ZORAN PETROVIĆ FOR CROSS-EXAMINATION**

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 to Call Witness Zoran Petrovic-Pirocanic [sic] for Cross Examination”, filed on 22 February 2012 (“Motion”), and hereby issues its decision thereon.

1. On 21 December 2009, the Chamber issued a confidential “Decision on Prosecution’s Fifth Motion for Admission of Statements in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” admitting, *inter alia*, the transcripts of the prior testimony of Zoran Petrović (“Witness”) in the *Popović et al.* case pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ In the Decision on Fifth Rule 92 *bis* Motion, the Chamber reviewed the evidence contained in the transcripts of the Witness’s prior testimony proffered by the Office of the Prosecutor (“Prosecution”), and decided to admit the Witness’s evidence pursuant to Rule 92 *bis*(A) of the Rules without requiring him to appear for cross-examination.²

2. In reaching its decision, the Chamber noted that the Witness was assigned to Ljubomir Borovčanin during the Srebrenica operation, filmed a documentary there, and while testifying in the *Popović et al.* case was specifically questioned about a shot in the film of the Kravica warehouse with a pile of dead bodies in front of it.³ The Chamber noted that the Witness testified about the acts and conduct of Ratko Mladić, who is named in the Indictment as a member of the Joint Criminal Enterprise (“JCE”) charged in respect to the Srebrenica events.⁴ However, the Chamber also considered that the Witness’s evidence regarding the footage filmed around Potočari and during the events at the Kravica warehouse (“Srebrenica footage”) was cumulative of the evidence of other witnesses.⁵ It also considered that while the Witness may have testified about the actions of Ratko Mladić and other members of the Srebrenica JCE, he “either [did] not testify to any acts or conduct of members of the Srebrenica JCE for which the

¹ Public Redacted Version of “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” Issued on 21 December 2009, 6 March 2012 (“Decision on Fifth Rule 92 *bis* Motion”), para. 67(B)(2). The Chamber notes that this decision was initially issued publicly but was made confidential pursuant to the Decision on Protective Measures for Witnesses, confidential, 2 March 2012, para. 37. The Chamber also notes that the Witness has also been referred to as “Zoran Petrović-Piročanac” both in filings and decisions. *See, e.g.*, Motion, para. 1; Decision on Fifth Rule 92 *bis* Motion, para. 24.

² Decision on Fifth Rule 92 *bis* Motion, para. 46.

³ Decision on Fifth Rule 92 *bis* Motion, para. 24.

⁴ Decision on Fifth Rule 92 *bis* Motion, paras. 38, 43.

⁵ Decision on Fifth Rule 92 *bis* Motion, para. 37(x).

Accused could be held responsible under the Indictment, or ha[d] been sufficiently cross-examined in prior cases to not warrant calling [him] for cross-examination in the present case.”⁶

3. In the Motion, the Accused now moves for an order requiring the Witness to be called for cross-examination in light of the testimony of witness Robert Block in these proceedings on 21 February 2012.⁷ The Accused notes that Block testified that the Witness and one other individual from Pale told him that the Accused had become angry about the showing of the Srebrenica footage.⁸ The Accused also notes that Block did not testify in the *Popović et al.* case and that the Witness, during his testimony in the *Popović et al.* case, was not asked whether the Accused was angry about the broadcast of the Srebrenica footage or took steps to order that it be confiscated.⁹ The Accused maintains that, if the Witness is called to testify, he will deny telling Block that the Accused had become angry.¹⁰

4. The Prosecution does not oppose the Motion.¹¹

5. The Chamber recalls that there is no provision in the Rules for reconsideration of its decisions. However, the standard for reconsideration of a decision set forth by the Appeals Chamber is that “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice’”.¹² The Chamber thus considers it necessary to analyse whether issues arising from Block’s testimony renders necessary the reconsideration of its Decision on Fifth Rule 92 *bis* Motion with respect to the Witness, in order to prevent injustice.

6. The Chamber notes that on 21 February 2012, during his testimony before the Chamber, Block stated that the Witness was one of the direct sources from whom he had heard that the Accused was angry in relation to the broadcast of the Srebrenica footage.¹³ The Chamber

⁶ Decision on Fifth Rule 92 *bis* Motion, para. 44.

⁷ Motion, paras. 1, 10.

⁸ Motion, para. 3, referring to T. 24925–24927 (21 February 2012).

⁹ Motion, para. 4.

¹⁰ Motion, paras. 5–6.

¹¹ Response to Karadžić’s “Motion to Call Witness Zoran Petrović-Piroćanac for Cross Examination”, 29 February 2012, paras. 1–2.

¹² Decision on Accused’s Motions for Reconsideration of Decisions on Judicial Notice of Adjudicated Facts, 14 June 2010, para. 12, citing *Prosecutor v. S. Milošević*, Case No. IT-02-54-AR108*bis*.3, confidential, Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, fn. 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle”, 14 June 2006, para. 2.

¹³ T. 24926 (21 February 2012).

considers that evidence regarding the Accused's reaction to the Srebrenica footage is relevant to the allegations in the Indictment concerning the events in Srebrenica in July 1995. The Chamber further considers that it would be in the interests of justice to hear directly from the Witness about this in order to assess the veracity of the hearsay evidence presented through Block on this issue. The Chamber is also of the view that it would be in the interests of justice for the Witness to be cross-examined on other aspects related to the Srebrenica footage. Therefore, the Chamber finds that reconsideration of its decision to admit the Witness's evidence pursuant to Rule 92 *bis* without the need for him to appear for cross-examination is necessary in order to prevent injustice.

7. Accordingly, the Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby **RECONSIDERS** its Decision on Fifth Rule 92 *bis* Motion in relation to the Witness, and **ORDERS** that the Witness shall appear for cross-examination and that his evidence be presented in accordance with Rule 92 *ter*.

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



Judge O-Gon Kwon
Presiding

Dated this thirteenth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]