



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: 23 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: 23 March 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL ANNEX A

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF SUPPLEMENTAL
RULE 92 *BIS* STATEMENT (WITNESS KDZ612)**

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 Rule 92 *bis* Statement”, filed on 15 February 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 21 December 2009, the Chamber issued its “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” (“Decision on Fifth Rule 92 *bis* Motion”), whereby it provisionally admitted, *inter alia*, KDZ612’s written statements without requiring the witness to appear for cross-examination, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. In the Motion, the Accused requests the admission of a supplemental statement given by KDZ612 during an interview with the Accused’s Legal Advisor on 14 February 2012,² and submits that the information contained therein is directly relevant to the charge in Count 2 of the Indictment.³ The Accused further requests the Chamber, should it determine that the supplemental statement otherwise meets the criteria of Rule 92 *bis*, to appoint a member of the Tribunal’s Victims and Witnesses Section (“VWS”) as a presiding officer to certify the statement.⁴ The Accused further states that he would not object to the Chamber ordering that the evidence contained in the supplemental statement be heard *viva voce* if the Chamber so preferred.⁵

3. On 16 February 2012, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Karadžić’s Motion for Admission of Supplemental Rule 92 *bis* Statement” (“Response”) whereby it does not oppose the Motion, provided that the supplemental statement is only provisionally admitted until the Rule 92 *bis*(B) attestation procedure has been completed.⁶

¹ Decision on Fifth Rule 92 *bis* Motion, paras. 46, 67(B)(4).

² Motion, paras. 1, 3.

³ Motion, para. 4.

⁴ Motion, para. 5.

⁵ Motion, para. 6.

⁶ Response, para. 1.

II. Discussion

4. The Chamber has set out the law applicable to motions filed pursuant to Rule 92 *bis* of the Rules in the “Decision on 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)” (“Decision on Third Rule 92 *bis* Motion”), and will not further recount it in this Decision.⁷

5. The summary of the supplemental statement for KDZ612 tendered by the Accused is set out in Confidential Annex A to this Decision.

6. With respect to the admissibility of the proposed evidence pursuant to Rule 92 *bis*, and having analysed the contents of the supplemental statement, the Chamber is satisfied that the evidence is relevant and has probative value. Furthermore, the Chamber considers that it does not pertain to the acts and conduct of the Accused as charged in the Indictment nor to any acts or conduct which goes to establish that the Accused participated in a joint criminal enterprise, as charged in the Indictment, or shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes. The statement only contains information which complements and expands on certain areas of the original statements admitted through Rule 92 *bis*. In addition, the Chamber notes that the Prosecution does not oppose the admission into evidence of the supplemental statement. Accordingly, the Chamber will provisionally grant the admission into evidence of the supplemental statement, subject to the Rule 92 *bis*(B) certification requirements being fulfilled.

7. The Accused has requested the Chamber to appoint a member of the VWS as a presiding officer to certify the statement.⁸ The Chamber recalls that, once a statement has been provisionally admitted, it is incumbent upon the offering party to provide the requisite certification; this case should not constitute an exception. Consequently, the Chamber will not issue an order to the Registry but encourages the Accused to directly liaise with the Registry in order to comply with the provisions under Rule 92 *bis* (B) of the Rules.

⁷ See Decision on Third Rule 92 *bis* Motion, paras. 4–11.

⁸ Motion, para. 5.

III. Disposition

8. For the foregoing reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber hereby **GRANTS** the Motion and provisionally admits into evidence KDZ612's supplemental statement, under seal, subject to the Accused obtaining the required Rule 92 *bis*(B) attestation.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-third day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]