



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: 10 April 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: 10 April 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL ANNEX A

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF SUPPLEMENTAL
RULE 92 *BIS* STATEMENT (WITNESS KDZ407)**

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: KDZ407”, filed on 6 March 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 admitted KDZ407’s transcripts of prior testimony in the case of *Prosecutor v. Popović et al.*, Case No. IT-05-88-T (“*Popović* Transcript”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) without requiring the witness to appear for cross-examination.¹

2. In the Motion, the Accused requests the admission of a supplemental statement given by KDZ407 during an interview with the Accused’s legal advisor on 28 February 2012,² and submits that the information contained therein is directly relevant to the charge in Count 2 of the Third Amended Indictment (“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 20 March 2012, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to ‘Motion for Admission of Supplemental Rule 92 *bis* Statement: KDZ407’ with Confidential Appendix A” (“Response”) whereby it does not oppose the Motion, subject to certain conditions.⁶ First, the Prosecution submits that the supplemental statement should only be provisionally admitted subject to the completion of the formalities required by Rule 92 *bis*.⁷ The Prosecution further submits that the proposed supplemental statement incompletely reflects the information given by KDZ407 to the Accused’s legal advisor during his interview and that it

¹ Decision on Fifth Rule 92 *bis* Motion, paras. 46, 67(B)(2).

² Motion, paras. 1, 3, Confidential Annexes A, B.

³ Motion, para. 4.

⁴ Motion, para. 6.

⁵ Motion, para. 7.

⁶ Response, paras. 1, 6.

⁷ Response, para. 1.

inaccurately paraphrases KDZ407's statements on a number of issues, including the issue of the *mens rea* for genocide.⁸ As such, the Prosecution requests that the Accused be invited to provide a further supplemental statement from KDZ407 to clarify these issues at the time of completion of the Rule 92 *bis* formalities.⁹ Moreover, the Prosecution submits that the supplemental statement contains errors in the English translation and suggests that the Accused prepare a correct translation.¹⁰

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 repeat it herein.¹¹

5. The summary of the supplemental statement for KDZ407 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. The supplemental statement only contains information which complements and expands on certain areas of the *Popović* Transcript admitted through Rule 92 *bis*. The Chamber notes that the Prosecution does not oppose the admission into evidence of the supplemental statement, nor challenges its relevance and probative value; rather the Prosecution disputes the accuracy of portions of the supplemental statement. The Chamber notes that Rule 92 *bis* provides a method by which the contents of a written statement may be verified by the witness, through the Rule 92 *bis*(B) attestation procedure. Accordingly, at that stage, if KDZ407 is of the view that the supplemental statement does not accurately reflect the information he provided to the Accused's legal advisor on 28 February 2012, he will have an opportunity to make the necessary corrections. Accordingly, the Chamber will provisionally admit the

⁸ Response, paras. 2–4.

⁹ Response, para. 1.

¹⁰ Response, para. 5.

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

supplemental statement into evidence, subject to the Rule 92 *bis*(B) attestation procedure being completed.

7. The Accused has requested the Chamber to appoint a member of the VWS as a presiding officer to certify the statement.¹² The Chamber recalls that, once a statement has been provisionally admitted, it is incumbent upon the offering party to provide the requisite certification. Consequently, the Chamber encourages the Accused to directly liaise with the Registry in order to comply with the provisions under Rule 92 *bis*(B) of the Rules.

8. Finally, the Chamber considers that the English translation provided in confidential Annex B to the Motion is not an accurate translation of the original, in particular with respect to paragraph three. The Chamber therefore orders the Accused to provide a revised English translation which accurately reflects the supplemental statement in its original version.

¹² Motion, para. 6.

III. Disposition

9. For these reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber hereby,
- (a) **GRANTS** the Motion and provisionally admits into evidence KDZ407's supplemental statement, under seal, subject to the Accused obtaining the required Rule 92 *bis*(B) attestation;
 - (b) **ORDERS** the Accused, upon completion of the Rule 92 *bis*(B) procedure, to provide a publicly redacted version of the supplemental statement; and
 - (c) **ORDERS** the Accused, upon completion of the Rule 92 *bis*(B) procedure, to provide a revised English translation of the supplemental statement.

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



Judge O-Gon Kwon
Presiding

Dated this tenth day of April 2012
At The Hague
The Netherlands

[Seal of the Tribunal]