



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: 1 June 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: 1 June 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S REQUEST TO ADMIT SUPPLEMENTAL
STATEMENT OF 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 “Request to Admit Supplemental Statement of Witness KDZ407” filed on 9 May 2012 (“Request”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 10 April 2012, the Trial Chamber issued its “Decision on Accused’s Motion for Admission of Supplemental Rule 92 *bis* Statement (Witness KDZ407)” (“Decision”), wherein it provisionally admitted a supplemental statement for KDZ407 (“Witness”) submitted by the Accused pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) (“Statement”), subject to the Rule 92 *bis*(B) attestation procedure being completed.¹ In the Decision, the Chamber noted that although the Office of the Prosecutor (“Prosecution”) disputed the accuracy of portions of the Statement, the Rule 92 *bis*(B) attestation process “provides a method by which the contents of a written statement may be verified by the witness” and that accordingly, the Witness would have an opportunity to make any necessary changes at that time.² The Chamber further noted in the Decision that the English translation of the Statement tendered initially by the Accused was not accurate, in particular with respect to paragraph three.³ Accordingly, the Chamber ordered the Accused to obtain the required attestation for the Statement pursuant to Rule 92 *bis*(B), and upon its completion, to provide a revised English translation which accurately reflects the Statement, as well as a publicly redacted version of the Statement.⁴

2. In the Request, the Defence requests that the Statement, which has been certified by a Presiding Officer appointed by the Registry of the Tribunal pursuant to Rule 92 *bis*(B) of the Rules, be admitted into evidence.⁵ The Defence further requests that, in light of the protective measures in place for the Witness, the Statement be admitted under seal, and requests that a publicly redacted version of the Statement also be admitted.⁶

3. The Prosecution did not respond to the Request.

¹ Decision, paras. 6, 9.

² Decision, para. 6.

³ Decision, para. 8.

⁴ Decision, paras. 8, 9.

⁵ Request, para. 1.

⁶ Request, para. 3. The Accused informs the Chamber that the confidential and the public redacted versions of the Statement are available in e-court under Rule 65 *ter* numbers 1D5587 and 1D5588, respectively. Request, paras. 2–3.

II. Applicable Law

4. Rule 92 *bis* of the Rules allows for the admission of written evidence in lieu of oral testimony from a witness in certain circumstances. Where a Chamber decides to exercise its powers to admit such written evidence, Rule 92 *bis*(B) requires a declaration by the person making the statement as to the truth and accuracy of its contents, to the best of his or her knowledge and belief. This declaration must be witnessed by “a person authorised to witness such a declaration in accordance with the law and procedure of a State” or “a Presiding Officer appointed by the Registrar of the Tribunal for that purpose.” That authorised person or Presiding Officer must verify in writing:

- (a) that the person making the statement is the person identified in the said statement;
- (b) that the person making the statement stated that the contents of the written statement are, to the best of the person’s belief and knowledge, true and correct;
- (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
- (d) the date and place of the declaration.

5. It is permissible for a Chamber to provisionally admit a written witness statement under Rule 92 *bis*, pending completion of the formal requirements of Rule 92 *bis*(B); however, the witness statement is not fully admitted until those requirements are met.⁷

III. Discussion

6. The Chamber has analysed the certified Statement, and is satisfied that it adheres to the formal requirements of Rule 92 *bis*(B) set out above. A Presiding Officer appointed by the Registrar of the Tribunal witnessed the attestation of the Statement. The Witness declared that the contents of his written statement were true and accurate, to the best of his knowledge and belief, and was informed in a language that he understands that he may be subject to proceedings for giving false testimony. Finally, the Witness is identified by name, date of birth, and place of residence in the Statement, and the attestation provides the date and place of the declaration.

⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis*, 12 September 2006, paras. 19–21; *Prosecutor v. Martić et al.*, Case No. IT-95-11-T, Decision on Prosecution’s Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, paras. 11, 37.

7. In addition, the Chamber notes that, as ordered by the Chamber in the Decision, the Accused has provided a revised English translation of the Statement. Finally, the Chamber has reviewed the publicly redacted version of the Statement and is satisfied that all of the relevant portions have been redacted.

8. For the foregoing reasons, the Chamber is satisfied that the certification procedure for the Witness's Statement as tendered by the Accused fulfils the formal requirements of Rule 92 *bis*(B) and shall be admitted into evidence.

IV. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby **GRANTS** the Request, and **REQUESTS** the Registry:

- (A) to record that the confidential version of the Statement is admitted into evidence, under seal, and to assign it an exhibit number; and
- (B) to record that the publicly redacted version of the Statement is admitted into evidence, and to assign it an exhibit number.

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



Judge O-Gon Kwon
Presiding

Dated this first day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]