



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: 25 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: 25 June 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

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

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 19 April 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 into evidence, *inter alia*, the transcripts of prior testimony of Mile Janjić (“Witness”) without requiring him 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 Mile Janjić during an interview with the Accused’s Legal Adviser on 18 April 2012 (“Statement”).² The Accused submits that the information contained therein goes directly to the issue of *mens rea* for genocide by the alleged perpetrators of crimes related to the Srebrenica component of the case and thus is directly relevant to Count 2 of the Third Amended Indictment (“Indictment”).³ The Accused further submits that should the Chamber determine that the Statement meets the criteria of Rule 92 *bis*, he will request that the Registrar appoint 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 Statement be heard *viva voce* if the Chamber so preferred.⁵

3. The Office of the Prosecutor (“Prosecution”) did not respond to the Motion. However, on 9 May 2012, *via* email correspondence to the parties, the Chamber invited the Prosecution to respond to three questions related to the Motion by 23 May 2012. The Chamber notes that only the first two questions posed to the Prosecution are relevant for the purposes of this decision. The Prosecution filed the “Prosecution’s Position Regarding Tendering by the Accused of Evidence of his Acts and Conduct” (“Response”) on 14 May 2012. With respect to the first question by the Chamber—whether the Prosecution is of the view that paragraph 16 of the

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

² Motion, paras. 1, 3.

³ Motion, para. 4.

⁴ Motion, para. 6.

⁵ Motion, para. 7.

Statement constitutes evidence relating to the acts and conduct of the Accused within the meaning of Rule 92 *bis* of the Rules—the Prosecution submits in the Response that it is “pure opinion” by the Witness and does not meet the Rule 92 *bis* threshold for evidence relating to acts and conduct of the Accused.⁶ The Prosecution further submits that the fact that no one mentioned the Accused’s name to the Witness in the context of the events in Srebrenica also does not constitute evidence of acts and conduct of the Accused.⁷ In response to the Chamber’s second question regarding whether Rule 92 *bis* prohibits the admission of evidence relating to the acts and conduct of the Accused when the Accused is the tendering party, the Prosecution submits that Rule 92 *bis* does prohibit an accused from tendering exculpatory evidence regarding his acts and conduct, even if no objection is raised by the opposing party.⁸

II. Discussion

4. On 15 October 2009, the Trial Chamber 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 recount it in this Decision.⁹

5. In the Statement, the Witness provides information related to attacks by Bosnian Muslims on Kravica and other Bosnian Serb villages between 1993 and the end of June 1995.¹⁰ The Witness also states that, as a member of the Bratunac Brigade Military Police in July 1995, one of his duties was to provide security for two to three buses of Bosnian Muslim men in Bratunac during the night of 13 July 1995.¹¹ He also provides information on the general state of mind of members of the Bratunac Brigade,¹² and states that he was never aware of any plan to kill the Bosnian Muslims or to destroy them as a group.¹³

6. With respect to the admissibility of the proposed evidence pursuant to Rule 92 *bis*, and having analysed the contents of the Statement, the Chamber is satisfied that the evidence is relevant and has probative value. The Chamber recalls that for written evidence to be admissible pursuant to Rule 92 *bis*, it must not relate to the acts and conduct of the Accused as

⁶ Response, paras. 2–3.

⁷ Response, para. 4.

⁸ Response, paras. 7–11.

⁹ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹⁰ Motion, Annex B, para. 3, 5.

¹¹ Motion, Annex B, paras. 11–13.

¹² Motion, Annex B, paras. 7–8.

¹³ Motion, Annex B, paras. 9, 15.

charged in the Indictment and furthermore, that the phrase “acts and conduct of the accused” has been interpreted in the Tribunal’s jurisprudence as an expression that must be given its ordinary meaning of “deeds and behaviour of the accused”.¹⁴

7. First, with regard to the content in paragraph 16 of the Statement, the Chamber notes that the Prosecution does not oppose its admission into evidence by virtue of it being “pure opinion”;¹⁵ however, the Chamber does not find this factor alone to be determinative in its decision as to whether to admit this evidence under Rule 92 *bis*. The Chamber notes that there is no requirement under Rule 92 *bis* for the Chamber to undertake an assessment of whether such opinion is grounded in fact, though evidence based purely on a witness’s opinion may affect the probative value of the evidence, and ultimately the weight given to it by the Chamber. The Chamber has taken a combination of factors into account in determining whether to admit paragraph 16 of the Statement in this specific case, including, *inter alia*, the Witness’s low-ranking position during the period of the Indictment, that he very likely had little to no contact with the Accused, the nature of the statement, and finally that the Prosecution does not oppose its admission into evidence. The Chamber therefore finds that, in this particular instance, the statement made by the Witness in paragraph 16 of the Statement is not sufficiently tied to the acts and conduct of the Accused to warrant its exclusion.

8. The Chamber further considers that the remainder of the Statement 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. Moreover, the Chamber considers that the Statement only contains information which complements and expands on areas of the prior transcripts of testimony admitted through the Witness under Rule 92 *bis*. Accordingly, the Chamber is of the view that the Statement should be provisionally admitted into evidence, subject to the Rule 92 *bis*(B) attestation procedure being completed.

¹⁴ Decision on Third Rule 92 *bis* Motion, para. 5.

¹⁵ See Response, para. 3.

III. Disposition

9. For these reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and provisionally admits the Statement into evidence, subject to the Accused acquiring 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-fifth day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]