



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: 29 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: 29 June 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF SUPPLEMENTAL
RULE 92 *BIS* STATEMENTS (MILORAD BIRČAKOVIĆ AND OSTOJA STANIŠIĆ)**

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* Statements: Witnesses Birčanović (*sic*) and Stanišić”, filed on 13 June 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 the prior testimony of Milorad Birčaković and Ostoja Stanišić without requiring them 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 supplemental statements given by Birčaković and Stanišić during interviews with an investigator from the Accused’s defence team, on 14 May 2012 and 1 June 2012, respectively (“Statements”).² The Accused submits that the information contained in the Statements 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 Statements meet the criteria of Rule 92 *bis*, he will request the Registrar to appoint a presiding officer to certify the Statements.⁴ Furthermore, the Accused states that he would not object to the Chamber ordering that the evidence contained in the Statements be heard *viva voce*, if the Chamber so preferred.⁵

3. The Office of the Prosecutor (“Prosecution”) did not respond to the Motion.

III. 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

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

² Motion, paras. 1, 5, Annex C, Annex D.

³ Motion, para. 6.

⁴ Motion, para. 8.

⁵ Motion, para. 9. The Chamber notes that paragraph number 7 is repeated in the Motion and thus considers that the second reference to paragraph 7 should, in fact, be to paragraph 9.

to Rule 92 *bis* (Witnesses for Sarajevo Municipality)” (“Decision on Third Rule 92 *bis* Motion”), and will not further recount it in this Decision.⁶

5. In his supplemental statement given on 14 May 2012, Birčaković provides information regarding his involvement with the Zvornik Brigade between 1992 and 1995 and the fact that in July 1995, he worked as a driver for Drago Nikolić, Chief of Security of the Zvornik Brigade.⁷ The witness states that he never heard any member of the Zvornik Brigade or the Army of Republika Srpska (“VRS”) express, in his presence, a wish to destroy the Bosnian Muslims as a group, and furthermore, that he “was very surprised that prisoners were killed in July 1995” because nothing similar had ever occurred before.⁸

6. In his supplemental statement given on 1 June 2012, Stanišić provides information regarding his role as Commander of the 6th Battalion of the Zvornik Brigade.⁹ He states that during his time in this unit, he did not witness any crimes against the civilian population in the area.¹⁰ The witness also provides information related to the Bosnian Muslim attacks on VRS positions in Glodansko Brdo on 6 November 1992.¹¹ Furthermore, he states that he never heard any member of the Zvornik Brigade or the VRS express, in his presence, a wish to destroy the Bosnian Muslims as a group, and moreover, that he “was very surprised that prisoners were killed in July 1995” because nothing similar had ever occurred before.¹²

7. With respect to the admissibility of the proposed evidence pursuant to Rule 92 *bis*, and having analysed the contents of the Statements, the Chamber is satisfied that it is relevant and has probative value. Furthermore, the Chamber considers that the Statements do 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 that he 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 Statements only contain information which complements and expands on certain areas of the prior transcripts of testimonies admitted through Rule 92 *bis*. Finally, the Chamber notes that the Prosecution did not respond to the Motion. Accordingly, the Chamber is of the view that the Statements should be provisionally admitted into evidence, subject to the Rule 92 *bis*(B) attestation procedures being completed.

⁶ See Decision on Third Rule 92 *bis* Motion, paras. 4–11.

⁷ Motion, Annex C, p. 1.

⁸ Motion, Annex C, p. 1.

⁹ Motion, Annex D, p. 1.

¹⁰ Motion, Annex D, p. 1.

III. Disposition

8. For these reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and provisionally admits the Statements into evidence, subject to the Accused acquiring the required Rule 92 *bis*(B) attestations.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-ninth day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Motion, Annex D, p. 1.

¹² Motion, Annex D, p. 2.