



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: 17 July 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: 17 July 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF SUPPLEMENTAL
RULE 92 *BIS* STATEMENT (WITNESS KDZ486)**

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: Witness KDZ486”, filed on 28 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 Seventh Motion for Admission of Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*: Delayed Disclosure Witnesses” (“Decision on Seventh Rule 92 *bis* Motion”), whereby it admitted into evidence, *inter alia*, the transcripts of prior testimony of KDZ486 (“Witness”) in the case of *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) without requiring him to appear for cross-examination.¹

2. In the Motion, the Accused requests the admission of a supplemental statement given by the Witness during an interview with the Legal Adviser of the Accused on 12 June 2012 (“Statement”).² The Accused submits that the information contained in the Statement goes directly to the issue of *mens rea* for genocide of 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 also submits 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.⁴ Finally, the Accused informs the Chamber that the Statement has been certified by a Presiding Officer appointed by the Registry of the Tribunal and thus conforms to the requirements under Rule 92 *bis*(B) of the Rules.⁵

3. On 6 July 2012, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Karadžić’s Motion for Admission of Supplemental Rule 92 *bis* Statement: Witness KDZ486” (“Response”) whereby it does not oppose the Motion.⁶

¹ Decision on Seventh Rule 92 *bis* Motion, paras. 20, 32(a).

² Motion, paras. 1, 4, 8, Annex A. The Accused informs the Chamber that the unredacted, confidential version of the Statement has been uploaded on to eCourt as Rule 65 *ter* number 1D05675, while the redacted version of the Statement is attached to the Motion as Annex A.

³ Motion, para. 5.

⁴ Motion, para. 7.

⁵ Motion, para. 4.

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)”, filed on 15 October 2009 (“Decision on Third Rule 92 *bis* Motion”), and will not further recount it in this Decision.⁷

5. In the Statement, the Witness provides information relating to his involvement in the Zvornik Brigade and his experiences in Orahovac in July 1995.⁸ The Witness states that while he served in the Zvornik Brigade, “nobody expressed any intent to destroy the Muslims as a group, either some of them or all of them”.⁹ The Witness further states that on the basis of what he heard, he could not believe that Drago Nikolić possessed the “intent to destroy Muslims as a group” and that “[i]t was a surprise to all that he took part in these executions”.¹⁰

6. With respect to the admissibility of the proposed evidence pursuant to Rule 92 *bis*, having analysed the contents of the Statement, the Chamber is satisfied that it is relevant and has probative value. Furthermore, the Chamber considers that 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 that he shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes. In addition, the Chamber considers that the Statement only contains information which complements and expands on certain areas of the transcripts of the Witness’s prior testimony already admitted through Rule 92 *bis*. Finally, the Chamber notes that the Prosecution does not oppose the Motion. Accordingly, the Chamber is of the view that the Statement should be admitted into evidence.

7. Moreover, the Chamber has analysed the certified Statement and is satisfied that it adheres to the formal requirements of Rule 92 *bis*(B). 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. In addition, the Witness is identified by name, date of

⁶ Response, p. 1.

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

⁸ Motion, Annex A.

⁹ Motion, Annex A, para. 4.

¹⁰ Motion, Annex A, para. 5.

birth, and place of residence in the Statement, and the attestation provides the date and place of the declaration. Finally, the Chamber has reviewed the public 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).

III. Disposition

9. For these reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber hereby:

- (A) **GRANTS** the Motion and admits the confidential and public redacted versions of the Statement into evidence; and
- (B) **REQUESTS** the Registry to assign exhibit numbers to the confidential and public redacted versions of the Statement.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of July 2012
At The Hague
The Netherlands

[Seal of the Tribunal]