



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: 7 December 2011

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: 7 December 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR LEAVE TO CONVERT MODE OF
ADMISSION OF ONE WITNESS**

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 “Prosecution’s Motion for Leave to Convert the Mode of Evidentiary Admission for one Witness and Notification that two Reserve Witnesses will be Called During the Srebrenica Component of the Case”, filed on 5 October 2011 2011 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 21 December 2009, the Chamber issued the “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” (“Rule 92 *bis* Decision”), wherein it admitted, *inter alia*, the testimony of Mirsada Malagić (“Witness”) in the case of *Prosecutor v. Radislav Krstić* (“*Krstić* case”) pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) without requiring her to appear for cross-examination in this case.¹

2. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks to “convert the mode of evidentiary admission” for the Witness from Rule 92 *bis* to Rule 92 *ter* so that she can be heard live on a number of issues in addition to being cross-examined by the Accused. The Prosecution contends that it would be in the interests of justice to hear live from a victim of the alleged forcible transfer, that the Accused would not be prejudiced and that granting the Motion will not delay or significantly increase the length of trial.² The Prosecution further informs the Chamber and the Accused that it intends to call pursuant to Rule 92 *ter* witnesses KDZ045 and KDZ071, currently designated as reserve witnesses, during the Srebrenica component of the case.

3. On 6 October 2011, the Accused filed a “Response to Motion to Convert Witness” (“Response”), not opposing the Motion but requesting that the Witness along with witnesses KDZ045 and KDZ071 not be called before the winter recess in order to give him enough time to prepare for their testimonies.

4. Upon the Chamber’s request for clarification,³ the Prosecution filed the “Prosecution Additional Submission Regarding Prosecution Motion for Leave to Convert the Mode of Evidentiary Admission for one Witness” on 10 October 2011 (“Additional Submission”). The Prosecution first clarifies that it would be in the interests of justice to hear the Witness live in light

¹ Rule 92 *bis* Decision, para. 67(B)(2).

² Motion, para. 4.

³ T. 20024–20025 (6 October 2011).

of the Accused's position in relation to the allegations of forcible transfer from Srebrenica.⁴ The Prosecution then submits that in order to supplement the Witness's evidence previously admitted pursuant to Rule 92 *bis*, it expects to lead evidence live in relation to i) the conditions in Srebrenica town between 1992 and July 1995, ii) the attack on Srebrenica starting on 6 July 1995, and iii) the conditions in Potočari.⁵

II. Discussion

5. The Chamber recalls that it admitted the Witness's evidence in the Rule 92 *bis* Decision without requiring her to appear for cross-examination.⁶ In deciding whether to allow the Prosecution to call her live, the Chamber gave particular regard to the Prosecution's submission that it would supplement her evidence pursuant to Rule 92 *bis* on (i) the conditions in Srebrenica town between 1992 and July 1995; ii) the attack on Srebrenica starting on 6 July 1995; and iii) the conditions in Potočari in July 1995. These topics are central to some of the allegations with which the Accused is charged in relation to Srebrenica. Not only will the Chamber benefit from hearing live from the Witness but the Accused will also be able to cross-examine her evidence. The Chamber further considers that it is ultimately up to the Prosecution to decide how to best use the remainder of the time allocated to it to present its case and that calling the Witness live will not unduly delay the trial. The Chamber therefore considers that, on balance, and given that the Accused did not oppose the Motion, it is in the interests of justice to allow the Prosecution to call the Witness live to testify in order to supplement her evidence previously admitted pursuant to Rule 92 *bis*.

6. In respect of the Accused's request in the Response that witnesses KDZ045 and KDZ071 be called after the winter recess as they had been identified until now as "reserve witnesses", the Chamber notes that they are scheduled to appear in early January 2012.⁷ The Chamber therefore considers that this request is moot.

⁴ Additional Submission, para. 3.

⁵ Additional Submission, para. 5.

⁶ Rule 92 *bis* Decision, paras. 46, 67(B)(2).

⁷ Prosecution's Submission of Order of Witnesses for January and February 2012 with Appendix A, 1 December 2011.

III. Disposition

7. Accordingly, the Chamber, pursuant to Rule 54 of the Rules, hereby:
- a) **GRANTS** the Motion; and
 - b) **DECLARES** moot the request in the Response.

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



Judge O-Gon Kwon
Presiding

Dated this seventh day of December 2011
At The Hague
The Netherlands

[Seal of the Tribunal]