



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: 13 February 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:** 13 February 2012

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

*PUBLIC*

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**DECISION TO CALL DRAŽEN ERDEMOVIĆ FOR CROSS-EXAMINATION**

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**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”) *proprio motu* issues this decision in relation to the evidence of Dražen Erdemović (“Witness”).

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”) admitting, *inter alia*, the Witness’s transcripts of prior testimony in the *Popović et al.* case pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>1</sup> In the Decision on Fifth Rule 92 *bis* Motion, the Chamber reviewed the evidence contained in the transcripts of the Witness’s prior testimony proffered by the Office of the Prosecutor (“Prosecution”), and decided to admit the Witness’s evidence pursuant to Rule 92 *bis*(A) of the Rules without requiring him to appear for cross-examination.<sup>2</sup>

2. In reaching this decision, the Chamber noted that the Witness had testified about the acts and conduct of Ratko Mladić, who is named in the Indictment as a member of the JCE charged in respect to the Srebrenica events, and that he had faced limited cross-examination in the *Popović et al.* case.<sup>3</sup> However, it also found the Witness’s evidence to be cumulative of the evidence of other witnesses and that while he may have testified about the actions of Ratko Mladić and other members of the Srebrenica JCE, the Chamber considered that he “either [does] not testify to any acts or conduct of members of the Srebrenica JCE for which the Accused could be held responsible under the Indictment, or ha[d] been sufficiently cross-examined in prior cases to not warrant calling [him] for cross-examination in the present case.”<sup>4</sup>

3. On 24 March 2011, the Accused filed the “Motion to Call Witness Drazen Erdemovic for Cross Examination” (“Motion to Call Erdemović for Cross-Examination”), requesting the Chamber to require the Witness to appear for cross-examination, based upon new information which was not available when the Witness testified in the *Popović et al.* case.<sup>5</sup> The Accused argued that, based on information contained in a publication from 2009 and the evidence given by the Witness in the *Perišić* case, there was reason to believe that the Witness possessed exculpatory information which was not included in his testimony in the *Popović et al.* case.<sup>6</sup> On

<sup>1</sup> Decision on Fifth Rule 92 *bis* Motion, para. 67(B)(2).

<sup>2</sup> Decision on Fifth Rule 92 *bis* Motion, para. 46.

<sup>3</sup> Decision on Fifth Rule 92 *bis* Motion, paras. 38, 42, 43.

<sup>4</sup> Decision on Fifth Rule 92 *bis* Motion, para. 44; *see also* Decision on Fifth Rule 92 *bis* Motion, para. 37(i), (vi).

<sup>5</sup> Motion to Call Erdemović for Cross-Examination, paras. 1, 9.

<sup>6</sup> Motion to Call Erdemović for Cross-Examination, paras. 3–5.

6 April 2011, the Prosecution filed a response opposing the Motion to Call Erdemović for Cross-Examination.<sup>7</sup> On 13 April 2011, the Chamber issued its “Decision on Accused’s Motion to Call Dražen Erdemović for Cross-Examination” finding that the test for reconsideration had not been met and thus denying the Accused’s request.<sup>8</sup>

4. On 1 and 2 February 2012, during the cross-examination of Prosecution witness Jean-René Ruez, the Accused challenged the credibility and reliability of the Witness’s evidence in relation to Scheduled Incidents 9.2 and 10.1 of the Indictment.<sup>9</sup> Similarly, the Witness’s credibility was challenged on 7 February 2012, during the cross-examination of Prosecution witness Dragan Todorović.<sup>10</sup>

5. The Chamber recalls that there is no provision in the Rules for reconsideration of its decisions. However, the standard for reconsideration of a decision set forth by the Appeals Chamber is that “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice’”.<sup>11</sup>

6. Based on the recent evidence heard over the last few days, the Chamber considers it necessary to analyse whether the existence of new circumstances renders necessary the reconsideration of its Decision on Fifth Rule 92 *bis* Motion with respect to the Witness, in order to prevent injustice.

7. The Chamber recalls that the Witness was a member of the VRS 10<sup>th</sup> Sabotage Detachment during the Indictment period and testified in the *Popović et al.* case about, *inter alia*, the unit’s involvement in the takeover of the Srebrenica enclave on 10 and 11 July 1995, and events taking place in the following days, including those at Branjevo Military Farm and at

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<sup>7</sup> Prosecution Response to Accused’s Motion to Call Witness Dražen Erdemović for Cross-Examination, 6 April 2011, paras. 1, 2, 9.

<sup>8</sup> Decision on Accused’s Motion to Call Dražen Erdemović for Cross-Examination, 13 April 2011, paras. 8, 12.

<sup>9</sup> See Jean-René Ruez, T. 23998 (1 February 2012) where the Accused stated: “Could you get anything more objective and impartial than Drazen Erdemovic? Could you not deal with it more scientifically, if you will?”, and Jean-René Ruez, T. 24059–24061 (2 February 2012) where the Accused stated: “Do you know that the Defence cannot cross-examine Erdemovic, and his statement has been admitted under 92 bis? You would rather examine him, wouldn’t you? You would not consider him to be fully credible; right?”

<sup>10</sup> See Dragan Todorović, T. 24204, 24213–24214 (7 February 2012).

<sup>11</sup> Decision on Accused’s Motions for Reconsideration of Decisions on Judicial Notice of Adjudicated Facts, 14 June 2010, para. 12, citing *Prosecutor v. S. Milošević*, Case No. IT-02-54-AR108bis.3, confidential, Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, fn. 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle”, 14 June 2006, para. 2.

the Pilica Cultural Centre on 16 July 1995.<sup>12</sup> As a member of the 10<sup>th</sup> Sabotage Detachment, the Witness played a direct role in the alleged crimes committed at Branjevo Military Farm on 16 July 1995.<sup>13</sup>

8. The Chamber notes that Dragan Todorović's recent testimony also relates to the involvement of the 10<sup>th</sup> Sabotage Detachment in the takeover of the Srebrenica enclave in July 1995.<sup>14</sup> Upon a preliminary review of the Witness's evidence in the *Popović et al.* case and that given by Dragan Todorović in court, the Chamber has found instances of apparent contradictions between the two witnesses.<sup>15</sup> In addition to the contradictions relating to events in the Srebrenica enclave in July 1995, the Chamber notes that Dragan Todorović specifically challenged the Witness's claims in relation to the Witness's forced involvement in the commission of crimes.<sup>16</sup>

9. Based on the apparent contradictions between the Witness and Dragan Todorović's evidence, as well as the Accused's position on the Witness's reliability and credibility, and despite the fact that the Witness's evidence is admissible pursuant to Rule 92 *bis*, as it does not relate to the acts and conduct of the Accused as charged in the Indictment, the Chamber has decided to revisit its position to exercise its discretion to require the Witness to appear for cross-examination. Therefore, the Chamber finds that reconsideration of its decision to admit the Witness's evidence pursuant to Rule 92 *bis* without the need for him to appear for cross-examination is necessary in order to prevent injustice.

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<sup>12</sup> See Dražen Erdemović, P332 (Transcript from *Prosecutor v. Popović*, Case No. IT-05-88).

<sup>13</sup> See Dražen Erdemović, P332 (Transcript from *Prosecutor v. Popović*, Case No. IT-05-88), T. 10971–10972.

<sup>14</sup> See Dragan Todorović, T. 24204, 24213–24214 (7 February 2012).

<sup>15</sup> See Dražen Erdemović, P332 (Transcript from *Prosecutor v. Popović*, Case No. IT-05-88), T. 10937, 10947, 10962; Dragan Todorović, T. 24196, 24201–24204, 24208, 24213, 24214 (7 February 2012).

<sup>16</sup> See Dragan Todorović, T. 24214 (7 February 2012) where Dragan Todorović stated: “[...] Erdemovic also said that he was forced to do something at gunpoint. That's not true. Whoever would have made him doing anything but at gunpoint would have had to answer for it later before the commander.”

10. Accordingly, the Chamber, pursuant to Rule 54 and Rule 92 *bis* of the Rules, hereby **RECONSIDERS** its Decision on Fifth Rule 92 *bis* Motion in relation to the Witness, and **ORDERS** that the Witness shall appear for cross-examination and that his evidence be presented in accordance with Rule 92 *ter*.

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



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Judge O-Gon Kwon  
Presiding

Dated this thirteenth day of February 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]