



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: 20 January 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

Order of: 20 January 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER IN RELATION TO TESTIMONY OF RUPERT SMITH AND BERKO ZEČEVIĆ

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”) hereby issues this Order, *proprio motu*, in relation to the testimony of Rupert Smith and Berko Zečević.

1. On 16 December 2010, the Office of the Prosecutor (“Prosecution”) filed its revised order of witnesses to be called in January and February 2011, which included Rupert Smith and Berko Zečević (together “Witnesses”).¹ Both Witnesses were listed as to give evidence partially pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). The Prosecution also filed, on 15 December 2010, its notification of the submission of Rupert Smith’s written evidence pursuant to Rule 92 *ter*, in accordance with the standard procedure in this case.² The Prosecution states that, in addition to submitting his amalgamated witness statement pursuant to Rule 92 *ter*, it will need four hours for its examination in chief of General Smith.³ While no such notification has yet been filed in relation to Berko Zečević, who will give evidence, in part, as an expert witness, the Prosecution has intimated that it will need two hours for his examination in chief.⁴

2. The Trial Chamber notes that Rule 92 *ter* is intended to be used in order to facilitate an expeditious trial, while ensuring full respect for the rights of the accused. The decision whether to admit evidence pursuant to Rule 92 *ter* remains entirely within the Chamber’s discretion.⁵ Having considered the summaries of the expected evidence of the Witnesses as submitted by the Prosecution, the Chamber is convinced that, given the nature of that expected testimony as well as the positions that the Witnesses occupied during the period relevant to the Indictment, it is in the interests of justice for their testimony to be heard entirely *viva voce*, rather than pursuant to Rule 92 *ter*.

3. For these reasons, pursuant to Rule 54 of the Rules, the Chamber hereby **ORDERS** the Prosecution to lead the evidence of Rupert Smith and Berko Zečević *viva voce*, and to advise the

¹ Prosecution’s Submission of Revised Order of Witnesses for January and February 2011 with Appendix A, 16 December 2010.

² Prosecution’s Notification of Submission of Written Evidence pursuant to Rule 92 *ter* and Request for Leave to add Documents to the Rule 65 *ter* Exhibit List with Appendices A & B: Witness General Sir Rupert Smith, 15 December 2010 (“Smith Notification”).

³ Smith Notification, Appendix A.

⁴ Prosecution’s Submission of Revised Order of Witnesses for January and February 2011 with Appendix A, 16 December 2010.

⁵ See *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *viva voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 3.

Chamber and the Accused, as soon as possible, as to the revised estimate of the time needed for their examination in chief.

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



Judge O-Gon Kwon
Presiding

Dated this twentieth day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]