



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T

Date: 22 February 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Decision of: 22 February 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON ADMISSION OF WRITTEN
STATEMENTS, TRANSCRIPTS AND ASSOCIATED
EXHIBITS PURSUANT TO RULE 92 *ter***

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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”);

BEING SEIZED of the “Prosecution Motion for Admission of Witness Written Statements and Transcripts Pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence, with Annexes A, B, C, D, E and F, Annexes A, B and C Being Confidential”, filed partially confidentially on 5 February 2007 (“Motion”), in which the Prosecution requests the Trial Chamber to admit into evidence

- 1) three witness statements of Vahid Karavelić, one dated 2 November 2001 and attached as confidential Annex A (English translation) and another dated 18 August 2006 and attached as confidential Annex B (BCS original) and as confidential Annex C (English translation) to the Motion (“written statements”);
- 2) transcript pages of testimony given by Vahid Karavelić in the case *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, listed in Annex D and transcript pages of testimony given in the case *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, listed in Annex E (“transcript pages”); as well as
- 3) four associated exhibits listed in Annex F accompanying the witness statements and transcript pages (“associated exhibits”);

NOTING that in its response, the Defence takes no position as to the Motion, but requests to be allocated adequate time for the cross-examination of Vahid Karavelić;¹

NOTING that the associated exhibit with Rule 65 *ter* No. 02454 was not listed in the Rule 65 *ter* exhibit list and that the Prosecution informed the Trial Chamber by email on 21 February 2007 that the admission of the exhibit is no longer requested;

NOTING Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”), pursuant to which a Trial Chamber may admit the evidence of a witness in the form of a written statement or transcript of evidence given by a witness if the witness is present in court, available for cross-examination and any questioning by the Judges and if the witness attests that the written statement or transcript accurately reflects the witness’ declaration and what the witness would say if examined;

¹ Response to the Prosecution Motion on the Admission of Written Statements and Transcript Pages of the Testimony of a Witness (Rule 92 *ter* of the Rules of Procedure and Evidence), 19 February 2007.

CONSIDERING that exhibits accompanying written statements or transcripts form an inseparable part of the evidence and can be admitted along with statements or transcripts;²

CONSIDERING that the requirements of Rule 92 *ter* of the Rules must be met when Vahid Karavelić appears to give testimony in the present case;

NOTING that the original estimated length of the examination of Vahid Karavelić in the Prosecution's Rule 65 *ter* witness list was ten hours and that the new estimated length of the examination of Vahid Karavelić is approximately seven hours;³

CONSIDERING that the written statements and the transcript pages of testimony are voluminous and that the testimony of Vahid Karavelić is significant for this case;

CONSIDERING that four hours should be ample time for the Defence to conduct its cross-examination of Vahid Karavelić;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 92*ter* of the Rules,

HEREBY GRANTS the Motion, and

ORDERS that

1. the written statements of Vahid Karavelić, the transcript pages and the three associated exhibits be admitted into evidence subject to the witness
 - a) appearing in court
 - b) being available for cross-examination and questioning by the Judges and
 - c) attesting that the written statements and transcript pages accurately reflect his declaration and what he would say if examined;

² *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's *Confidential* Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 September 2006, para. 23; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution's Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 January 2004, p. 5; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-PT, Decision Regarding Prosecutor's Notice of Intent to Offer Transcripts Under Rule 92 *bis* (D), 9 July 2001, para. 8.

³ Motion, para. 4.

2. the Prosecution provide the Registrar with an electronic version of the written statements, the transcript pages and the three associated exhibits;
3. the examination-in-chief of Vahid Karavelić shall not exceed two hours and that the cross-examination shall not exceed four hours;

Requests the Registrar to assign exhibit numbers to the written statements, the transcript pages and the three associated exhibits upon fulfilment of these requirements.

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



Judge Patrick Robinson
Presiding

Dated this twenty-second day of February 2007

At The Hague

The Netherlands

[Seal of the Tribunal]