



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: 19 April 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: 19 April 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON PROSECUTION MOTION FOR
ADMISSION OF WITNESS STATEMENTS PURSUANT
TO RULE 92 *BIS* (W-111)**

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 SEISED of the “Prosecution Motion for Admission of Witness Written Statement and Transcripts Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, with Confidential Annexes A, B and C”, filed partially confidentially on 19 March 2007 (“Motion”), in which the Prosecutor requests the Trial Chamber to provisionally admit into evidence the written statement of Witness W-111 (“Statement”) and the transcripts of evidence given by this witness in the case *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T (“Transcripts”) and associated exhibits (“Exhibits”), without requiring the witness to appear for cross-examination;

NOTING the Defence “Conclusion en Réponse de la Requête du Procureur aux Fins d’Admission de la Déclaration Ecrite de Témoin et du Compte-Rendu”, filed 29 March 2007 (“Response”);

RECALLING the Trial Chamber’s “Decision on Prosecution Motion for Admission of Witnesses Written Statements Pursuant to Rules 92 *bis* and *ter* of the Rules of Procedure and Evidence with Confidential Annex A”, dated 27 February 2007, in which the Trial Chamber set out the law on admission of statements pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”);

NOTING the arguments of the Prosecution in support of the Motion:

- (i) the Statement and Transcripts do not go to the acts and conduct of the Accused or to a critical issue in the Prosecution’s case and therefore should be admitted without the requirement to cross-examine the witness;¹
- (ii) the “exhibits accompanying transcripts form an inseparable and indispensable part of the testimony and can be admitted along with the transcripts”;²
- (iii) although the Statement has not yet been formalised pursuant to Rule 92 *bis* (B), arrangements will be made for the attestation by the witness before a Presiding Officer of the Registry as soon as possible;³

NOTING that the Defence objects to the admission of the Statement and Transcripts of Witness W-111 pursuant to Rule 92 *bis* of the Rules;

¹ Motion, paras 7 and 10.

² Motion para. 11, citing *Prosecutor v. Mladen Natelić aka “TUTA” and Vinko Martinović aka “ŠTELA”*, Case No. IT-98-34-PT, Decision regarding Prosecutor’s Notice of Intent to Offer Transcripts under rule 92 *bis*, 9 July 2001, para.8.

³ Motion, para. 13.

NOTING the submissions of the Defence in support of the Response:

- (i) the evidence given by Witness W-111 in his Statement and in the Transcripts contains an opinion as to the origin of fire;⁴
- (ii) the Transcripts and the Statement go to prove very important elements of the Prosecution case,⁵ which calls for the witness appearing before the Trial Chamber for cross-examination;⁶
- (iii) the Statement of Witness W-111 was compiled irrespectively of the principle of adversarial proceedings, with the sole intervention of the Prosecutor;
- (iv) while the Transcripts comply with the principle of adversarial proceedings, they go to a time period which is outside of the Indictment;

CONSIDERING that the evidence submitted in the Motion's Annexes A to C is relevant and has probative value;

CONSIDERING that parts of this evidence relate to live and pivotal issues between the Parties, notably evidence going to the origin of fire or the authority of the Accused, hence calling for Witness W-111 to appear for cross-examination on those points, in order to ensure the Accused a fair trial;

PURSUANT TO RULES 89 (C) , 89 (D) and 92 *bis*,

HEREBY GRANTS IN PART the Motion, and

ADMITS into evidence the statement of Witness W-111, dated 24 May 1995, the Transcripts and the Exhibits contained in Annexes B and C to the Motion; subject to the witness appearing for cross-examination and otherwise meeting the requirements of Rule 92 *ter*, and orders that the examination-in-chief of this witness shall not exceed 30 minutes and cross-examination of this witness shall not exceed 45 minutes;

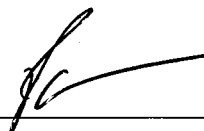
REQUESTS the Registrar to assign exhibit numbers to the Statement and Transcripts of Witness W-111, as well as to the Exhibits contained in Annex C to the Motion, upon fulfilment of the requirements of Rule 92 *bis* (C).

⁴ Response, para.7.

⁵ *Ibid.*

⁶ Response, para. 8.

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



Judge Patrick Robinson
Presiding

Dated this 19th day of April 2007

At The Hague

The Netherlands

[Seal of the Tribunal]