



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: 9 July 2010

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: 9 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO FORMALLY ADMIT THE CERTIFIED
RULE 92 *BIS* STATEMENTS OF SARAJEVO WITNESSES**

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 Motion to Formally Admit the Certified Rule 92 *bis* Statements of Sarajevo Witnesses”, filed on 17 June 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 5 March 2010, the Trial Chamber issued its “Decision on Prosecution’s Fourth Motion for Admission of Statements and Transcripts in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Siege Witnesses” (“Rule 92 *bis* Decision”), wherein it provisionally admitted into evidence, *inter alia*, the written statements of witnesses Ašida Fazlić, Šefik Bešlić, Ziba Šubo, Anđa Gotovac, Fatima Palavra, Fadila Tarčin, Zilha Granilo, Sabina Šabanić, Slavica Livnjak, Tarik Žunić, Ziba Avdić, as well as of KDZ036, KDZ079, KDZ090, and KDZ289, under seal, subject to the Prosecution obtaining the required attestations pursuant to Rule 92 *bis*(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Trial Chamber also provisionally admitted the supplemental statements submitted by the Accused for Ašida Fazlić and Šefik Bešlić, subject to the same requirement. The Trial Chamber ordered the Prosecution to obtain the required Rule 92 *bis*(B) attestation for the supplemental statement of Ašida Fazlić, which the Registrar gave the exhibit number D2.² Furthermore, the Trial Chamber ordered the Accused to obtain the required attestation for the supplemental statement of Šefik Bešlić, which the Registrar gave the exhibit number D3.³

2. In the Motion, the Prosecution submits that the written statements and supplemental statements of Ašida Fazlić, Šefik Bešlić, Ziba Šubo, Anđa Gotovac, Fatima Palavra, Fadila Tarčin, Zilha Granilo, Sabina Šabanić, Slavica Livnjak, Tarik Žunić, Ziba Avdić, KDZ036, KDZ079, and KDZ090⁴ (“Witnesses”) have been certified by a Presiding Officer appointed by the Registry of the Tribunal pursuant to Rule 92 *bis*(B) of the Rules, and requests that they be formally admitted into evidence. The Prosecution further submits that the Rule 92 *bis* packages for the Witnesses, which now include the certifying material, have been given exhibit numbers, respectively, P470, P472, P488, P490, P497, P498, P499, P492, P495, P496, P500, P477 (under seal), P480 (under seal), and P483 (under seal), and that they are available in court.

¹ Rule 92 *bis* Decision, paras. 72(C)(i–ii), 72(C)(v–vi).

² Rule 92 *bis* Decision, para. 72(C)(i).

³ Rule 92 *bis* Decision, para. 72(C)(ii).

⁴ In the Motion, the Prosecution noted that the Rule 92 *bis*(B) attestation for the written statements of KDZ289 is not available yet.

3. On 17 June 2010, the Accused informed the Trial Chamber and the Prosecution by way of email that he has no objection to the Motion.

II. Applicable Law

4. Rule 92 *bis* of the Rules allows for the admission of written evidence in lieu of oral testimony from a witness in certain circumstances. Where a Chamber decides to exercise its powers to admit such written evidence, Rule 92 *bis*(B) requires that there is attached to the statement a declaration by the person making it as to the truth and accuracy of its contents, to the best of his or her knowledge and belief. This declaration must be witnessed by “a person authorised to witness such a declaration in accordance with the law and procedure of a State” or “a Presiding Officer appointed by the Registrar of the Tribunal for that purpose.” That authorised person or Presiding Officer must verify in writing:

- (a) that the person making the statement is the person identified in the said statement;
- (b) that the person making the statement stated that the contents of the written statement are, to the best of the person’s belief and knowledge, true and correct;
- (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
- (d) the date and place of the declaration.

5. It is permissible for a Chamber to provisionally admit a written witness statement under Rule 92 *bis*, pending completion of the formal requirements of Rule 92 *bis*(B), but the witness statement is not fully admitted until those requirements are met.⁵

III. Discussion

6. The Trial Chamber has analysed the certified statements for all of the Witnesses to determine if they adhere to the formal requirements of Rule 92 *bis*(B) set out above. A Presiding Officer appointed by the Registrar of the Tribunal witnessed the attestation of each of the Witnesses’ written statements. Each witness declared that the contents of his or her witness statement was true and accurate, to the best of his or her knowledge and belief, and was

⁵ *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, paras. 19–21; *Prosecutor v. Martić et al.*, Case No. IT-95-11-T, Decision on Prosecution’s Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, paras. 11, 37.

informed in a language that he or she understands that he or she may be subject to proceedings for giving false testimony. Each of the Witnesses is identified by name, date of birth, and place of residence, and each attestation provides the date and place of declaration. Therefore, the Chamber is satisfied that the certification procedure for each of the written statements of the Witnesses tendered by the Prosecution fulfils the formal requirements of Rule 92 *bis*(B) and shall be admitted.

7. In its review of the Rule 92 *bis* packages provided by the Prosecution, the Chamber notes that witnesses Ašida Fazlić, Sabina Šabanić, Tarik Žunić, Anđa Gotovac, KDZ036, and KDZ079 have provided addenda to their witness statements during the attestation procedure. The Chamber notes that the addenda were also certified under Rule 92 *bis*(B), and that all of the addenda, except two, are uploaded into e-court with the corresponding provisionally admitted witness statements. However, the Chamber is unable to locate the addenda for Anđa Gotovac and KDZ079 in the Rule 92 *bis* packages uploaded into e-court as exhibits P490 and P480, respectively, even though they are expressly noted by the Presiding Officer in the certifying materials for these witnesses. The Chamber further notes that although some of the addenda to the witness statements reflect only minor errors in spelling or minor clarifications of the evidence in the witness statements, many of the changes submitted in the addenda are more significant. In particular, the Chamber finds this to be the case for the addenda to the witness statements for Ašida Fazlić,⁶ Sabina Šabanić,⁷ and Tarik Žunić.⁸

8. The Chamber understands that the attestation process may provide an opportunity for witnesses to clarify their written evidence, and it considers that it may be appropriate for a witness to make corrections to his or her evidence in this regard. However, where the Chamber has provisionally admitted a witness's written evidence, as it has for the witnesses who are the subject of this Decision, any substantive changes to that evidence will require the Chamber to

⁶ In the addendum to her 4 November 2008 statement, Ašida Fazlić's makes one substantive change to paragraph three: "The hospital director should be Dr. Bakir Nakaš, not his brother Abdullah as written in the statement".

⁷ Sabina Šabanić makes a number of substantive changes to her two witness statements of 16 November 1995 and 22 May 2006. First, with regard to her 16 November 1995 statement, the witness provides that she did not hear the "smashing of glass", as written in paragraph four, and she did not hear firing, as provided in paragraph six of the same statement. Furthermore, she also added that since giving her 16 November 1995 statement, she has experienced physical difficulty as a result of her injury, discussed in the statement, and she is 50 per cent disabled as a result. Finally, she made a correction to both her 16 November 1995 and 22 May 2006 statements, namely that both should state in paragraphs ten and six, respectively: "The *four* white tall apartment buildings in Grbavica were well known sniper locations", instead of "[t]he *three* white tall buildings in Grbavica were well known sniper locations" (emphasis added).

⁸ Tarik Žunić makes two substantive changes with respect to his two written witness statements of 10 November 1995 and 21 April 2006. First, he provides the following addition to his 10 November 1995 witness statement, noted in italics: "While I was there I discovered that I had two holes on the *left* front ~~part~~ of my jacket at the level of my heart, *one on the left side where the bullet entered and one on the right where the bullet exited*". Second, he provides the following substantive change to his 21 April 2006 witness statement, noted in italics: "They had the

assess the admissibility pursuant to Rule 92 *bis* of those changes or, if necessary, the witness's evidence as a whole, and whether the changes require the witness to appear before the Chamber for cross-examination. In this regard, the tendering party should notify the Chamber of any changes, whether minor or substantive, made during the attestation process. With that in mind, the Chamber has considered the evidence now presented in the addenda in the context of the corresponding admitted witness evidence. In so doing, it notes that the Accused has no objection to the Motion, and thus, it must be presumed, no objection to the admission into evidence of these addenda. Furthermore, while the changes noted in footnotes 6–8 of this Decision are of a substantive nature, rather than simply being editorial corrections, the Chamber considers that they do not alter the witnesses' evidence in such a way that would affect the admissibility of that evidence pursuant to Rule 92 *bis*. The Chamber has also considered the admissibility of the addenda themselves, and finds them admissible. The addenda also adhere to the Rule 92 *bis*(B) attestation requirements. Therefore, the addenda shall be admitted into evidence.

9. The Chamber further notes that the Prosecution certified the supplemental statement tendered by the Accused for Ašida Fazlić, and that it also adheres to the formal requirements of Rule 92 *bis*(B) stated in paragraph 4 above.⁹ However, the Prosecution tenders both the witness statement and supplementary statement under exhibit P470, while the supplementary statement was provisionally admitted as exhibit D2. Additionally, the Accused has not submitted a certified supplemental statement for Šefik Bešlić, as ordered by the Chamber in the Rule 92 *bis* Decision, and therefore, the Chamber will not formally admit it at this time.

IV. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby **GRANTS** the Motion, and:

- 1) **REQUESTS** the Registry to record that the written witness statements of Ašida Fazlić, Šefik Bešlić, Ziba Šubo, Anđa Gotovac, Fatima Palavra, Fadila Tarčin, Zilha Granilo, Sabina Šabanić, Slavica Livnjak, Tarik Žunić, Ziba Avdić, and the supplementary statement of Ašida Fazlić, are admitted into evidence, without any further formalities being required;

UN flag flying from the roof, but it still didn't prevent the shells and shots from hitting near that house *and near our house, and didn't prevent bullets from actually hitting both houses*".

⁹ The Chamber notes that the Prosecution tenders both the witness statement and supplementary statement under exhibit P470, while the supplementary statement was provisionally admitted as exhibit D2.

- 2) **REQUESTS** the Registry to record that the written witness statements of KDZ036, KDZ079, and KDZ090 are admitted into evidence under seal, without any further formalities being required;
- 3) **ORDERS** that the addenda to the written witness statements for Ašida Fazlić, Sabina Šabanić, Tarik Žunić, Anđa Gotovac, KDZ036, and KDZ079 shall be admitted into evidence, without any further formalities being required;
- 4) **ORDERS** the Prosecution to upload into ecourt the addenda to the witness statements for Anđa Gotovac and KDZ079 as part of their Rule 92 *bis* packages that have exhibit numbers P490 and P480, respectively;
- 5) **ORDERS** the Accused to upload into ecourt the certified supplementary statement for Ašida Fazlić, and the accompanying certifying materials, as exhibit D2; and
- 6) **REMINDS** the Accused that he must obtain the required Rule 92 *bis*(B) attestation for the supplemental statement of Šefik Bešlić before it will be admitted into evidence.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]