



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-95-13/1-T
Date: 28 September 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: Mr Hans Holthuis

Decision: 28 September 2006

PROSECUTOR

v.

**MILE MRKŠIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN**

**DECISION ON THE MOTION OF THE DEFENCE OF THE
ACCUSED MIROSLAV RADIĆ FOR ADMISSION OF WRITTEN
STATEMENTS IN LIEU OF VIVA VOCE TESTIMONY
PURSUANT TO RULE 92bis, WITH ANNEXES 1 AND 2**

The Office of the Prosecutor:

Mr Marks Moore
Mr Philip Weiner
Mr Vincent Lunny
Ms Meritxell Regue
Mr Alexis Demirdjian

Counsel for the Accused:

Mr Miroslav Vasić and Mr Vladimir Domazet for Mile Mrkšić
Mr Borivoje Borović and Ms Mira Tapušković for Miroslav Radić
Mr Novak Lukić and Mr Momčilo Bulatović for Veselin Šljivančanin

1. This decision of Trial Chamber II is in respect of the “Motion of the Defence of the Accused Miroslav Radić for Admission of Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92bis, With Annexes 1 and 2” (“Motion”), filed confidentially on 21 September 2006. The Defence for Miroslav Radić (“Defence”) seeks the admission, pursuant to Rule 92bis(A)(i)(e) of the Rules of Procedure and Evidence (“Rules”), of the written statements of Miško Gunjača and Zvonimir Žugaj, in lieu of their oral testimony. It is the submission of the Defence that the proposed statements are admissible without cross-examination under the Rule, as they merely relate to the character of the Accused and do not pertain to his acts and conduct during the events relevant to this trial.
2. On 27 September 2006, the Prosecution filed a “Prosecution’s Response to Motion of the Defence of the Accused Miroslav Radić for Admission of Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92bis”, whereby it indicated that it does not object to the admission of the proposed statements without the witnesses appearing for cross-examination.
3. For a written statement to be admitted into evidence in lieu of oral testimony, it must go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Chamber recalls that it has discretion in deciding whether to admit a written statement. Relevant to this determination is the proximity to the accused of any acts and conduct of his subordinates described in the written statements, and the cumulative nature of the evidence sought to be admitted in written form. In determining whether the witness should be available for cross-examination, the Chamber will consider whether the evidence in question relates to a critical and live issue between the parties as opposed to a peripheral or marginally relevant issue.
4. Both written statements sought to be admitted relate to the character of the Accused Miroslav Radić. They are given by individuals with whom the Accused is said to have had business and social relationships with from 1995 onwards. Thus, the Chamber is satisfied that the statements do not go to proof of the acts and conduct of the Accused and do not relate to a critical and live issue between the parties.
5. Finally, the Defence informally indicated that despite having filed the Motion confidentially, it was not seeking or intending to seek protective measures for any of the two witnesses concerned. The Chamber therefore sees no reason for its decision not to be public.

For the foregoing reasons, pursuant to Rules 89 and 92*bis* of the Rules, the Chamber

GRANTS the Motion and **DECIDES** that the written statements of Miško Gunjača and Zvonimir Žugaj will be provisionally admitted into evidence, without requiring the witnesses to be called for cross-examination. The admission of the statements is subject to compliance with the Rule 92*bis*(B) certification procedure.

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



Judge Kevin Parker
Presiding

Dated this twenty-eighth day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]