



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-05-88-T

Date: 3 February 2009

Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge O-Gon Kwon  
Judge Kimberly Prost  
Judge Ole Bjørn Støle – Reserve Judge

**Acting Registrar:** Mr. John Hocking

**Decision of:** 3 February 2009

**PROSECUTOR**

v.

**VUJADIN POPOVIĆ  
LJUBIŠA BEARA  
DRAGO NIKOLIĆ  
LJUBOMIR BOROVČANIN  
RADIVOJE MILETIĆ  
MILAN GVERO  
VINKO PANDUREVIĆ**

**PUBLIC**

**DECISION ON GVERO'S MOTION FOR THE ADMISSION OF  
EVIDENCE PURSUANT TO RULE 92 *quater***

**Office of the Prosecutor**

Mr. Peter McCloskey

**Counsel for the Accused**

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Vujadin Popović  
Mr. John Ostojić and Mr. Predrag Nikolić for Ljubiša Beara  
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić  
Mr. Aleksandar Lazarević and Mr. Christopher Gosnell for Ljubomir Borovčanin  
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić  
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero  
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

**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 “Motion on Behalf of Milan Gvero Seeking the Admission into Evidence of Three Statements of Đorđe Đukić Pursuant to Rule 92 *quater*”, filed on 16 December 2008 (“Motion”), and hereby renders its decision thereon.

## I. SUBMISSIONS OF THE PARTIES

### A. Motion

1. Gvero requests the Trial Chamber to admit into evidence three out of a series of ten statements (“Statements”) made by Đorđe Đukić in the course of Đukić’s detention by the Bosnia and Herzegovina authorities, pursuant to Rule 92 *quater*.<sup>1</sup>

2. Gvero submits that:

(a) the Statements were taken in the course of a judicial process in Bosnia and Herzegovina with which Đukić was familiar;<sup>2</sup>

(b) the Statements were signed;<sup>3</sup>

(c) the Statements were taken in BCS by a BCS-speaking authority;<sup>4</sup>

(d) the Statements were not subject to cross-examination but were taken by representatives of those with whom Đukić and the Bosnian Serbs had been fighting, who were in a position to examine the Statements critically, and would have done just that;<sup>5</sup>

(e) parts of the Statements dealing directly with Gvero are corroborated by evidence from other sources, such as from senior members of the VRS Main Staff;<sup>6</sup>

<sup>1</sup> These are the undated statement with BCS ERN number R104-5998–R 104-6002 (English ERN number R104-5889–R104-6002-ET); the 5 February 1996 statement with BCS ERN number 0037-4375-0037-4382 (English ERN number 0099-6150-0036150–0099-6154), and the 5 February 1996 statement bearing BCS ERN number R104-5986–R104-5989 (English ERN number 0099-6155–0099-6161). In the Gvero Reply to the Prosecution, Gvero states that since filing the Motion, he discovered that there were 10 and not eight statements. Gvero Reply to Prosecution, para. 5. *See also* Motion, para. 4.

<sup>2</sup> Motion, para. 8.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.* Đukić’s deputy, Ratko Miljanović, confirmed a part of one statement as what he understood to be Đukić’s view. Miljanović, T. 28948–28954 (27 November 2008). *Ibid.*

- (f) many of the parts of the Statements which interest Gvero were not matters that affected Đukić's own case, and it could be inferred that Đukić knew he did not have long to live, and that he had very little to lose by telling the truth;<sup>7</sup>
- (g) Đukić himself stated that he was treated correctly while being interrogated;<sup>8</sup>
- (h) though he is tendering only the three Statements relevant to his case, Gvero has no objection to the remaining statements being tendered into evidence;<sup>9</sup>
- (i) overall, the Statements fulfil the threshold for admission of such statements pursuant to the Tribunal's jurisprudence,<sup>10</sup> and
- (j) the Statements were not on the 65 *ter* Exhibit List and Gvero seeks leave to add them to it.<sup>11</sup>

### **B. Miletić Response**

3. On 29 December 2008, Miletić filed in the original French "General Miletić's Response to Milan Gvero's Motion Seeking the Admission into Evidence of Three Statements by Đorđe Đukić Pursuant to Rule 92 *quater*" ("Miletić Response").<sup>12</sup>

4. Miletić requests that the Motion be denied because:

- (a) the Statements are not reliable and do not satisfy Rule 92 *quater*(A)(ii); that the circumstances of and legal basis for Đukić's detention are questionable and unknown and that statements taken under Article 151 of the Law on Criminal Procedure of Bosnia and Herzegovina in 1996, apparently the law under which Đukić was detained, could not be used in court proceedings and should render the Statements inadmissible; that the Statements were not subject to cross-examination, and that they are inconsistent and not substantiated by other evidence; in particular, the parts of the Statements concerning the acts and conduct of Miletić are wrong and are contradicted by evidence in the trial record;<sup>13</sup>

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, para. 9. See ERN 0099-6155--0099-6156.

<sup>9</sup> *Ibid.*, para. 10.

<sup>10</sup> *Ibid.*, para. 11.

<sup>11</sup> *Ibid.*, para. 12.

<sup>12</sup> 9 January 2009 (English translation).

<sup>13</sup> Miletić Response, paras. 3, 10–34, 41.

- (b) the Statements do not satisfy Rule 89; they do not seem to be relevant and their probative value is substantially outweighed by the need to ensure a fair trial; however, should the Statements be admitted, all Đukić's statements referring to 1995 should be admitted so that the Trial Chamber is presented with a full picture of what he said;<sup>14</sup>
- (c) they should be excluded under Rule 95;<sup>15</sup> and
- (d) the Motion is late and the admission of the Statements now would be unfairly prejudicial to Miletić.<sup>16</sup>

5. Alternatively, Miletić requests the Trial Chamber to admit only a redacted version of the Statements to exclude reference to Miletić, and to admit the statement regarding the relationship between the VRS and UNPROFOR in May and June 1995 ("Additional Statement") which will allow the Trial Chamber to assess the inherent inconsistencies in different statements made by Đukić in 1996.<sup>17</sup>

6. Miletić also requests leave to exceed the word limit.<sup>18</sup>

### **C. Prosecution Response**

7. On 30 December 2008, the Prosecution filed "Prosecution Response to Motion on Behalf of Milan Gvero Seeking the Admission into Evidence of Three Statements of Đorđe Đukić Pursuant to Rule 92 *quater*" ("Prosecution Response").

8. The Prosecution argues that the Motion be denied because:

- a) the Statements are unreliable; the circumstances under which they were made are unknown as most of them are undated; on 11 February 1996, while Đukić had been in custody, Gvero himself had voiced doubts about the circumstances in which Đukić was being questioned; the Statements were not cross-examined and there is "sheer speculation" in the Motion on this; there is no reference to the events to which the Statements relate, nor is there sufficient reference to the other evidence in support of it—the only reference made shows that Gvero misleadingly used one of the Statements both at trial and in the Motion,<sup>19</sup> and

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<sup>14</sup> *Ibid.*, paras. 3, 35–40.

<sup>15</sup> *Ibid.*, para. 15.

<sup>16</sup> *Ibid.*, paras. 3, 42–46.

<sup>17</sup> *Ibid.*, paras. 33, 40, 48, Annex.

<sup>18</sup> *Ibid.*, paras. 4, 47.

<sup>19</sup> Prosecution Response, paras. 1, 6–14.

- b) it fails to demonstrate the Statements' relevance or probative value.<sup>20</sup>

#### **D. Gvero Reply to Prosecution**

9. On 5 January 2009, Gvero filed "Request on Behalf of Milan Gvero for Leave to Reply and Reply to Prosecution Response to Milan Gvero's Motion Seeking the Admission of Statements Made by Đorđe Đukić" ("Gvero Reply to Prosecution").

10. Gvero submits that:

- a) the Prosecution has previously sought the admission of six of Đukić's statements in the *Perišić* case, and questions why the Prosecution is now asserting that the same statements are unreliable;<sup>21</sup>
- b) it is the detail that Đukić goes into and the manner in which he implicates or exculpates certain individuals that is significant to the Gvero case;<sup>22</sup> the passage cited in the Prosecution Response itself demonstrates why the Statements are relevant;<sup>23</sup>
- c) with regard to corroborative evidence, the evidence of Skrbić, Milovanović, Simić and Miljanović, the latter already cited in the Motion, are pertinent;<sup>24</sup>
- d) Gvero's statement on 11 February 1996 is irrelevant;<sup>25</sup>
- e) in terms of the application of a Rule 92 *quater* statement and its effects, the position between Prosecution and an accused is different, as evidence that an accused seeks to adduce is designed simply to raise some reasonable doubt in the mind of the Trial Chamber, and as such, it can only act adverse to the interests of a co-accused if it assists in proving the guilt of that accused beyond a reasonable doubt,<sup>26</sup> and
- f) Gvero requests leave to file the Gvero Reply to Prosecution.<sup>27</sup>

<sup>20</sup> *Ibid.*, paras. 1, 12–15.

<sup>21</sup> Gvero Reply to Prosecution, paras. 4–7. While he is unable to verify if these six statements are part of the 10 statements referred to in the Motion, Gvero invites the Trial Chamber to proceed on the basis that they are, and to investigate the matter further, and reveal to the Defence as much information as it can related to the Đukić statements that may have been admitted in the *Perišić* case. Gvero also invites the Prosecution to disclose any information it may have relating to witnesses who could testify on the circumstances in which the Statements were taken. *Ibid.*, paras. 5, 8. The Prosecution in fact did so. *See* BiH Officials Statements, para. 2.

<sup>22</sup> *Ibid.*, para. 9.

<sup>23</sup> *Ibid.*, para. 12.

<sup>24</sup> *Ibid.*, para. 11.

<sup>25</sup> *Ibid.*, para. 9.

<sup>26</sup> *Ibid.*, para. 13.

<sup>27</sup> *Ibid.*, paras. 3, 14.

### E. Gvero Reply to Miletić

11. On 12 January 2009, Gvero filed "Request for Leave to Reply and Reply to Radivoje Miletić's Response to Milan Gvero's Motion Seeking the Admission of Statements by Đorđe Đukić" ("Gvero Reply to Miletić").

12. Gvero submits that:

- a) as mentioned in the Gvero Reply to Prosecution, defence evidence need only raise some doubt in the Trial Chamber's mind and as a corollary, it cannot be used against the interests of a co-accused, unless it is can prove the case against him beyond a reasonable doubt;<sup>28</sup>
- b) since the Prosecution submits that the Statements are unreliable, by reason of a legal estoppel, it cannot in due course invite the Trial Chamber to rely on the Statements against Miletić's interest;<sup>29</sup>
- c) he has no objection in principle to Miletić's proposed redaction of the Statements though such redaction would affect the sensible reading of the Statements, and in any case, the Trial Chamber will have already read them to consider their admissibility; that Rule 92 *quater*(B) supports this; that, however, the Trial Chamber can admit the Statements in whole while reassuring Miletić that they will not have any adverse effect on his case; that it is the wrong test or a wrong way of looking at things, to ask whether the Statements are consistent and substantiated from the point of view of a co-accused as opposed to that of the accused person seeking their admission pursuant to Rule 92 *quater*;<sup>30</sup>
- d) there are circumstances where such statements taken under Article 151 of the Law on Criminal Procedure of Bosnia and Herzegovina could be used as evidence in criminal proceedings in the former Yugoslavia but this does not assist the Trial Chamber in determining the reliability of the Statements;<sup>31</sup>
- e) there is a distinction between the use of statements in criminal proceedings against the maker and the use of statements in criminal proceedings against other persons; that the procedural safeguards Miletić refers to are in place to protect the maker of the statement and not others, and are not applicable to this situation; that the fact that the Statements

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<sup>28</sup> Gvero Reply to Miletić, para. 5. *See* para. 10(e) *supra*.

<sup>29</sup> *Ibid.*, para. 6.

<sup>30</sup> *Ibid.*, paras. 7-9, 15.

<sup>31</sup> *Ibid.*, para. 11.

were not taken with a view to being used in another person's case, renders them more reliable, as does the fact that they were taken soon after the events they are describing;<sup>32</sup>

- f) the issue of who took the Statements is irrelevant or insufficiently important for deciding their reliability and does not go to their reliability;<sup>33</sup>
- g) the Statements' relevance is so obvious that it did not need pointing out;<sup>34</sup>
- h) there is no real prejudice to be suffered by Miletić for the alleged late notification by Gvero of the Statements;<sup>35</sup>
- i) if the Statements have no effect against Miletić, a position Gvero supports, and are allegedly unreliable and irrelevant, then there is no need to ask for another statement to be admitted, even in the alternative,<sup>36</sup> and
- j) leave to file the Gvero Reply to Miletić be granted.<sup>37</sup>

#### **F. Other Filings**

13. On 15 January 2009, further to the Motion, Gvero filed the "Statements of BiH Officials Relating to the 1996 Interrogation of Đorđe Đukić" ("BiH Officials Statements")<sup>38</sup> disclosed to him by the Prosecution. These are the statements Edhem Godinjak and Enver Mujezinović gave to the Prosecution on 29 February 1996 on the circumstances in which the Statements were taken.

14. On 19 January 2009, Miletić filed, in the French original, "Observations by the Defence for General Miletić Regarding the Statements of Officials of Bosnia and Herzegovina filed on 15 January 2009" ("Observations on BiH Officials Statements") and argued, *inter alia*, that the BiH Officials Statements confirmed the arguments set forth in the Miletić Response.<sup>39</sup>

## **II. PRELIMINARY MATTER**

15. The "Practice Direction on the Length of Briefs and Motions" provides that motions, responses and replies shall not exceed 3,000 words and the Trial Chamber notes that "A party seeking authorisation to exceed this limit must do so in advance and "provide an explanation of the

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<sup>32</sup> *Ibid.*, para. 12.

<sup>33</sup> *Ibid.*, para. 14.

<sup>34</sup> *Ibid.*, para. 16.

<sup>35</sup> *Ibid.*, para. 17.

<sup>36</sup> *Ibid.*, para. 18.

<sup>37</sup> *Ibid.*, paras. 4, 19.

<sup>38</sup> English translation, 26 January 2009.

<sup>39</sup> Observations on BiH Officials Statements, paras. 2–6.

exceptional circumstances that necessitate this oversized filing.”<sup>40</sup> While the Trial Chamber grants Miletić’s request to exceed the word limit because of the extent of the legal issues discussed, the Trial Chamber again reiterates the importance of adhering to word limits.

### III. LAW AND DISCUSSION

#### A. Amendments of Rule 65 ter Lists of Witnesses and Exhibits

16. Rule 73 *ter*(D) provides that: “[a]fter commencement of the defence case, the defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called”.

17. In exercising its discretion under Rule 73 *ter*(D), the Trial Chamber should balance the accused’s right to present the available evidence during its defence case with the right of the Prosecution and the co-accused to have adequate time and facilities to prepare their case. In striking a balance, the Trial Chamber may also take into account additional criteria, including whether the proposed evidence is *prima facie* relevant and of probative value to issues raised in the indictment, and whether good cause for amending the witness list and/or exhibit list has been shown.

18. The Trial Chamber notes that while Đukić was already listed on Gvero’s 65 *ter* witness list of 1 May 2008 and one of the Statements was summarized in Đukić’s 65 *ter* witness summary, the Statements were not on his 65 *ter* Exhibit List.<sup>41</sup>

19. The Trial Chamber notes that the Prosecution and the co-Accused have in fact been on notice since 1 May 2008 of the possibility of Gvero introducing one of the Statements. Even if Miletić has only been on notice since December 2008 of the existence of two of the Statements, one of them is merely intended to prove the circumstances in which the other two were taken.<sup>42</sup> As additional criteria, the Trial Chamber has taken into account that the Statements are relevant and of probative value to issues raised in this case, as will be discussed below, and that good cause has been shown.

20. In these circumstances, the Trial Chamber concludes that no prejudice is suffered by Miletić by adding the Statements to Gvero’s 65 *ter* List of Exhibits and grants the request that they be so added.

<sup>40</sup> Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7.

<sup>41</sup> See para. 2(j) *supra*; Ex. 6D00315, “Further Statement of Đorđe Đukić” (ERN R104-5998-R 104-6002; ERN 0099-6141-6144).

<sup>42</sup> See para 2(h) *supra*; ERN 0099-6155-0099-6156.



## B. Rule 92 quater

21. Rule 92 *quater* governs the admissibility of evidence of unavailable persons and provides:

(A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:

(i) is satisfied of the person's unavailability as set out above; and

(ii) finds from the circumstances in which the statement was made and recorded that it is reliable.

(B) If the evidence goes to proof of acts and conduct of an Accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

22. The Trial Chamber has had the opportunity to lay down the law relevant to Rule 92 *quater* on a number of occasions and refers to the relevant parts of the "Decision on the Prosecution Motion for Admission of Evidence pursuant to Rule 92 *quater*" of 21 April 2008 and the "Decision on Motion on behalf of Drago Nikolić seeking Admission of Evidence Pursuant to Rule 92 *quater*" of 18 December 2008.<sup>43</sup>

23. With regard to the first requirement of Rule 92 *quater*(A), the Trial Chamber is satisfied that Đukić is an unavailable person as he is dead.

24. Turning to the second requirement, that of reliability, as a preliminary, the Trial Chamber notes, as it has done in the past, that the various factors of reliability will be considered collectively when determining the ultimate reliability of the Statements. As previously held by this Trial Chamber, the absence of one or more of these factors does not automatically lead to the exclusion of this evidence as it may be compensated for by the existence of other factors and where such evidence is admitted, the absence of one or more *indicia* of reliability will be taken into consideration when attributing the ultimate weight to be given to that evidence.<sup>44</sup>

25. Furthermore, the Statements also include evidence that goes to proof of the acts and conduct of Gvero's co-Accused, Miletić. In accordance with Rule 92 *quater*(B), the Trial Chamber may consider this factor as weighing against admission. The ultimate determination about whether to admit the Statements despite this factor will be made based on an assessment of all the factors as a whole.

<sup>43</sup> Decision on the Prosecution Motion for Admission of Evidence pursuant to Rule 92 *quater* ("Prosecution Decision"), 21 April 2008, paras. 28–32; Decision on Motion on behalf of Drago Nikolić seeking Admission of Evidence Pursuant to Rule 92 *quater* ("Nikolić Decision"), confidential, 18 December 2008, paras. 29–32.

<sup>44</sup> Prosecution Decision, para. 41; Nikolić Decision, para. 41.

26. The Statements, and the BiH Officials Statements in particular, shed light on the circumstances in which the Statements were made and recorded. The Statements were taken in February 1996, a few weeks before Đukić's transfer to the Tribunal, during the course of a preliminary investigation under Bosnia and Herzegovina law.<sup>45</sup> The Statements talk *inter alia* about the relationship between the members of the Main Staff and the role of various Main Staff officers, including Mladić, Gvero and Miletić during the period leading up to the events covered by the Indictment. The Statements were not given under oath however, nor were procedural safeguards given to Đukić. The BiH Official Statements, disclosed to Gvero by the Prosecution without any reservations, indicate that Đukić's interviewers were members of the then Anti-Terrorist Department of the Ministry of Interior of the Republic of Bosnia and Herzegovina, that the Statements are a summary, compiled by the interviewers, of what Đukić said, which Đukić reviewed and corrected where necessary, and eventually signed and acknowledged.<sup>46</sup> The interviews were also video- and audio-taped, albeit covertly.<sup>47</sup> The Trial Chamber also notes Đukić's own statement that "he had been "[...] treated very correctly and I have no comments to make about this treatment."<sup>48</sup>

27. The Trial Chamber is of the opinion that, taken cumulatively, these factors do not vitiate the reliability of the Statements. Procedural safeguards and sworn statements are not determinative of reliability. The Trial Chamber notes that the Statements were not given in the context of criminal proceedings against Gvero and are not being tendered against their maker, Đukić, who had no idea at the time he gave them that the Statements would be used by Gvero, and thus had no motive to exculpate or incriminate him.<sup>49</sup>

28. The Trial Chamber notes that the Statements were not subject to cross-examination. As previously held by this Trial Chamber, cross-examination is simply a factor to take into consideration as to the reliability of the evidence and not a requirement for admissibility under Rule 92 *quater*.<sup>50</sup>

29. Even if the Statements are unsworn and not subjected to cross-examination, they relate to issues on which there is other evidence on the trial record. They constitute cumulative evidence as the relationship between the members of the Main Staff and the role of various Main Staff officers,

<sup>45</sup> BiH Officials Statements, Statement of Edhem Godinjak, p. 1; Statement of Enver Mujezenović, pp. 1–2.

<sup>46</sup> BiH Officials Statements, Statement of Edhem Godinjak, pp. 1–2; Statement of Enver Mujezenović, pp. 1–2. *See* ERN 0099-6156. "[...] I have read the record and it contains everything as I stated and as such I accept it has [*sic*] my own. The conduct of the authorized bodies toward me has been correct."

<sup>47</sup> BiH Officials Statements, Statement of Edhem Godinjak, p. 1; Statement of Enver Mujezenović, p.1.

<sup>48</sup> ERN 0099-6156.

<sup>49</sup> *See* para. 12(e) *supra*.

<sup>50</sup> *See* Nikolić Decision, para. 46.

including Mladić, Gvero and Miletić during the period leading up to the events covered by the Indictment is corroborated by the testimony of witnesses such as Miljanović, Skbić, Milovanović, and Simić.<sup>51</sup> This evidence has been subjected to challenges by way of cross-examination.

30. The Statements do contain a part which goes to proof of the acts and conduct of Miletić. As noted previously, while this factor may weigh against admissibility it is not determinative of the issue under Rule 92 *quater*. The Trial Chamber disagrees with Gvero that evidence admitted for one purpose should not be used for another.<sup>52</sup>

31. In this case, the references to Miletić in one part of two of the Statements are fleeting—one is a general comment and another is placing him, allegedly inconsistent to evidence on the trial record, at a meeting which pre-dated the time of the events of the Indictment.<sup>53</sup> Moreover, the allegation by Miletić that the Statements are so inconsistent with regard to Miletić's acts and conduct, as to make them unreliable, is a matter which will go to the weight which can be given ultimately to those parts of the Statements.<sup>54</sup> Furthermore, such inconsistencies may also have a bearing on the overall weight to be accorded to the Statements. It is again for this reason—the need to assess a statement in its totality to accord it proper weight—that the Trial Chamber is not prepared to admit the Statements in redacted form. However, the Trial Chamber is of the view that the admission of the Additional Statement, as proposed by Miletić, relating to the relationship between the VRS and UNPROFOR, is appropriate and would be useful.<sup>55</sup> Again, it would allow for a more complete assessment of the evidence on the trial record for the purpose of according proper weight to it. The Trial Chamber notes that this suggestion is not opposed by Gvero who does not object to all of Đukić's statements being admitted.<sup>56</sup> The Trial Chamber concludes that the Statements, together with the Additional Statement, meet the requirements of Rule 92 *quater*.

32. The Statements and the Additional Statement also meet the requirements set out by Rule 89(c) as they are relevant to the present case, have probative value, and as discussed above, their admission does not affect the fairness of the proceedings. Moreover, the Trial Chamber notes that no real prejudice will be suffered by any party by the late filing of the Motion.<sup>57</sup>

<sup>51</sup> Miljanović, T. 28948–28954 (27 November 2008); Skrbić, T. 15562 (18 September 2007); Milovanović (30 May 2007); Simić, T. 28607 (21 November 2008).

<sup>52</sup> See para. 12 (c) *supra*.

<sup>53</sup> See Ex. 6D00315, "Further Statement of Đorđe Đukić", p. 3 (ERN R104-5998-R104-6002); ERN 0099-6153.

<sup>54</sup> See para. 4 (a), (c) *supra*.

<sup>55</sup> See para. 5 *supra*; ERN R104 5964-R 104 5971, ERN 0099 6162-0099 6166 (undated).

<sup>56</sup> See para. 2(h) *supra*; Gvero Reply to Miletić, para. 18.

<sup>57</sup> See paras 4(d), 12(h) *supra*.

#### IV. CONCLUSION

33. For the foregoing reasons, the Trial Chamber concludes that the Statements and Additional Statement are admissible under Rules 92 *quater* and 89(c). The Trial Chamber notes, as it has done in the past, that, as is always the case, a decision on admissibility must be distinguished from a determination as to the weight to be given to any piece of evidence and will bear in mind in particular the absence of the opportunity to cross-examine in the current trial when evaluating this evidence and deciding on its weight.<sup>58</sup>

#### V. DISPOSITION

34. For these reasons, pursuant to Rules 89(c), 92 *quater*, 73 *ter*(D) and 126 *bis*, the Trial Chamber hereby **DECIDES** as follows:

- a) To admit the Statements and the Additional Statement;
- b) To grant Gvero leave to add the Statements to the Rule 65 *ter* List of Exhibits;
- c) To grant Miletić leave to exceed the word-limit in the Miletić Response, and
- d) To grant Gvero leave to file the Gvero Reply to Prosecution and the Gvero Reply to Miletić.

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



Carmel Agius  
Presiding

Dated this third day of February 2009  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>58</sup> See Prosecution Decision, para 66.