



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-04-74-T
Date: 11 January 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 11 January 2008

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
TESTIMONIES PURSUANT TO RULE 92 *BIS* OF THE RULES**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. Trial Chamber III (“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 seized of the “Prosecution Supplemental Motion for Admission pursuant to Rule 92 *bis* of Additional Evidence from Statements Already Submitted through Previous 92 *bis* Motions”, to which five confidential annexes are attached, filed partly confidentially by the Office of the Prosecutor (“Prosecution”) on 16 October 2007 (“Motion”), in which the Prosecution requests the Chamber to admit into the record the written statements of five witnesses and the transcripts of the testimonies of two witnesses along with related exhibits (“Testimonies”).

2. At the hearing of 5 November 2007, the Chamber partially granted the request of the Counsel for the six Accused in this case (“Defence”) for additional time to respond to the Motion by granting an extension of time up to 7 November 2007.¹

3. On 7 November 2007, the Defence filed confidentially the “Joint Defence Response to Prosecution Supplemental Motion for Admission pursuant to Rule 92 *bis* of Additional Evidence from Statements Already Submitted through Previous 92 *bis* Motions (“Response”).

II. ARGUMENTS OF THE PARTIES

4. In its Motion, the Prosecution requests the Chamber, pursuant to Rule 92 *bis* (A) and (B) of the Rules of Procedure and Evidence (“Rules”), to admit the Testimonies and requests the Chamber to deny the Defence the right to cross-examine the witnesses.²

5. The Prosecution submits that all of the Testimonies and related documents have already been presented in previous motions but that following the “Decision on Prosecution Motion to Admit Testimonies pursuant to Rule 92 *bis* of the Rules (Jablanica)” rendered confidentially on 12 July 2007 (“Jablanica Decision”), it now requests, with arguments in support, that the Testimonies be admitted fully because

¹ Court transcript in French, pp. 23974 and 23975.

² Motion, paras. 1 and 8.

they are relevant, have a certain probative value and are corroborated or relate to similar evidence given by witnesses who have already been heard, and to documents already admitted by the Chamber.³ Furthermore, with regard to the legal requirements under Rule 92 *bis* of the Rules, the Prosecution refers to the arguments set out in its previous applications.⁴

6. In the Response, the Defence requests principally that the Motion be denied and alternatively that three witnesses appear in court for the purpose of a cross-examination.⁵

7. In support of its Response, the Defence refers to its arguments on the applicable law set out in its previous written responses to the Prosecution's requests for admission of evidence under Rule 92 *bis* of the Rules, in particular in the "Joint Defence Response to Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A) and (B) (Vareš Municipality)" filed on 10 September 2007.⁶

8. The Defence submits principally that the Motion is superfluous and argues that two of the Testimonies partially admitted by the Chamber in the Jablanica Decision were again submitted by the Prosecution through the "Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A) and (B) (Heliodrom and Generally)", filed partly confidentially by the Prosecution on 7 September 2007 ("Heliodrom Motion"), and upon which the Chamber has still not ruled.⁷ The Defence also submits that as of the date of the Motion, the admission of the five other Testimonies was pending in the context of the examination of the "Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A) and (B) (Stolac and Čapljina Municipalities)", filed partly confidentially on 31 May 2007 ("Stolac and Čapljina Motion") and that, since then, four of them were admitted entirely in the "Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A) and (B) (Stolac and Čapljina Municipalities)", rendered confidentially on 5 November 2007 ("Stolac and Čapljina Decision").⁸ Furthermore, the Defence argues that the Prosecution should have included its request for admission in a supplement to the pending motions, in

³ Motion, paras. 2-5; Annexes 1-5.

⁴ Motion, para. 7.

⁵ Response, p. 7.

⁶ Response, para. 4 and footnote 4.

⁷ Response, paras. 4, 9 and 12.

particular those concerning the Heliodrom and Dretelj and Gabela, instead of submitting the request through a new separate motion.⁹

9. Finally, more specifically, the Defence objects to the admission of Exhibit P 02025 which, in its view, goes directly to the acts and conduct of the Accused and cannot be admitted under Rule 92 *bis* of the Rules.¹⁰

III. DISCUSSION

10. The Chamber recalls that Rule 92 *bis* (A) of the Rules allows it to admit in lieu of an oral testimony, in whole or in part, written statements or transcripts of testimony, if they go to proof of a matter other than the acts and conduct of the accused as alleged in the indictment.

11. With regard to the arguments put forth by the Parties in their respective written submissions, the Chamber again invites the Parties to reduce the references to the factual and legal arguments set out in their previous submissions; this renders the Motion and the Response difficult to understand.

12. The Chamber will now examine the admissibility of the Motion. The Chamber finds, as the Defence rightly pointed out,¹¹ that the Prosecution submitted on several occasions, through various motions, the same request for admission of Testimonies upon which the Chamber has since ruled.

13. More specifically, the Chamber finds that the Testimonies of Witnesses JJ (P 09880) and LL (P 09881) were also requested for admission under Rule 92 *bis* of the Rules by way of the Heliodrom Motion which was filed before the present Motion. The Chamber informs the Parties that it ruled on the request for admission of these two Testimonies in the “Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* of the Rules (Heliodrom and Generally)”, rendered confidentially on 12 December 2007 (“Heliodrom Decision”). In the Heliodrom Decision, the Chamber rejected the testimony of Witness JJ (P 09880) since it repeats a large number of adjudicated facts of which the Chamber took judicial notice and

⁸ Response, para. 6.

⁹ Response, paras. 6-8.

¹⁰ Response, para. 16.

¹¹ See *supra* para. 8.

testimonies already heard by the Chamber and that it provides no further information that could contribute to a better understanding or appreciation of the case.¹² Moreover, through the Heliodrom Decision, the Chamber decided to admit the parts of the testimony of Witness LL (P 09881) that had not been examined by the Chamber in the Jablanica Decision, thereby admitting the testimony of Witness LL in its entirety. Consequently, the Motion is moot in respect of these two Testimonies since the Chamber already ruled on the request for their admission.

13. With regard the request to admit into the record the written statements of Sabira Hasić (P 09930), Witness DT (P 09917), Fatima Šoše (P 09934), Hikmeta Rizvanović (P 09179) and Edin Baljić (P 09173), the Chamber finds, as the Defence rightly pointed out, that as of the date of the Motion, these written statements were already the subject of a request for admission through the Stolac and Čapljina Motion. In the meantime, the Chamber decided, through the Stolac and Čapljina Decision, to admit entirely the statements of Sabira Hasić (P 09330), Witness DT (P 09917), Fatima Šoše (P 09934) and Hikmeta Rizvanović (P 09179), and to admit partially the statement of Edin Baljić (P 09173).

14. Consequently, as regards the request for admission of the statements of Sabira Hasić (P 09930), Witness DT (P 09917), Fatima Šoše (P 09934), Hikmeta Rizvanović (P 09179) and the part of the statement of Edin Baljić (P 09173) which was already admitted by the Stolac and Čapljina Decision, the Chamber declares the Motion moot on the ground that the Chamber has already ruled on their admission. As regards the part of the statement of Edin Baljić (P 09173) not admitted by the Stolac and Čapljina Decision, the Chamber finds, first, that the part not admitted concerns events that had taken place in the Dretelj and Gabela camps and that, consequently, it would have been more judicious to present this additional request for admission in the "Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* (A) and (B) (Dretelj, Gabela and Generally)", filed partly confidentially by the Prosecution on 13 August 2007. Moreover, after a substantive examination, the Chamber considers that this part of the statement provides no further information that could contribute to a better understanding or appreciation of the case and refuses, pursuant to Rule 89 (D) of the Rules, to accept the unnecessary production of repetitious evidence.

¹² Heliodrom Decision, para. 31.

IV. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 89 (D) and 92 *bis* (A) of the Rules,

DECLARES the Motion moot as regards the request for admission of the transcripts of the testimonies of Witnesses JJ (P 09880) and LL (P 09881), the request for admission of the statements of Sabira Hasić (P 09930), Witness DT (P 09917), Fatima Šoše (P 09934) and Hikmeta Rizvanović (P 09179), and the part of the statement of Edin Baljić (P 09173) which was already admitted by the Stolac and Čapljina Decision **AND**

DENIES the Motion as regards the request for admission of the part of the statement of Edin Baljić (P 09173) not already admitted by the Stolac and Čapljina Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of January 2008

At The Hague

The Netherlands

[Seal of Tribunal]