



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

IT/268

Date: 16 December 2009

ORIGINAL: ENGLISH

---

---

**AMENDMENTS TO THE RULES OF PROCEDURE AND EVIDENCE**

---

***PUBLIC DOCUMENT***

By decision of the thirty-eighth plenary session 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”), held on 10 December 2009, a new Rule 92 *quinquies* is adopted.

Pursuant to Rule 6(D) of the Rules of Procedure and Evidence of the Tribunal, the adoption shall enter into force seven days after the date of issuance of this official document, *i.e.*, on 23 December 2009. Document IT/32/Rev. 44 incorporating these amendments will be issued in both languages as soon as possible.

The full text of the amendments is set out in the Annex to this document.

---

Judge Carmel Agius  
Chair of the Rules Committee

Dated this sixteenth day of December 2009  
At The Hague  
The Netherlands

# ANNEX

## **Rule 92 *quinquies***

### **Admission of Statements and Transcripts of Persons Subjected to Interference**

**(A) A Trial Chamber may admit the evidence of a person in the form of a written statement or a transcript of evidence given by the person in proceedings before the Tribunal, where the Trial Chamber is satisfied that:**

- (i) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect;**
- (ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion;**
- (iii) where appropriate, reasonable efforts have been made pursuant to Rules 54 and 75 to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness; and**
- (iv) the interests of justice are best served by doing so.**

**(B) For the purposes of paragraph (A):**

- (i) An improper interference may relate *inter alia* to the physical, economic, property, or other interests of the person or of another person;**
- (ii) the interests of justice include:**
  - (a) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded;**
  - (b) the apparent role of a party or someone acting on behalf of a party to the proceedings in the improper interference; and**
  - (c) whether the statement or transcript goes to proof of the acts and conduct of the accused as charged in the indictment.**
- (iii) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.**

**(C) The Trial Chamber may have regard to any relevant evidence, including written evidence, for the purpose of applying this Rule.**