



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-PT
Date: 21 August 2009
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Order of: 21 August 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER FOR FURTHER SUBMISSIONS CONCERNING PROSECUTION'S
MOTIONS FOR ADMISSION OF RULE 92 *QUATER* EVIDENCE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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”) issues this order in light of the “Prosecution’s Motion for Admission of the Evidence of KDZ172 Pursuant to Rule 92*quater*” and the “Prosecution’s Motion for Admission of the Evidence of KDZ297 Pursuant to Rule 92*quater*”, both filed on 10 June 2009 (“Babić Motion” and “Deronjić Motion” respectively).

1. In the Deronjić Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission into evidence in these proceedings of the entire transcripts of testimony given by KDZ297 (Miroslav Deronjić) in the *Nikolić*, *Krstić*, *Blagojević*, *Slobodan Milošević*, *Deronjić*, and *Krajišnik* cases, as well as his witness statement of 25 November 2003, pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). It also seeks the admission of 56 “associated exhibits.”¹ In the Babić Motion, the Prosecution seeks the admission into evidence of the entire transcripts of testimony given by KDZ172 (Milan Babić), and 309 associated exhibits, in the *Slobodan Milošević*, *Krajišnik*, and *Martić* cases, as well as his witness statement of 24 March 2004.²

2. The transcripts of Babić’s testimony from the three cases in which he testified consist of a total of 2,118 pages. The transcripts of Deronjić’s testimony from the six cases in which he testified total 1,074 pages. The size of the “associated exhibits” accompanying this evidence varies from single-page documents to reports and interviews of considerable size.

3. Milan Babić was, in the early 1990s, a senior Serb political figure in Croatia, who was convicted by this Tribunal of crimes committed in Croatia. Both the *Slobodan Milošević* and *Martić* cases included charges of crimes alleged to have been committed in Croatia, which are not the subject of the present case. Having conducted a preliminary review of the transcripts of Babić’s testimony, the Chamber considers that there is a significant portion of it that covers events in Croatia that do not appear to be directly relevant to this case. Furthermore, there are elements of repetition in his evidence, across the three cases in which he has testified. While the complete evidence of Miroslav Deronjić is more clearly directly relevant to the present case, as it deals primarily with events in Srebrenica that are included in the Indictment, parts of his testimony in the six different cases repetitively cover the same events.

¹ Prosecution’s Motion for Admission of the Evidence of KDZ297 Pursuant to Rule 92*quater*, 10 June 2009, para 1.

² Prosecution’s Motion for Admission of the Evidence of KDZ172 Pursuant to Rule 92*quater*, 10 June 2009, para. 1.

4. The Chamber notes that in *Perišić*, the Prosecution only sought admission of specific pages and lines of the transcripts of Deronjić’s testimony in *Milošević*, *Krstić*, and *Blagojević*,³ and Babić’s testimony in *Milošević*.⁴ Furthermore, the Prosecution in *Popović*, sought admission of the transcript of Deronjić’s testimony in only one case, namely *Blagojević*.⁵ With regard to the “associated exhibits”, the *Popović* Trial Chamber decided that that only those documents which were used and explained by Deronjić in court in *Blagojević* were admissible pursuant to Rule 92 *quater*. Among these “associated exhibits” were the transcripts of Deronjić’s evidence in *Nikolić*, *Krstić*, and *Milošević*, and his prior written statements. The *Popović* Chamber found that only those portions of his prior statements and transcripts which were specifically referred to in court should be admitted. That included any parts read into the transcript and any portion of his prior statements and transcripts which were used for impeachment purposes but were not read out *verbatim*.⁶ It consequently ordered the Prosecution to identify and file the latter.⁷

5. The Pre-Trial Judge raised the issue of the absence of selection of the evidence sought to be admitted by the Prosecution under Rule 92 *quater* in this case during the Status Conference of 20 August 2009. The Prosecution stated that this had been done deliberately, because it believed that the Accused might object to the admission of only parts of the evidence on the basis that the selection was done by the Prosecution.⁸

6. A selective presentation of specific parts of the evidence of the witnesses, focused on the real issues in this case, is likely to promote the objective of securing a fair and expeditious trial. With that in mind, the Trial Chamber considers that the Prosecution should identify those portions of the evidence previously given by Milan Babić and Miroslav Deronjić that (a) it considers to be directly relevant to these proceedings, and (b) are merely repetitive and can be excluded from admission. A similar process of selection should be undertaken with regard to the “associated exhibits”. The Chamber will also be assisted by submissions from the Prosecution explaining its selection. The Accused will then have the opportunity to respond and identify any further portions

³ *Prosecutor v. Perišić*, Case No. IT-04-81, Motion for Leave to File Motion Pursuant to Rule 92 *quater*, 3 September 2007, Confidential Annex B.

⁴ *Prosecutor v. Perišić*, Case No. IT-04-81, Motion for Admission of Evidence Pursuant to Rules 89 and 92 *quater*, 1 May 2007, Confidential Annex A.

⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88, Prosecution’s Motion to Admit the Evidence of Jekić, Bojanović, Marić, and Deronjić Pursuant to Rule to Rule 92 *quater*, 29 January 2008.

⁶ *Prosecutor v. Popović et al.*, Case No. IT-05-88, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, para 65.

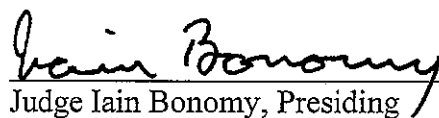
⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, para 65.

⁸ Status Conference, T. 356–365 (20 August 2009).

of the evidence that he would want to have admitted, should the Chamber consider that the requirements for admission under Rule 92 *quater* are satisfied.

7. Accordingly, pursuant to Rule 54 of the Rules, the Trial Chamber hereby **ORDERS** the Prosecution to file a written submission identifying those portions of the evidence of Milan Babić and Miroslav Deronjić that it seeks to have admitted in these proceedings pursuant to Rule 92 *quater*, and providing an explanation for its selection, bearing in mind the requirements of relevance and non-repetition, by no later than **15 October 2009**. The Accused will then have until **12 November 2009** to respond to the Prosecution submission.

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


Judge Iain Bonomy, Presiding

Dated this twenty-first day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]