



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-05-87-T

Date: 30 October 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 30 October 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

**DECISION GRANTING PROSECUTION'S RENEWED SECOND MOTION FOR
ADMISSION OF EVIDENCE PURSUANT TO RULE 92 *BIS***

Office of the Prosecutor

Mr. Thomas Hannis
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Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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”),

NOTING the confidential “Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92 *bis*”, filed on 31 July 2006, in which the Prosecution asked the Trial Chamber to admit into evidence a 5 February 2002 letter, along with four “attachments”, addressed to the then-Deputy Prosecutor of the Tribunal from Mr. Neill Wright, who in 1999 headed the unit of the Office of the United Nations High Commissioner for Refugees (“UNHCR”) responsible for that organisation’s operations in the former Yugoslavia,¹

NOTING the confidential joint response of the Accused, in which they “agree[d] to the admission into evidence of Attachments 1, 2, and 3 only and Mr. Wright’s 92bis Statement [the 5 February 2002 letter], with redactions to all references to Attachment 4”,² and additionally agreed to admitting that material without requiring Mr. Wright to appear for cross-examination,³

NOTING the “Decision Denying Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92 *bis*”, filed on 13 September 2006 (“Decision”), in which this Trial Chamber ruled that “Attachments One, Two and Three, and the portions of [Mr. Wright’s] letter which do not refer to Attachment Four, are admissible”,⁴ but declined to admit those documents at that time,⁵ and invited the Prosecution to “submit a motion to admit the admissible evidence, as either a public or confidential exhibit, pursuant to an applicable rule”,⁶

NOTING the “Prosecution’s Renewed Second Motion for Admission of Evidence Pursuant to Rule 92 *bis* with Annex A”, filed on 20 October 2006 (“Renewed Motion”), in which the Prosecution “seeks the admission into evidence of Attachments One, Two and Three to Mr.

¹ See Confidential Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 31 July 2006.

² Confidential Joint Defence Response to the Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 14 August 2006 (“Joint Response”), para. 7. The Accused clarified that they were “not agreeing to the accuracy of the statistics compiled by the UNHCR nor [were] they agreeing on or commenting on any inferences which may be drawn from those statistics.” *Ibid.*, para. 8.

³ See *ibid.*, para. 7 (“[I]t is unnecessary for Mr. Wright to appear for cross-examination.”).

⁴ Decision Denying Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 13 September 2006 (“Decision”), para. 16(2).

⁵ See *ibid.*, para. 15 (citations omitted):

The Trial Chamber declines, however, to admit the material into evidence at this time. It is clear from the Prosecution’s submissions that it desires the identities of both the Witness and the Organisation to be confidential, but the Prosecution has not asked that the Witness’s material be admitted as a confidential exhibit. Given the Tribunal’s policy favouring transparency, the Trial Chamber will not admit material into evidence under seal absent good cause being shown pursuant to an applicable rule.

⁶ *Ibid.*, para. 16(3).

Wright's statement and of a redacted version of his statement as public exhibits, pursuant to Rule 92 *bis*",⁷

CONSIDERING the Prosecution's submission that it "has obtained the consent of the UNHCR to submit this witness's written statement and attachments in these proceedings as public exhibits",⁸

CONSIDERING that Attachments One, Two and Three already have been ruled admissible and that the Prosecution's redactions to Mr. Wright's 5 February 2002 letter, which the Trial Chamber previously found to be a "written statement" within the meaning of Rule 92 *bis*,⁹ mirror those which the Accused already have suggested,¹⁰

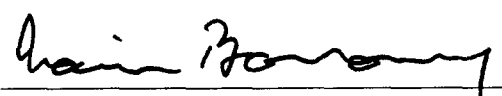
CONSIDERING that there is thus no objection to the admission of Mr. Wright's redacted letter and Attachments One, Two and Three, and further that the Accused have assented to the admission of such material without requiring Mr. Wright to appear for cross-examination,

PURSUANT TO Rules 54, 89 and 92 *bis* of the Rules of Procedure and Evidence,

HEREBY GRANTS the Renewed Motion and **ADMITS** Prosecution Exhibits P2438 (Mr. Wright's redacted letter and Rule 92 *bis*(B) affidavit), P736 (Attachment One), P737 (Attachment Two) and P738 (Attachment Three) into evidence without requiring Mr. Wright to appear for cross-examination.

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

Dated this thirtieth day of October 2006
At The Hague,
The Netherlands.



Judge Iain Bonomy
Presiding

[Seal of the Tribunal]

⁷ Prosecution's Renewed Second Motion for Admission of Evidence Pursuant to Rule 92 *bis* with Annex A", 20 October 2006 ("Renewed Motion"), para. 3.

⁸ *Ibid.*, para. 4.

⁹ See Decision, para. 11 (citations omitted):

With regard to form, the Chamber accepts that the letter is a "written statement" within the meaning of Rules 92 *bis*(A) and (B) despite the fact that it does not superficially resemble the kind of witness statement more routinely proffered for admission under Rule 92 *bis*. The important points are that the letter contains both the opinions of the Witness on matters other than the acts of the Accused, and a declaration that the "information and explanations contained in this letter are true and correct to the best of [the Witness's] knowledge and belief." The Trial Chamber also accepts that the Witness's declaration was properly witnessed as required by Rules 92 *bis*(B)(i) and (B)(ii).

¹⁰ Compare Renewed Motion, Annex A with Joint Response, Annex 1.