UNITED NATIONS

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-T

Date: 27 November 2012

Original: English

IN THE TRIAL CHAMBER

Before: **Judge O-Gon Kwon, Presiding Judge**
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: **Mr. John Hocking**

Decision of: **27 November 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON PROSECUTION'S MOTION TO EXCLUDE THE EVIDENCE OF WITNESS ANGELINA PIKULIĆ

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 "Prosecution's Motion to Exclude the Evidence of Witness Angelina Pikulić", filed on 19 November 2012 ("Motion"), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Office of the Prosecutor ("Prosecution") requests that the evidence of witness Angelina Pikulić ("Witness") be excluded pursuant to Rule 89(C) and (D) of the Tribunal's Rules of Procedure and Evidence ("Rules").[1] The Prosecution argues that most of the Witness's evidence is irrelevant to the charges in the Indictment as it pertains to crimes committed against Bosnian Serbs.[2] It also claims that the remainder of the Witness's evidence has "very little probative value" and is duplicative of evidence admitted through other witnesses,[3] and that its probative value is thus outweighed by the interests of ensuring a fair and expeditious trial.[4] The Prosecution also requests that the Witness's testimony be postponed until the Motion is ruled upon.[5]

2. By email of 20 November 2012, the Chamber ordered the Accused pursuant to Rule 126 *bis* of the Rules to file an expedited response to the Motion no later than 21 November 2012. On 21 November 2012, the Accused filed the "Response to Prosecution Motion to Exclude Testimony of Angelina Pikulić" ("Response"), in which it opposes the Motion.[6] The Accused argues that the Witness's evidence is relevant to the location of legitimate military targets on the Bosnian Muslim side and to "rebut the prosecution's claim that the VRS shelling of Sarajevo was indiscriminate and disproportionate".[7] Additionally, the Accused argues that the evidence concerning the mistreatment of Serbs in Sarajevo is relevant to identify "military and police targets who [were] engaged in persecuting Serb civilians or seeking to extract intelligence from them".[8] The Accused adds that he would have no objection to the Witness's evidence being admitted in writing pursuant to Rule 92 *bis*.[9]

[1] Motion, para. 1.
[2] Motion, para. 1.
[3] Motion, paras. 1, 4.
[4] Motion, para. 1.
[5] Motion, para. 5.
[6] Response, para. 1.
[7] Response, para. 2.

II. Applicable Law

3. The requirements of Rule 89(C) provide that the Chamber may admit any evidence if it is relevant and of probative value.[10] Once these requirements are satisfied, the Chamber maintains the discretionary power over the admission of evidence, including by way of Rule 89(D), which provides that it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.[11]

III. Discussion

4. As a preliminary matter, the Chamber notes that the Motion was filed almost a month after the filing of the Accused's "Notification of Submission of Written Evidence Pursuant to Rule 92 *ter*: Witness KW378" on 22 October 2012, and that the Witness is scheduled to testify next week. While the Chamber has reminded the Accused on a number of occasions to file his Rule 92 *ter* notifications in a timely manner, it also expects the Prosecution to file its witness-related motions sufficiently in advance so that the Accused can respond and the Chamber can rule on the said motions prior to the witness's arrival in The Hague.

5. Having reviewed the Witness's Rule 92 *ter* statement ("Witness Statement"), the Chamber finds that paragraphs 1 and 9 to 13 therein are potentially relevant to the Witness's background and the location of military targets in Pofalići and Velešići.[12] However, the Chamber considers that of the twelve remaining paragraphs of the Witness Statement, ten are comprised solely of *tu quoque* evidence pertaining to crimes allegedly committed against Bosnian Serbs,[13] and another two paragraphs provide information that is irrelevant to the charges in the Indictment.[14] The Chamber has warned the Accused that it will not accept *tu quoque* evidence as it has no impact on his responsibility for the crimes alleged in the Indictment.[15] Furthermore, the Chamber is not convinced by the Accused's argument that this evidence "shows" why the VRS would target ABiH forces who may have been committing such crimes against the Serbs. Accordingly, the Chamber finds that paragraphs 2 to 8 and 14 to 18 of

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[8] Response, para. 5.

[9] Response, para. 7.

[10] Decision on Prosecution's Second Bar Table Motion for the Admission of Intercepts, 25 May 2012, para. 5 ("Decision on Second Bar Table Motion"); *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Decision on Prosecution's Submission Pursuant to Trial Chamber's 20 September 2011 Order, 3 November 2011, para. 7 ("Decision on 20 September 2011 Order").

[11] Decision on Second Bar Table Motion, para. 5; Decision on 20 September 2011 Order, para. 7.

[12] The Witness's statement is available on e-court as 65 *ter* 1D28228.

[13] Witness Statement, paras. 2–8, 14–15, and 18.

[14] Witness Statement, paras. 16–17.

[15] Hearing, T. 30365 (15 November 2012); Status Conference, T. 28792 (3 September 2012); Hearing, T. 23518 (24 January 2012).

the Witness Statement are irrelevant to the charges in the Indictment and therefore may not be tendered into evidence.[16]

6. With regard to the Accused's suggestion that the Witness's testimony may be offered pursuant to Rule 92 *bis*, the Chamber considers that removing the irrelevant portions of the Witness Statement would leave the Witness's evidence difficult to understand.[17] The Chamber therefore orders that the Witness be led live only on the topics that are relevant to the charges in the Indictment and which are discussed in paragraphs 1 and 9 to 13 of the Witness Statement, if the Accused still wishes to call her. The Chamber further orders that the Prosecution's cross-examination of the Witness shall not exceed the time taken by the Accused for his examination in chief.

IV. Disposition

7. For these reasons, pursuant to Rules 54 and 89 of the Rules, the Trial Chamber hereby

i. **DENIES** the Motion,

ii. **INSTRUCTS** the Accused to lead the Witness *viva voce* on topics that are relevant to the Indictment and are discussed in paragraphs 1 and 9 to 13 of the Witness Statement, if the Accused still wishes to call her, and

iii. **ORDERS** that the Prosecution's cross-examination of the Witness shall not exceed the time taken by the Accused for his examination in chief.

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

Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of November 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

[16] *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009, para. 250.
[17] *See* Response, para. 7.