



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-08-91-T
Date: 24 August 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 24 August 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION DENYING PROSECUTION MOTION FOR
ADMISSION OF STATEMENT OF ST060 PURSUANT
TO RULE 92 *BIS***

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

TRIAL CHAMBER II (“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”);

BEING SEISED of the “Prosecution’s motion for admission of statement of witness ST-060 in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, with annexes”, filed confidentially on 18 July 2011 (“Motion”), whereby the Prosecution seeks admission of a statement made by Mirsad Smajš on 18 December 1993 to the authorities of Republic of Bosnia and Herzegovina (“Bosnian Statement”), attached as confidential Annex B, pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹

NOTING that neither the Defence of Mićo Stanišić nor the Defence of Stojan Župljanin filed a response;

NOTING the Prosecution submission that it had intended to tender the Bosnian Statement in its Original Motion, and although it overlooked including it in the index provided as Annex A thereof, the Prosecution included it in the DVD provided as Annex B along with the statement of witness to the Tribunal on 14 January 1998 (“ICTY Statement”);²

NOTING the Prosecution submission that the Bosnian Statement was not included in the Annex A of the Original Motion “owing to an oversight” but that “[i]t was always the intention of the Prosecution to utilise both the ICTY and Bosnian statements”;³

NOTING the Prosecution submission that the witness “treated both statements [...] as one statement” when attesting them pursuant to Rule 92 *bis* and that the evidence of Mirsad Smajš contained in the ICTY Statement “will be clearer” if the Bosnian Statement is also admitted;⁴

RECALLING that the Guidelines state that “the Trial Chamber will be guided by the best evidence rule” and that “[e]ach party shall produce their evidence by following this rule as far as practicable”;⁵

RECALLING that the Trial Chamber has considerable discretion while applying the best evidence rule;⁶

¹ Motion, para. 11.

² Motion, paras 1-2, citing Prosecution’s motion for the admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, 29 Feb 2008 (“Original Motion”).

³ Motion, para. 9.

⁴ Motion, paras 8, 10.

⁵ Order further amending guidelines on the admission and presentation of evidence, 19 Aug 2011 (“Guidelines”), para. 1.

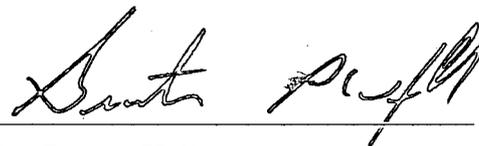
RECALLING that, in its decision of 2 November 2010, the Trial Chamber only considered and admitted the ICTY Statement of Mirsad Smajš as exhibit P2179;⁷

CONSIDERING that the Bosnian Statement does not contain any material new or additional information, being largely duplicative of the ICTY Statement;

CONSIDERING, accordingly, that the admission of the Bosnian Statement would not comply with the best evidence rule;

PURSUANT TO Rule 54 of the Rules, the Trial Chamber **DENIES** the Motion.

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



Judge Burton Hall
Presiding

Dated this twenty-fourth day of August 2011

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ *Prosecutor v. Halilović*, Case No.: IT-01-48-AR73.2, Decision on interlocutory appeal concerning admission of record of interview of the accused from the bar table, 19 Aug 2005, para. 19.

⁷ Motion, para 6; Written reasons for oral decision of 4 September 2009 admitting evidence of 24 witnesses pursuant to Rule 92 *bis*, 2 Nov 2010, paras 71-72.