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THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 19 June 2015

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public w/Confidential Annex C*

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TENTH MOTION TO RE-OPEN DEFENCE CASE:  
DRAGO NIKOLIC TESTIMONY

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The Office of the Prosecutor:  
Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:  
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber to re-open his case in order to admit answers to written questions by Drago Nikolic pursuant to Rule 92 *bis*.

2. Drago Nikolic's answers indicate unequivocally that the evidence of Prosecution Witness Momir Nikolic that he traveled to Zvornik and met with Drago Nikolic on the evening of 13 July 1995 is false.<sup>1</sup> Drago Nikolic's evidence, which was not available during Dr. Karadzic's defence case, is another element in support of Dr. Karadzic's contention that there was no intention to destroy the Bosnian Muslims of Eastern Bosnia and that the execution of prisoners after the fall of Srebrenica was not planned prior to the Kravica warehouse mutiny on the evening of 13 July.<sup>2</sup>

#### **Procedural History**

3. The testimony of Drago Nikolic was not available to Dr. Karadzic during Dr. Karadzic's defence case because Mr. Nikolic refused to testify while his appeal from his conviction was pending.<sup>3</sup>

4. On 30 January 2015, Drago Nikolic's conviction was affirmed by the Appeals Chamber.<sup>4</sup>

5. Beginning in February 2015, Dr. Karadzic's Legal Advisor communicated with counsel for Drago Nikolic in order to determine if Mr. Nikolic would be willing to now provide information that could be used in Dr. Karadzic's case. After a series of communications, Drago Nikolic agreed to answer written questions and signed a document containing the answers to those questions on 9 June 2015.<sup>5</sup> An official of the Registry certified the answers on 17 June 2015.<sup>6</sup>

6. Dr. Karadzic now seeks to re-open his defence case to admit the answers of Drago Nikolic pursuant to Rule 92 *bis*.

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<sup>1</sup> Momir Nikolic gave this evidence during his viva voce testimony on 14 February 2012 (T24670). It was also included in the statement of facts that accompanied his plea agreement. (D2081, para. 10)

<sup>2</sup> See *Defence Final Trial Brief* (29 August 2014) at para. 2451

<sup>3</sup> *Motion to Vary Witness List: Srebrenica Component* (21 August 2013) at para. 24

<sup>4</sup> *Prosecutor v Popovic et al*, No. IT-05-88-A, *Judgement* (30 January 2015)

<sup>5</sup> The e-mail correspondence between Mr. Robinson and counsel for Mr. Nikolic is attached as Confidential Annex "C".

<sup>6</sup> An English translation is attached as Annex "A". The certified answers are attached as Annex "B".

### Legal Considerations

7. This Chamber has already set forth the requirements for re-opening a party's case in its *Decision on Prosecution Motion to Re-Open Its Case* (20 March 2014). The Chamber held that:

- (A) A party may seek leave to re-open its case to present "fresh" evidence, that is, evidence that could not be obtained by the moving party by the conclusion of its case-in-chief despite exercising all reasonable diligence to do so.
- (B) The primary consideration in determining an application for reopening a case to allow for the admission of fresh evidence is the question of whether, with reasonable diligence, the evidence could have been identified and presented in the case-in-chief of the party making the application.
- (C) The Chamber has the discretion, pursuant to Rule 89(D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. The following factors are relevant to the exercise of the Chamber's discretion: (i) the advanced stage of the trial; (ii) the delay likely to be caused by the proposed re-opening and the suitability of an adjournment in the overall context of the trial; as well as (iii) the probative value of the evidence to be presented.

### Timeliness

8. The testimony of Drago Nikolic was not available to Dr. Karadzic at the time his defence case closed, as Drago Nikolic was unwilling to testify voluntarily while his own case was pending.

9. Drago Nikolic's appeal was not decided until after Dr. Karadzic's defence case had been closed.

10. It was not possible for Dr. Karadzic to compel Drago Nikolic's testimony because the Trial Chamber's requirements for seeking a subpoena could not be satisfied. Evidence refuting Momir Nikolic's testimony that a plan to execute prisoners from Srebrenica existed prior to the Kravica warehouse incident was available through other witnesses and was in fact presented during Dr. Karadzic's case.<sup>7</sup>

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<sup>7</sup> See *Defence Final Trial Brief* (29 August 2014) at paras. 2455-2504

11. Therefore, Drago Nikolic's evidence could not have, with reasonable diligence, been presented during Dr. Karadzic's case-in-chief.

**Probative Value of the Evidence**

12. Drago Nikolic's evidence is highly probative of Momir Nikolic's credibility as it directly refutes Momir Nikolic's evidence that he met with Drago Nikolic in Zvornik on 13 July 1995 and told him that the prisoners would be transported to Zvornik to be executed. Drago Nikolic's evidence is unequivocal that he did not meet with Momir Nikolic that day and that he was not informed that the prisoners were to be executed.

13. The evidence is admissible pursuant to Rule 92 *bis* because it does not go to the acts, conduct, and mental state of the accused. Among the factors favoring a discretionary decision to admit the evidence pursuant to Rule 92 *bis* is that it is of a cumulative nature to other evidence relating to the credibility of Momir Nikolic.<sup>8</sup>

14. Although cumulative, Drago Nikolic's evidence is important to be considered by the Trial Chamber when evaluating Momir Nikolic's credibility. Dr. Karadzic does not know where the tipping point is before the Trial Chamber decides not to credit Momir Nikolic's evidence.

**The Need to Ensure a Fair Trial**

15. The probative value of Drago Nikolic's evidence is not outweighed by the need to ensure a fair trial. The re-opening the defence case to admit Drago Nikolic's answers pursuant to Rule 92 *bis* would not consume any court time at all and the targeted scope of his evidence would make it simple for the Trial Chamber to take it into consideration without delaying its deliberations.

**Conclusion**

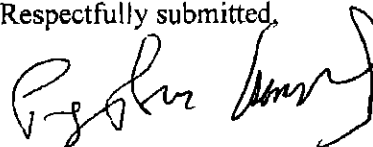
16. The Trial Chamber is respectfully requested to allow Dr. Karadzic to re-open his defence case and admit the evidence of Drago Nikolic pursuant to Rule 92 *bis*. Doing so would create an appropriate balance among the rights of Dr. Karadzic, Drago Nikolic, and the prosecution.

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<sup>8</sup> For example, evidence of Vujadin Popovic (D3993, at para. 18); Svetozar Kosoric (D3562, at paras. 6-8); Petar Uscumlic (D3552, at para. 7); Vidoje Blagojevic (D4189, at paras. 7-8); Witness KW582 (D4291, at pp. 3628, 3681); Mile Petrovic (D4218); Mile Janjic (D2262, at para 11).

Word count: 2488

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic

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**ANNEX "A"**

I, Drago Nikolic, do hereby declare under penalty of perjury that I have provided the answers to the following questions from the defence team of Radovan Karadzic, and that the answers are true and correct:

1. Prior to 13 July 1995, were you aware of any plan to execute prisoners from Srebrenica?

**No**

2. Were you at the forward command post of the Zvornik Brigade on the evening of 13 July 1995?

**Yes**

3. Did you see Momir Nikolic on 13 July 1995?

**No, and furthermore, I did not see him for a long time before and after 13 July.**

4. Did you speak to Momir Nikolic on 13 July 1995 by telephone or radio or through any third person?

**No**

5. Did you know from any source on 13 July that prisoners from Srebrenica would be or were being transported to Zvornik?

**Yes.**

6. What was that source and what were you told?

**On 13 July around 2200h, Mr. Trbic called me and informed me that prisoners would be transferred to Zvornik.**

7. Was there any information at that time that the prisoners were to be executed?

**No.**

8. Did you have any contact with Momir Nikolic during the remainder of July 1995?

**No.**

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Date: 9 July 2015

/s/  
Drago Nikolic



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**ANNEX "B"**



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yugoslavie

*ATTESTATION BY THE PRESIDING OFFICER PURSUANT TO RULE*

*92 BIS(B)*


I, VIKTORIJA TASEVA, Presiding Officer appointed by the Registrar of the International Criminal Tribunal for the Former Yugoslavia on 12.06.15 pursuant to Rule 92bis of the Rules of Procedure and Evidence, with the assistance of a certified interpreter, certify;

that on 17.06.2015 in UNITED NATIONS DETENTION UNIT, THE HAGUE, NL

the following person appeared:

Witness's First and Last name(s): MR. DRAGO NIKOLIĆ  
Date and Place of Birth: 09.11.1957 BRANA BAČIĆI - BRATUNAC  
Identity-, or Passport No.: \_\_\_\_\_  
Habitual Residence: UNDU

- that in the attached statement dated 09.06.2015 and certified by the undersigned on 17.06.2015 the said witness is identified as the author;
- that the above-mentioned witness was provided with a version of the said statement in a language that he (~~she~~) understands;
- that the above-mentioned witness was informed, in a language that he (~~she~~) understands, by the Presiding Officer that if the contents of the written statement are not true to the best of his (~~her~~) knowledge and belief then he or she may be subject to proceedings for giving false testimony;
- that the above-mentioned witness was provided with a text of Rule 91 of the Rule of Procedure and Evidence, in a language he (~~she~~) understands;


Presiding  
Officer  
  
  
Rule 92bis

- that above-mentioned witness declared that the content of his (her) written statement are true and correct to the best of his (her) knowledge and belief;
- that no pressure was brought to bear on the witness and that he (she) voluntarily signed the attached declaration dated 17.06.2015 ;
- that the following persons were present during the said declaration:  
MR. DRAGO NIKOLIĆ - WITNESS  
MR. RADOVAN KARADIĆ - SELF-REPRESENTED ACCUSED  
MS. VIKTORIJA TASEVA - PRESIDING OFFICER

Additional remarks:

Done this 17 06.2015  
At UNDO, THE HAGUE, NL

Signature of the Presiding Officer



Presiding  
Officer



Rule 92.bis



United Nations  
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International  
Criminal Tribunal  
for the Former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yugoslavie

Prijevod

**DEKLARACIJA OSOBE KOJA JE DALA PISMENU IZJAVU  
U SKLADU S PRAVILOM 92BIS**

Ja,

Prezime, ime: Nikolic' Dario

Datum i mjesto rođenja: 09.11.1957. Brana Badići - Bračunac

Identifikacioni broj ili broj pasoša: \_\_\_\_\_

ovime potvrđujem, u prisustvu predsjedavajućeg službenika \_\_\_\_\_

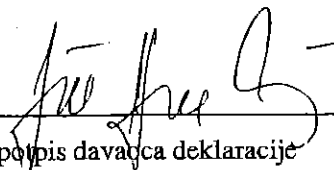
da je sadržaj pismene izjave (izjava) koju sam dao (-la) dana 09.6.2015.

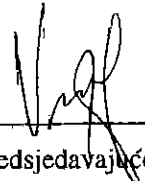
i koja je priložena ovoj deklaraciji, po mom najboljem znanju i uvjerenju, istinit i tačan.

Uručena mi je i kopija pravila 91 Pravilnika o postupku i dokazima Međunarodnog suda na jeziku koji razumijem i znam da protiv mene može biti pokrenut krivični postupak zbog lažne izjave, ukoliko sadržaj moje pismene izjave (pismenih izjava) nije istinit i tačan.

Dana: 17.6.2015.

U: Den Haag

  
potpis davalca deklaracije

  
potpis predsjedavajućeg službenika

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 BW The Hague. Netherlands  
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas  
Tel.: 31 70 512 5000 Fax: 31 70 512 5345

Presiding  
Officer



Rule 92 bis

Prijevod

Ja, Drago Nikolić, ovim izjavljujem pod prijetnjom kazne za krivokletstvo da sam odgovarao na sljedeća pitanja tima odbrane Radovana Karadžića, i da su odgovori istiniti i tačni:

1. Da li ste prije 13. jula 1995. bili svjesni bilo kakvog plana za pogubljenje zarobljenika iz Srebrenice?

Ne.

2. Da li ste se nalazili na isturenom komandom mjestu Zvorničke brigade u večernjim satima 13. jula 1995.?

Da.

3. Da li ste vidjeli Momira Nikolića 13. jula 1995.?

Ne, a nisam ga vidio ni dugo vremena prije ni nakon 13. jula.

4. Jeste li razgovarali sa Momirom Nikolićem 13. jula 1995. telefonom, radio-vezom, ili preko neke treće osobe?

Nisam.

5. Da li ste iz bilo kog izvora 13. jula saznali da će zarobljenici iz Srebrenice biti transportirani, ili da se transportuju u Zvornik?

Da.

6. Koji je to bio izvor, i što vam je rečeno?

Dana 13. jula oko 22:00 časova, g. Trbić me je pozvao i obavijestio me da će zarobljenici biti prebačeni u Zvornik.

7. Da li je bilo ikakvih informacija u to vrijeme da će zarobljenici biti pogubljeni?

Ne.

8. Da li ste imali bilo kakvih kontakata sa Momirom Nikolićem do kraja jula 1995.?

Ne.

Datum:

09.6.2015.

Drago Nikolić  
Drago Nikolić  
*[Signature]*

Presiding  
Officer



Rule 92bis