



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: 18 June 2009
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 18 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER FOLLOWING UPON RULE 65 TER MEETING AND
DECISION ON MOTIONS FOR EXTENSION OF TIME**

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”) is seised of the Accused’s “Motion for Extension of Time to Respond to Rule 92 *bis* Motions”, filed on 8 June 2009, “Motion for Extension of Time to Respond to Seventh Rule 92 *bis* Motion: Delayed Disclosure Witnesses and for Disclosure of *ex parte* Filings”, filed on 5 June 2009, “Motion to Vacate Protective Measures for Witness B-161 in Slobodan Milosevic Case and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ446”, filed on 5 June 2009, “Motion for Extension of Time to Respond to Motion for Admission of Testimony of Witness KDZ-290”, filed on 12 June 2009, “Motion for Public Disclosure of Annexes and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ198”, filed on 8 June 2009, and “Motion to Vacate Protective Measures, for Public Disclosure of Annexes, and for Extension of Time to Respond to Motion to Admit Testimony of 16 Witnesses under Rule 92 *quater*”, filed on 8 June 2009, (together “Motions”), and hereby renders its decision thereon.

1. The Motions were filed by the Accused following the submission by the Office of the Prosecutor (“Prosecution”) of eight motions for the admission of evidence pursuant to Rule 92 *bis*, and four motions for the admission of evidence pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), on 29 May 2009.¹ The Prosecution filed two further Rule 92 *quater* motions on 10 June 2009.² The question of the timing for the Accused’s responses to these motions was discussed at a Rule 65 *ter* meeting attended by the Accused and representatives of the Prosecution, and presided over by the pre-trial Judge, on 15 June 2009. In reaching its decision on

¹ Prosecution’s First Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis* (Witnesses for Eleven Municipalities), 29 May 2009; Prosecution’s Second Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses ARK Municipalities), 29 May 2009; Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis* (Witnesses for Sarajevo Municipalities), 29 May 2009; Prosecution’s Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*, Sarajevo Siege Witnesses, 29 May 2009; Prosecution’s Fifth Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis* (Srebrenica Witnesses), 29 May 2009; Prosecution’s Sixth Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*: Hostage Witnesses, 29 May 2009; Prosecution’s Seventh Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*: Delayed Disclosure Witnesses, 29 May 2009; Prosecution’s Motion for Admission of the Evidence of Eight Experts Pursuant to Rule 94*bis* and Rule 92*bis*, with Appendix A and Confidential Appendix B, 29 May 2009; Prosecution’s Motion for Admission of Testimony of Witness KDZ446 and Associated Exhibits Pursuant to Rule 92*quater*, 29 May 2009; Prosecution Motion for Admission of Evidence of Witness KDZ 290 Pursuant to Rule 92*quater*, 29 May 2009; Prosecution’s Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92*quater*, 28 May 2009; Prosecution’s Motion for Admission of the Evidence of Sixteen Witnesses Pursuant to Rule 92*quater*, with Confidential Appendices A, B and C, 29 May 2009.

² Prosecution’s Motion for Admission of the Evidence of KDZ297 Pursuant to Rule 92*quater*, with Public Appendices A, B and Confidential Appendices C, D, E, 10 June 2009; Prosecution’s Motion for Admission of the Evidence of KDZ172 Pursuant to Rule 92*quater*, with Public Appendices A-B and Confidential Appendices C-F, 10 June 2009.

the Motions, the Chamber has taken into consideration the discussion at the Rule 65 *ter* meeting, as well as the written submissions of the Accused and the responses thereto filed by the Prosecution.³

2. The Chamber notes that the Prosecution does not object to a “reasonable” extension of time for the Accused to respond to the first seven Rule 92 *bis* motions, on the basis of the volume of material covered by these motions. However, it opposes his request for an extension of time until after his defence team has been able to interview the witnesses covered by these motions.⁴ Moreover, at the Rule 65 *ter* meeting, the Prosecution undertook that all of the exhibits relevant to the Rule 92 *bis* and *quater* motions would be uploaded into the electronic court system (e-court) by the end of that day.

3. The Chamber also notes that, at the Rule 65 *ter* meeting, the Prosecution undertook to review each of its Rule 92 *bis* motions in light of the Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts, issued on 5 June 2009, and any subsequent decision on adjudicated facts, to determine whether it could withdraw any of its proposed Rule 92 *bis* witnesses. The deadline for the completion of this review and request to withdraw any of the proposed witnesses contained in the third and fourth Prosecution motions for admission of Rule 92 *bis* evidence (which relate to Sarajevo municipalities and the siege of Sarajevo) is 26 June 2009. Similar reviews will be conducted following the Chamber’s decisions on the second and third motions for judicial notice of adjudicated facts, which remain pending.

4. Although the Accused seeks time to do so, the Chamber does not consider it necessary for him or his defence team to interview each and every one of the proposed Rule 92 *bis* witnesses (in excess of 225) in order for him to be able to respond to the relevant motions from the Prosecution. However, in light of the volume of material covered by these motions, and the need to organise both the Accused’s own resources and the work of the Chamber itself, the Chamber will grant the “Motion for Extension of Time to Respond to Rules 92 *bis* Motions”, filed on 8 June 2009, in part, and will order the Accused to respond to the first seven Rule 92 *bis* motions on the dates set out below.

³ Prosecution’s Response to Karadžić’s Motion for Extension of Time to Respond to Rule 92 *bis* Motions, 15 June 2009; Prosecution’s Response to Karadžić’s Motion for Extension of Time to Respond to Seventh Rule 92 *bis* Motion: Delayed Disclosure Witnesses and for Disclosure of Ex Parte Filings, 12 June 2009; Prosecution’s Response to Karadžić’s Motion to Vacate Protective Measures of KDZ446 and for Extension of Time, 11 June 2009; Prosecution’s Response to Karadžić’s Motion for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ290, 15 June 2009; Prosecution’s Response to Karadžić’s Motion for Public Disclosure of Annexes and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ198, 11 June 2009; Prosecution Response to Karadžić’s Motion to Vacate Protective Measures, for Public Disclosure of Annexes, and for Extension of Time to Respond to Motion to Admit Testimony of 16 Witnesses under Rule 92 *quater*, 12 June 2009.

⁴ Prosecution’s Response to Karadžić’s Motion for Extension of Time to Respond to Rule 92 *bis* Motions, 15 June 2009, para. 4.

5. With particular regard to the Prosecution's seventh motion for admission of Rule 92 *bis* evidence (delayed disclosure witnesses), the Accused submits that he cannot respond to this motion until he knows the identity of the four witnesses in the motion, and has disclosure of all relevant material.⁵ The Prosecution does not oppose an extension of time until the Accused is in possession of this information and the material in confidential and *ex parte* Appendices A and B to the seventh motion.⁶

6. A decision has already been issued by another Trial Chamber rescinding delayed disclosure for one of these four witnesses, and a motion remains pending for rescission of delayed disclosure of the other three. The Chamber is cognisant of the fact that the timing of the Accused's response to the Prosecution's seventh Rule 92 *bis* motion must take into account the date upon which he has access to the identities and prior testimony or statements of these witnesses. The Chamber will therefore order the Accused to respond to this motion on the date set out below, subject to the understanding that, should he not have access to this information by that time, he may seek a further extension.

7. With regard to the Prosecution's Motion for Admission of Testimony of Witness KDZ446 and Associated Exhibits Pursuant to Rule 92 *quater*, filed on 29 May, the Accused has requested that the protective measures for this witness be vacated, and that his time to respond to the motion be extended until he has access to all the relevant material, including exhibits and a confidential decision referred to by the Prosecution in the motion.⁷ Once again, the Prosecution does not oppose some extension of time for the Accused to respond to the motion, acknowledging that he would need to have access to the material in confidential and *ex parte* Appendix D to the motion in order to be able to respond fully.⁸ This Appendix refers to evidence that is cumulative or corroborative of that of KDZ446, some of which is subject to delayed disclosure and therefore not yet in the possession of the Accused.

8. The Trial Chamber does not consider that the issue of protective measures for KDZ446, and the possible rescission thereof (other than delayed disclosure), has any bearing on the timing of the Accused's response to the Rule 92 *quater* motion in relation to this witness. The Prosecution has indeed undertaken to review the position with regard to the witness, who is deceased, and whether

⁵ Motion for Extension of Time to Respond to Seventh Rule 92 *bis* Motion: Delayed Disclosure Witnesses and for Disclosure of *Ex Parte* Filings, 5 June 2009, para. 3.

⁶ Prosecution's Response to Karadžić's Motion for Extension of Time to Respond to Seventh Rule 92 *bis* Motion: Delayed Disclosure Witnesses and for Disclosure of *Ex Parte* Filings, 12 June 2009, para. 2.

⁷ Motion to Vacate Protective Measures for Witness B-161 in Slobodan Milošević case and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ446, 5 June 2009, para. 7.

⁸ Prosecution's Response to Karadžić's Motion to Vacate Protective Measures of KDZ446 and for Extension of Time, 11 June 2009, para. 3.

or not the protective measures in relation to him/her continue to be necessary. The outcome of this review and any future decision that may be made by this or another Chamber with regard to these protective measures does not affect the deadline set out below for the Accused's response to the motion. However, the summary of corroborative or cumulative evidence in confidential and *ex parte* Appendix D to the motion includes evidence from one witness for whom there are delayed disclosure measures in place. At the Rule 65 *ter* meeting, the Prosecution undertook to review this appendix and whether it could be reformulated in a way that it would not reveal this information to the Accused. It has, however, been unable to do so. The Chamber will therefore order the Accused to respond to this motion on the date set out below, subject to the understanding that, should he not have access to this information by that time, he may seek a further extension.

9. With regard to the Prosecution's Motion for Admission of Testimony of Witness KDZ290 Pursuant to Rule 92 *quater*, filed confidentially on 29 May 2009, the Accused only requests that his time to respond be extended until the relevant exhibits are uploaded to e-court.⁹ The Prosecution opposes this request.¹⁰ The Chamber notes that all of the relevant exhibits should now be available to the Accused on e-court, as well as having already been disclosed to the Accused. The Accused will therefore be ordered to respond to this motion by the deadline set out below.

10. The Accused has also requested an extension of time in which to respond to the Prosecution's Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 *quater*, filed on 29 May 2009, until 14 days after he has access to the relevant exhibits on e-court.¹¹ In addition, he requests that the confidential appendices to the motion be made public, as the witness is deceased, and previously testified in open session.¹² The Prosecution does not oppose a "reasonable" extension of the time limit for the Accused to respond to this motion.¹³ It also does not oppose his request that Appendices A and C be reclassified as public, subject to certain redactions being made to Appendix C. However, it does request that Appendix B remain confidential for reasons of privacy, presumably of the witness and his family.¹⁴ The Chamber will therefore order the Accused to respond to this motion on the date set out below. The Chamber does not consider it necessary, at this stage, for these appendices to be made public, as

⁹ Motion for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ-290, 12 June 2009, para. 3.

¹⁰ Prosecution's Response to Karadžić's Motion for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ290, 15 June 2009, para. 2.

¹¹ Motion for Public Disclosure of Annexes and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ198, 8 June 2009, para. 4.

¹² *Ibid.*, para. 2.

¹³ Prosecution Response to Karadžić's Motion for Public Disclosure of Annexes and for Extension of Time to Respond to Motion to Admit Testimony of Witness KDZ198, 12 June 2009, para. 4.

¹⁴ *Ibid.*, para. 3.

this would not assist the Accused in his response to the motion or his preparation for the trial, and indeed to do so would be inconsistent with the position taken by the Chamber in paragraph 15 below.

11. With regard to the Prosecution's Motion for Admission of the Evidence of Sixteen Witnesses Pursuant to Rule 92 *quater*, with confidential Appendices A, B, and C, filed on 29 May 2009, the Accused requests that the protective measures for one of these witnesses, namely KDZ044, be vacated.¹⁵ He also requests that all of the confidential appendices be re-filed as public documents, as, with the exception of KDZ044, none of the relevant witnesses has protective measures.¹⁶ He asks for an extension of time to respond to the motion until such time as he has access to the relevant exhibits through the e-court system and for a period of 90 days thereafter in order to "complete his investigation" into the 16 witnesses.¹⁷

12. The Trial Chamber does not consider that the issue of protective measures for KDZ044, and the possible rescission thereof, has any bearing on the timing of the Accused's response to the Rule 92 *quater* motion in relation to this witness. The Prosecution has indeed undertaken to review the position with regard to the witness, who is deceased, and whether or not the protective measures in relation to him/her continue to be necessary. The outcome of this review and any future decision that may be made by this, or another Chamber with regard to these protective measures does not affect the deadline set out below for the Accused's response to the motion.

13. The Chamber notes that the Prosecution opposes the Accused's requests that the confidential appendices be re-filed as public documents, on the basis that witness-related information should remain confidential at this stage of the proceedings, that one of the appendices contains death and medical certificates, and that the third appendix includes transcripts of evidence from a protected witness (KDZ044) and other witnesses who gave some evidence in private session, and a death certificate.¹⁸ The Prosecution does not oppose a "reasonable" extension of the time limit for the Accused to respond to this motion, but considers that 90 days from the accessing of the relevant exhibits in e-court to be excessive.¹⁹

¹⁵ Motion to Vacate Protective Measures, for Public Disclosure of Annexes, and for Extension of Time to Respond to Motion to Admit Testimony of 16 Witnesses under Rule 92 *quater*, 8 June 2009, para. 3.

¹⁶ *Ibid.*, para. 6.

¹⁷ *Ibid.*, para. 10.

¹⁸ Prosecution Response to Karadžić's Motion to Vacate Protective Measures, for Public Disclosure of Annexes, and for Extension of Time to Respond to Motion to Admit Testimony of 16 Witnesses under Rule 92 *quater*, 12 June 2009, paras. 3–5.

¹⁹ *Ibid.*, para. 7.

14. Furthermore, at the Rule 65 *ter* meeting, the pre-trial Judge invited the Prosecution to review the material submitted in support of its claims that two of the 16 witnesses are unable to testify for medical reasons, and to provide the Chamber with additional information demonstrating that these witnesses are indeed unfit to give evidence because of illness. This review does not, however, affect the deadline set out below for the Accused's response to the motion.

15. The Chamber considers that the Accused has access to all the material necessary for him to be able to respond to the Rule 92 *quater* motion in relation to the 16 witnesses, and therefore will order him to do so by the deadline set out below. It denies his request for the confidential appendices to the motion to be reclassified as public documents, on the basis that (1) there is some confidential material contained therein, or material that is not *per se* confidential but that relates to other confidential material, and (2) at this stage in the proceedings, there are good reasons to be cautious concerning making public material that is simply disclosed at this time for the purposes of trial preparation, although that material may indeed become public following the Trial Chamber's decision on the motion, or in the course of the trial. Thus, the confidential filing of witness-related material at the pre-trial phase of the proceedings does not affect in any way the Accused's right to a public trial, pursuant to Article 20(4) of the Statute of the Tribunal.

16. The Accused has not yet filed any motion for extension of time to respond to the last two of the Prosecution's Rule 92 *quater* motions, namely in relation to witnesses KDZ297 and KDZ192. Nonetheless, the Chamber considers that an extension of time for him to respond to these motions is warranted, and he is ordered to file his responses in accordance with the deadlines set out below.

17. Finally, the Prosecution's Motion for Admission of the Evidence of Eight Experts Pursuant to Rule 94 *bis* and Rule 92 *bis*, filed on 29 May 2009, was also discussed at the Rule 65 *ter* meeting. The Accused is in the process of engaging his own experts to review the reports produced by the various proposed Prosecution expert witnesses. The resolution of this motion is therefore connected to the issue of whether agreement between the parties can be reached on some of the material produced by the Prosecution experts. For this reason, the Accused will be given an extension of time in which to respond to the motion, until the date set out below, in anticipation of progress being made in the meantime on his own experts' review of the relevant material.

18. For these reasons, pursuant to Rules 54 and 127 of Rules, the Trial Chamber hereby **GRANTS** the Motions in part and:

(a) **ORDERS** the Prosecution to:

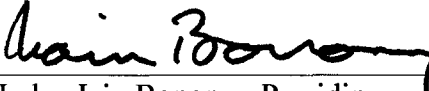
- i. File, no later than 26 June 2009, any request it may have to withdraw any of the proposed witnesses contained in the third and fourth Prosecution motions for admission of Rule 92 *bis* evidence (which relate to Sarajevo municipalities and the siege of Sarajevo), as per its review of such motions in light of the Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts, issued on 5 June 2009;
- ii. File, no later than 30 June 2009, any submission it wishes to make in relation to witness KDZ446, and whether the protective measures currently in place for this witness continue to be necessary.
- iii. File, no later than 30 June 2009, any submission it wishes to make in relation to witness KDZ044, and whether the protective measures currently in place for this witness continue to be necessary.

(b) **ORDERS** the Accused to file his responses to the various Rule 92 *bis* and 92 *quater* motions on or before the dates listed hereunder:

Prosecution Motion for Admission of Evidence of Witness KDZ290 Pursuant to Rule 92 <i>quater</i>	30 June 2009
Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92 <i>bis</i> (Witnesses for Sarajevo Municipalities)	9 July 2009
Prosecution's Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92 <i>bis</i> , Sarajevo Siege Witnesses	9 July 2009
Prosecution's Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 <i>quater</i>	14 July 2009
Prosecution's Motion for Admission of the Evidence of Sixteen Witnesses Pursuant to Rule 92 <i>quater</i> , with Confidential Appendices A, B and C	14 July 2009
Prosecution's Sixth Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92 <i>bis</i> : Hostage Witnesses	16 July 2009
Prosecution's Fifth Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92 <i>bis</i> (Srebrenica Witnesses)	23 July 2009

Prosecution's First Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92bis (Witnesses for Eleven Municipalities)	30 July 2009
Prosecution's Motion for Admission of the Evidence of KDZ297 Pursuant to Rule 92quater, with Public Appendices A, B and Confidential Appendices C, D, E	4 August 2009
Prosecution's Motion for Admission of the Evidence of KDZ172 Pursuant to Rule 92quater, with Public Appendices A-B and Confidential Appendices C-F	4 August 2009
Prosecution's Motion for Admission of Testimony of Witness KDZ446 and Associated Exhibits Pursuant to Rule 92quater	6 August 2009
Prosecution's Seventh Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92bis: Delayed Disclosure, 29 May 2009	11 August 2009
Prosecution's Second Motion for Admission of Statements and Transcripts of Evidence in lieu of <i>Viva Voce</i> Testimony Pursuant to Rule 92bis (Witnesses for ARK Municipalities)	11 August 2009
Prosecution's Motion for Admission of the Evidence of Eight Experts Pursuant to Rule 94bis and Rule 92bis, with Appendix A and Confidential Appendix B, 29 May 2009	13 August 2009

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


 Judge Iain Bonomy, Presiding

Dated this eighteenth day of June 2009
 At The Hague
 The Netherlands

[Seal of the Tribunal]