



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: 2 September 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Order of: 2 September 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR EXTENSION OF TIME TO RESPOND TO
RULE 92 *BIS* MOTION FOR EXPERT WITNESSES AND TO
EXCLUDE THE REPORTS OF KATHRYN BARR**

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* Motion for Expert Witnesses and to Exclude the Reports of Kathryn Barr”, filed on 31 August 2009 (“Motion”), and hereby renders this decision thereon.

1. In the Motion, the Accused moves for an extension of time to respond to the “Prosecution’s Motion for the Admission of the Evidence of Eight Experts Pursuant to Rule 94 *bis* and Rule 92 *bis*” filed on 29 May 2009 (“Experts Motion”), and for exclusion of the written evidence of one of these eight experts.¹

2. The Experts Motion concerns the evidence of eight experts, seven of whom are forensic scientists dealing with the remains of victims in Bosnia and Herzegovina. The eighth expert is a handwriting expert, Kathryn Barr, whose reports and evidence address the authors of entries in various documents of the Zvornik Brigade.

3. With respect to his request for an extension of time, the Accused argues that he has retained two experts to deal with the evidence of the seven forensic scientists engaged by the Office of the Prosecutor (“Prosecution”) as experts. However, “due to delays in obtaining authorisation for funding of these experts, as well as delays in obtaining access for the experts to the material they need” the work of the Accused’s experts has not been completed and he is “not yet in a position to make submissions on whether the expert reports should be admitted.”² The Accused also submits that, should the Trial Chamber decide to admit the reports of the seven Prosecution forensic experts, each of them should be ordered to appear for cross-examination.³

4. With respect to his request that the evidence of the handwriting expert, Kathryn Barr, be excluded, the Accused notes that his chosen handwriting expert has determined that he would need approximately 100 hours to analyse Barr’s work. However, according to the Accused, the Tribunal’s Registry has declined to allow a sufficient number of hours for this exercise and he is, therefore, not in a position to be able to viably contest Barr’s evidence.⁴ He also claims that this evidence should be excluded under Rule 89 of the Rules of Procedure and Evidence

¹ Motion, paras. 1, 11.

² Motion, para. 2.

³ Motion, para. 3.

⁴ Motion, paras. 4–6, 9–10.

("Rules") on the basis that its probative value is outweighed by the prejudicial effect of admitting evidence which cannot be tested.⁵

5. Under Rule 92 *bis* a Trial Chamber may dispense with the attendance of a witness in person and instead admit his or her evidence in the form of a written statement or a transcript of evidence given in previous proceedings. The Rule outlines a number of factors in favour of admitting such evidence. It also provides for factors against admitting such evidence, namely, that there is an overriding public interest in the evidence in question being presented orally, that a party objecting to it can demonstrate that its nature and source render it unreliable, that its prejudicial effect outweighs its probative value, or that there are any other factors which make it appropriate for the witness to attend for cross-examination.

6. With respect to the Accused's request for an extension of time to respond to the Experts Motion, the Chamber notes at the outset that it has previously granted similar requests made by him on three different occasions. The time for his response was first extended until 13 August,⁶ then until 25 August,⁷ and, finally, until 1 September 2009.⁸ The Chamber further notes that the Motion was filed on 31 August 2009, that is, one day before the already extended deadline for his response to the Experts Motion was due to expire. Given the urgency of that aspect of the Motion, the Chamber will deal with the issue of extension without hearing from the Prosecution.

7. The Chamber observes that the former pre-trial Judge was actively engaged with the parties in relation to the issue of expert evidence in an effort to identify points of agreement, particularly in relation to the forensic science evidence dealing with burial sites. However, thus far no areas of agreement have been identified, and indeed the Accused has clearly indicated his intention to challenge at least parts of the conclusions reached by the Prosecution's forensic science experts. The pre-trial Judge was also involved in discussions with the Registry and the Accused concerning the engagement of appropriate defence experts and the allocation of hours by the Registry to pay for the work of these experts.⁹

8. The Registry has significantly extended the normal allocation of hours for work performed by appropriate defence experts in this case, and has agreed to bring forward some of the expert hours normally allocated during the trial to the pre-trial phase, to assist in completing the work of at least some of the Accused's experts prior to the trial itself. This work, however,

⁵ Motion, paras. 7–8.

⁶ See Order Following upon Rule 65 *ter* Meeting and Decision on Motions for Extension of Time, 18 June 2009.

⁷ See Decision on Accused's Application for Certification to Appeal Decision on Motions for Extension of Time: Rule 92 *bis* and Response Schedule, 8 July 2009.

⁸ Status Conference, T. 370 (23 July 2009).

⁹ See Public Transcript of Rule 65 *ter* Meeting held on 17 August 2009.

apparently goes way beyond what is necessary simply to respond to the Experts Motion. Indeed, the Chamber is of the view that the hours already spent by the Accused's forensic experts are sufficient for the purposes of filing his response to the Experts Motion. The Chamber is strengthened in this view having reviewed a document prepared by one of the Accused's forensic science experts for the purposes of the Rule 65 *ter* meeting held on 17 August 2009, which outlines a number of perceived flaws or problems with the work of six of the seven Prosecution forensic experts, and in itself appears a sufficient basis for the Accused to be able to respond to the Experts Motion in relation to these six experts. At that meeting the pre-trial Judge indicated this view to the Accused.¹⁰

9. Furthermore, the Accused has been informed by the pre-trial Judge that, following the filing of his responses to Prosecution's Rule 92 *bis* motions, he could, in case he had additional material relating to those responses, ask the Chamber, before its decision is issued, to consider that information.¹¹ As a side issue, it should also be noted that the pre-trial Judge has indicated to the Prosecution that it seems likely that some of the expert witnesses in the Experts Motion are not likely to be accepted by the Chamber without any form of cross-examination, especially in light of the fact that some of the issues relating to these experts are still being explored by the Accused.¹²

10. Accordingly, given that (i) the Chamber has already granted significant extensions of time to the Accused for the purpose of responding to the Experts Motion; (ii) the Accused's forensic experts have been allocated a significant number of hours already by 21 July 2009 to enable them to review the work of the seven forensic science experts; and (iii) much of the necessary work for the purpose of the response to the Experts Motion, as far as those seven experts are concerned, has already been done, the Chamber does not consider that any significant further extension of time should be granted to the Accused to respond in relation to the forensic experts. However, in order to permit him time to file a response based on the work already conducted by his experts, the Chamber will grant the Accused a final extension to 4 September 2009.

11. As for the second aspect of the Accused's Motion, namely the request to exclude the evidence of Kathryn Barr, the Chamber considers that it should hear from the Prosecution on the issue before it makes its decision. However, the Chamber is of the view that it would be in the interests of good case management to require an expedited response to the Motion.

¹⁰ Rule 65 *ter* Meeting, T. 152–153 (17 August 2009).

¹¹ Status Conference, T. 370 (23 July).

¹² Rule 65 *ter* Meeting, T. 122–123 (17 August 2009).

12. Accordingly, pursuant to Rules 54, 92 *bis*, and 126 *bis*, the Chamber hereby **GRANTS** the Motion in part and **ORDERS** as follows:

- (i) The Accused shall file his response to those parts of the Experts Motion dealing with the seven forensic science experts by no later than close of business on 4 September 2009.
- (ii) The Prosecution shall file its response to the part of the Motion dealing with the Accused's request for the exclusion of evidence from Kathryn Barr by no later than 4 September 2009.

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



Judge O-Gon Kwon, Presiding

Dated this second day of September 2009
At The Hague
The Netherlands

[Seal of the Tribunal]