



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: 2 October 2009
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 2 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ & STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON PROSECUTION'S MOTIONS FOR
ADMISSION OF EVIDENCE OF 33 WITNESSES PURSUANT
TO RULE 92 TER**

The Office of the Prosecutor

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Counsel for the Accused

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I. INTRODUCTION

1. Trial Chamber II (“Trial Chamber”) of the International Criminal 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 following:

- Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, filed in part confidentially on 29 February 2008 (“Motion”);
- Prosecution amended motion and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, filed on 10 December 2008 (“Amended Notice”);
- Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92 *bis* and 92 *ter*, with confidential annexes, filed on 28 July 2009 (“Supplemental Motion”), (together referred to as the “Combined Motions”),

whereby the Prosecution seeks the admission into evidence of the prior transcripts of testimony and witness statements of 35 witnesses¹ and related evidence pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”).

2. On 29 September 2009 the Trial Chamber issued a separate decision granting the Motion in respect of two witnesses, ST012 and ST019 (“the September 2009 Decision”) and remained seised of the Combined Motions for the remaining 33 witnesses proposed pursuant to Rule 92 *ter*.² In the September 2009 Decision, the Trial Chamber set out the applicable law and considered the general submissions raised by the parties in the Combined Motions³ and does not repeat these here save for matters specifically relevant to the remaining witnesses.

II. BACKGROUND AND RELEVANT SUBMISSIONS

3. Following the filing of the Motion, the Defence of Mićo Stanišić (“Stanišić Defence”) sought and was granted an extension of time in which to file its response.⁴ On 17 April 2008, the

¹ The Trial Chamber notes that this total figure of witnesses proposed pursuant to Rule 92 *ter* was arrived at with the reduced witness list filed on 10 September 2009 and does not include those witnesses that are proposed under Rule 94 *bis*. Prosecution’s reduced list of witnesses, with confidential annexes, 10 Sep 2009.

² Decision on Prosecution’s motions for admission of evidence pursuant to Rule 92 *ter* (ST012 and ST019), issued confidentially on 29 Sep 2009 (“September 2009 Decision”).

³ September 2009 Decision, paras 11-16.

⁴ *Prosecutor v. Mico Stanistic*, Case No. IT-04-79-PT, Urgent Defence’s filing for extension of time for filing the response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 10 Mar 2008; *Prosecutor v. Mico Stanistic*, Case No. IT-04-79-PT, Prosecution’s response to urgent Defence’s filing for extension of time for filing the response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 10 Mar 2008; Decision regarding response to Prosecution motion pursuant to Rule 92 *ter*, 11 Mar 2008.

Stanišić Defence filed a response setting out its objections to the Motion (“Stanišić Response”).⁵ On 23 April 2008, the Prosecution sought leave to reply and included a proposed reply (“Reply”).⁶ Leave to file the Reply is hereby granted.

4. On 23 September 2008, following the arrest of Stojan Župljanin, the cases against the two accused were joined.⁷ On 19 November 2008, the Prosecution requested, *inter alia*, that the Motion apply to Stojan Župljanin as well as to Mićo Stanišić.⁸ The Defence of Stojan Župljanin (“Župljanin Defence”) responded on 26 January 2009 (“Župljanin Response”), having been granted an extension of time for such filing.⁹

5. On 30 January 2009, the Stanišić Defence filed a submission in relation to the Motion seeking to join the Župljanin Response.¹⁰ This submission was dismissed for procedural reasons by the Trial Chamber in its September 2009 Decision and will not be addressed further.¹¹

6. On 8 June 2009, the Prosecution filed its pre-trial brief and consolidated witness and exhibit lists pursuant to Rule 65 *ter*(E).¹² It removed from the witness list four proposed witnesses, Idriz Merdžanić, Mehmed Tenić, Biljana Plavšić and Mesud Begović, who were originally included in the Motion and Amended Notice.¹³ On 22 June 2009, the Prosecution filed a corrigendum to its witness list and witness summaries to clarify and correct the mode of testimony for certain witnesses.¹⁴

⁵ *Prosecutor v. Mico Stanisic*, Case No. IT-04-79-PT, Defence’s response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, filed confidentially on 17 Apr 2008; Urgent Defence’s motion for extension of time for filing respond to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 10 Mar 2008; Prosecution’s response to urgent Defence’s motion for extension of time for filing response to Prosecutions’s motion for admission of evidence pursuant to Rule 92 *ter*, 10 Mar 2008; Decision regarding response to Prosecution motion to Rule 92 *ter*, 11 Mar 2008.

⁶ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Motion for leave to reply and proposed reply to Defence’s response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 23 Apr 2008.

⁷ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT and *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, Decision on the Prosecution’s motion for joinder and for leave to consolidate and amend indictments, 23 Sep 2008; Prosecution’s motion for joinder and for leave to consolidate and amend indictments, with confidential annexes, 15 Jul 2008.

⁸ Prosecution notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 19 Nov 2008; Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 3 Dec 2008; Decision on Stojan Župljanin’s motion requesting an order that the prosecution clarify its motion of 19 November 2008, 15 Dec 2008; Prosecution amended notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 10 Dec 2008.

⁹ Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of evidence pursuant to Rule 92 *ter*, filed confidentially on 26 Jan 2008. See also, Decision on Stojan Župljanin’s motion requesting an order that the prosecution clarify its motion of 19 November 2008, 15 Dec 2008, p.4; Decision on Stojan Župljanin’s motion for the Trial Chamber to reconsider its Decision of 15 December 2008, p.4.

¹⁰ Submission of Mićo Stanišić’s Defence regarding Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of evidence pursuant to Rule 92 *ter*, 30 Jan 2009.

¹¹ September 2009 Decision, paras 5-6.

¹² Prosecution’s pre-trial brief with confidential annexes, 8 Jun 2009 (“Prosecution’s Pre-trial Brief”).

¹³ Supplemental Motion, paras 4-5. See also, Prosecution’s Pre-trial Brief, Appendix 3.

¹⁴ Corrigendum to confidential appendices 3 & 4 of the Prosecution’s pre-trial brief of 8 June 2008 with confidential annexes, 22 Jun 2009.

7. On 28 July 2009, the Prosecution filed a Supplemental Motion “updating the Prosecution’s prior submissions in light of the Rule 65*ter* witness list filed concurrently with its Pre-Trial Brief” and “clarifying and correcting a number of matters” arising from its recent filings.¹⁵ It seeks (1) to convert the mode of testimony for six witnesses previously proposed for admission pursuant to Rule 92 *bis* to Rule 92 *ter*, as their evidence is said to go to the acts and conduct of Stojan Župljanin;¹⁶ (2) to withdraw its submissions in relation to four witnesses who are no longer on its witness list;¹⁷ (3) to correct errors in the mode of testimony indicated for certain witnesses;¹⁸ and (4) to admit the testimony of an additional 13 witnesses not included in the original Motion.¹⁹ Three of these witnesses were earlier to be called *viva voce* and the remaining ten were included for the first time on its consolidated witness list of 8 June 2009.²⁰ In relation to these witnesses, the Prosecution indicates it will file an appropriate motion later for the addition of the documents that accompany their transcript and statements to its exhibit list.²¹ No such filing has been made.

8. As part of its submission of the “Rule 92 *ter* packages” of the evidence of these witnesses, the Prosecution identifies specific portions in the evidence of the witnesses as relevant and probative to its case.²² In the absence of any such indication, the Prosecution considers the transcripts and statements relevant in their entirety.²³

9. On 30 August 2009, close to three weeks after the expiry of the relevant time limit pursuant to Rule 126 *bis*, the Stanišić Defence responded to the Supplemental Motion.²⁴ This response was also dismissed by the Trial Chamber in its September 2009 Decision and will not be considered further.²⁵

10. On 10 September 2009 the Prosecution filed its final witness list, in which it removed the following six witnesses subject of the Combined Motions: Stjepan Kljuić, Mevludin Sejmenović, Bego Selimović, Vedran Skoro, Mirsad Tokača and Patrick Treanor.²⁶

¹⁵ Supplemental Motion, para. 2. See also, Prosecution’s Pre-trial Brief, Appendix 3.

¹⁶ Supplemental Motion, paras 6-7.

¹⁷ Supplemental Motion, paras 4-5 and 18-20. The Trial Chamber notes, however, that the Prosecution states that this withdrawal is subject to the outcome of its motions pursuant to Rule 94 and to the Defence introducing “reliable and credible evidence calling into question adjudicated facts to which their evidence relates.”

¹⁸ Supplemental Motion, paras 18-20.

¹⁹ Supplemental Motion, paras 11-17.

²⁰ Supplemental Motion, paras 11-12 and 16-17.

²¹ Supplemental Motion, para. 22.

²² Supplemental Motion, para. 21.

²³ Supplemental Motion, footnote 13.

²⁴ Mr. Mićo Stanišić’s response to the Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92*bis* and 92*ter*, with confidential annexes, 31 Aug 2009.

²⁵ September 2009 Decision, para. 9.

²⁶ Prosecution’s reduced list of witnesses, with confidential annexes, 10 Sep 2009.

11. Lastly, on 22 June 2009, the Stanišić Defence and the Župljanin Defence filed a joint motion seeking the preclusion of 39 witnesses, ten of whom are the subject of the Combined Motions.²⁷ On 31 August 2009, the Trial Chamber determined that the Prosecution was not in breach of its obligations insofar as their inclusion on the witness list and so they remain subject of the Combined Motions.²⁸

III. DISCUSSION

12. The Trial Chamber notes that, in the Supplemental Motion, the Prosecution has identified what it considers to be relevant portions of the transcripts and statements for the witnesses it seeks to have admitted pursuant to Rule 92 *ter*.²⁹ The Trial Chamber has undertaken its own review of the evidence submitted and finds that, for most witnesses, the portions identified by the Prosecution are indeed relevant. The Trial Chamber does consider that, for some witnesses, the Prosecution's indications are too inclusive and not related with the evidence of the witness. The Trial Chamber sets out below the portions that it does not view as relevant or probative to issues in the case:

(i) ST155 – *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, 14 April 2005, T. 12057-12086 and 19 April 2005, T. 12287-12315;³⁰ and

(ii) ST198 - *Prosecutor v. Brđanin*, Case No. IT-99-36, 13 February 2002, T. 1661-1669 and T. 1694-1700.

13. With the exception of the portions identified above, the Trial Chamber is satisfied that the transcripts and statements are relevant and probative to the issues in the present case and will, therefore, admit them and call the witnesses for cross-examination pursuant to Rule 92 *ter*.

14. The Prosecution tenders into evidence several documents that accompany the transcripts and statements of the witnesses. It submits that “without these exhibits [the witnesses’] prior testimony cannot be fully evaluated for relevance and probative value”.³¹ The Trial Chamber recalls that any material that a party seeks to have admitted into evidence must appear on its exhibit list.³² However, the Prosecution submits in its Combined Motions that of the accompanying documents, some were

²⁷ Joint Defence motion of Mićo Stanišić & Stojan Župljanin requesting the Trial Chamber to preclude Prosecution's new witnesses and new exhibits, with confidential annexes A and B, 22 Jun 2009, confidential annex A. The relevant witnesses are ST173, ST174, ST180, ST183, ST184, ST187, ST189, ST190, ST191 and ST198.

²⁸ Decision on joint defence motion requesting preclusion of prosecution's new witnesses and exhibits, 31 August 2009.

²⁹ *Supra*, para. 17.

³⁰ The Trial Chamber notes that the transcript provided for Vehid Hodžić (ST155) is that of 18 April 2005, although the Prosecution lists the transcript in its tabular index as that of 19 April 2005.

³¹ Rule 92 *ter* Reply, para. 9; Supplemental Motion, para. 22.

³² Guidelines, para. 6; Decision on ST012 and ST019, para. 33.

included on its exhibit list, while those that are not “sufficiently significant to the Prosecution’s case as to require them to be independently admitted into evidence” were not.³³

15. The Trial Chamber, in its review of the accompanying documents, finds that most of them do indeed form an inextricable and indispensable part of the evidence they accompany, save the following:

(i) ST173 – Information, Issue 1 by the SDS Information and Promotion Centre, including decision No. 03-487/92, 09.06.92, concerning termination of employment and No. 03-597/92, 29.06.92; Large map of Prijedor with highlighted area of Milin Birt; Cover letter by Paul Grady dated 1 July 2002 and a legible photocopy of Nedeljko Rašula's diary; Excerpts from V000-3252 Aerial footage recorded on 22 July 2001 of crime scene locations in Prijedor, Sanski Most, Ključ and Kotor Varoš; Drawing of Manjača Camp and annotated by witness indicating where he stayed in Manjača camp; Resettlement from the territory and unauthorised departure from units; Sanski Most Crisis Staff Decision ordering Judge Stanić to carry out preparations for establishment of a war time court; Colour Photographs; Map depicting the operational activities of the 6th Serbian Sanski Most Infantry Brigade; Law on Administrative Procedure - Declaring Missing Persons Dead and Proof of Death; Birth certificate Smajlović; Ruling to register Muhamed Smajlović in register of deaths; Investigation report and photos (BW only) following discovery of a charred body in village of Hrustova, by investigating judge Milena Zorić; Hand-written list of Manjača internees; Letter from Public Security Station concerning a list of persons from Sanski Most area located in Manjača; Receipt from Public Security Station for the copy of the list of persons; List of imprisoned persons in military operations on the territory of the Serbian Municipality of Sanski Most; List of 246 Manjača prisoners, with name, year of birth and place of residence; Record on the investigation and exhumation of bodies of Bosniaks from mass graves by the bridge in Vrhpolje, Sanski Most Municipality; Collection of 29 autopsy reports for unidentified individual; Series of 4 plans of the Vrhpolje Bridge massacre site in Sanski Most; Report about crime scenes, exhumations and autopsies of bodies of civilians from mass graves in Hrustovo, Vrhpolje and Kljevci; Report about crime scenes, exhumations and autopsies of bodies of civilians from mass graves in Hrustovo, Vrhpolje I

³³ Rule 92 *ter* Reply, para. 10; Supplemental Motion, para. 22. The Trial Chamber notes that at the time of making the Rule 92 *bis* Motion and Rule 92 *ter* Motion, the Prosecution’s Rule 65 *ter* exhibit list pertained solely to the case against Mićo Stanišić. On 21 May 2008, the Prosecution sought leave to amend its Rule 65 *ter* exhibit list. In its order of 8 May 2009, the Trial Chamber directed the Prosecution to file a consolidated exhibit list reflecting its case against both Mićo Stanišić and Stojan Župljanin and declared moot the Prosecution’s motion to amend its Rule 65 *ter* exhibit list. *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution motion seeking leave to amend its Rule 65 *ter* exhibit list, with confidential annexes, 21 May 2008; Scheduling Order for submission of pre-trial briefs and other materials pursuant to Rule 65 *ter*, 8 May 2009.

and Kljevc; Report by Federal Ministry of Interior Affairs in Sarajevo, regarding exhumations in Hrustovo and Vrhpolje villages; 5th Corps Command report No. 44-1/114 to 2nd Military District Command; 5th Corps Command regular operations report No. 84-82 to 2nd Military District Command; Regular Combat Report no. 44-1/150 issued to Republika Sprska BH Army Main Staff; Order issued by Cmdr of civil protection HQ to sanitise the terrain in the area of Mahala etc. No. 80-3/92; Regular Combat Report no. 44-1/151; Minutes from the 5th session of the Sanski Most municipal assembly executive committee; Order of the War HQ of Sanski Most municipality on confiscation of looted property; Agenda for the 7th Session of the Executive Committee of the Sanski Most Municipal assembly; Minutes of and decisions taken during 8th session of the Executive Committee of the Municipal Assembly Sanski Most; Invitation to a meeting of the Sanski Most branch of the Serbian Democratic party which be held on 16 August 1992; Report concerning activities of civil protection HQ, Sanski Most municipality, during the period 15 July to 15 October 1992 (Part I); Military Police Company Report on events in Šehovici; War Bulletin - 6th Krajina Brigade (Ratni Bilten), Issue no. 3, 15 December 1992; Hand-written log book entitled "Data on Completed Services" containing information on burials between 28 May 1992 and 27 December 1993; Document concerning resettlement from the territory and unauthorised departure from units; and Conclusion reached by Municipal Assembly Sanski Most at a meeting held on 26 February 1993 concerning the exhumation of remains in the town cemetery.

(ii) ST180 – Chart entitled “Key to names witness B-1775 will be referring to during his testimony in IT-02-54-T”;

(iii) ST183 – Colonel Osman SELAK’s notes from 1 June 1992 meeting with General TALIĆ; and

(iv) ST189 – List of Guardian Newspaper articles on Bosnia by witness published between 1992 and 1995.

16. In keeping with the jurisprudence of the Tribunal,³⁴ the Trial Chamber will, when admitting into evidence the prior transcripts and written statements of a witness pursuant to Rule 92 *ter*, also

³⁴ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on confidential Prosecution motion for the admission of prior testimony with associated exhibits and written statements of witnesses pursuant to Rule 92 *ter*, 9 Jul 2008, para. 15; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution’s Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 Jan 2004, p. 3; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *bis*, 22 Feb 2007, para. 23; *Prosecutor v. Dordević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 *ter*, 10 Feb 2009, para. 5.

admit all the accompanying documents, save those identified hereinabove, for the reason that it views this evidence as an integral whole.

IV. DISPOSITION

17. For the foregoing reasons, and pursuant to Rules 54, 89, 92 *ter* and 126 *bis* of the Rules, the Trial Chamber:

GRANTS leave to the Prosecution to reply to the Stanišić Response;

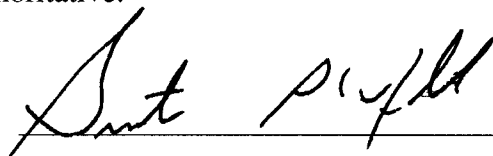
GRANTS the Combined Motions **IN PART**;

ACCEPTS that witnesses ST013, ST014, ST015, ST023, ST028, ST034, ST043, ST054, ST058, ST063, ST073, ST081, ST108, ST110, ST111, ST113, ST137, ST144, ST147, ST151, ST152, ST155, ST156, ST173, ST174, ST180, ST183, ST184, ST187, ST189, ST190, ST191 and ST198 be called to testify in accordance the provisions of Rule 92 *ter*;

ACCEPTS onto the Prosecution's Rule 65 *ter* exhibit list, the prior evidence of these witnesses, save the portions identified in paragraph 12 of this decision, along with the accompanying documents, other than those identified in paragraph 15 of this decision; and

REMAINS SEISED of the Amended Notice and Supplemental Motion.

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



Judge Burton Hall
Presiding

Dated this second day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]