



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-T  
Date: 30 November 2009  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision of:** 30 November 2009

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION MOTION FOR ADMISSION OF  
TESTIMONY OF SIXTEEN WITNESSES AND ASSOCIATED EXHIBITS  
PURSUANT TO RULE 92 QUATER**

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**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

**Appointed Counsel**

Mr. Richard Harvey

**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 “Prosecution’s Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *quater*”, filed on 29 May 2009 (“Motion”), and hereby issues its decision thereon.

### I. Background and Submissions

1. The Office of the Prosecutor (“Prosecution”) seeks the admission of oral and written evidence, and associated exhibits, of 15 witnesses, pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), which provides for the admission of evidence from “unavailable persons”.<sup>1</sup> It submits that all these witness are unavailable; 14 are unavailable because they are deceased, and one (KDZ235, Đula Leka) is unable to testify for medical reasons.<sup>2</sup> The Prosecution generally argues that the evidence of the 15 witnesses, in the form of written statements, transcripts from prior cases, and associated exhibits, meets the requirements for admission under Rule 92 *quater*, and that it is relevant, probative, and reliable.<sup>3</sup>

2. Having received an extension of time to respond to the Motion,<sup>4</sup> the Accused filed his “Response to Prosecution 92 *Quater* Motion: Sixteen Witnesses” on 10 July 2009 (“Response”). In opposing the Motion, the Accused raises five main arguments: (i) Rule 92 *quater* violates his rights under Article 21(4)(e) of the Statute “to examine, or have examined, the witnesses against him”; (ii) in the circumstances of this case, the cumulative effect of the Prosecution’s motions for judicial notice of adjudicated facts and motions for the admission of evidence pursuant to Rules 92 *bis* and *quater* is to shift the burden of proof from the Prosecution to the Accused, in violation of his right to a fair trial; (iii) the unavailability requirement of Rule 92 *quater* is not satisfied in relation to Đula Leka; (iv) the evidence of some of the witnesses relates to the acts and conduct of the Accused and to critical issues of the Prosecution’s case; and (v) many statements of the witnesses are unreliable because they have never been subject to cross-examination.<sup>5</sup> The Accused further submits that, should the Chamber decide that the evidence generally fulfils the requirements for

<sup>1</sup> In the Motion the Prosecution seeks the admission of testimony from 16 witnesses, but it subsequently withdrew its request in relation to KDZ355, and this decision therefore only addresses the admission of evidence from the remaining 15 witnesses. See Prosecution Submission Concerning Witnesses KDZ235 and KDZ355, with Confidential Appendices A and B, 26 June 2009, para. 3.

<sup>2</sup> Motion, para. 6.

<sup>3</sup> Motion, para. 2.

<sup>4</sup> Order following upon Rule 65 *ter* meeting and Decision on Motions for Extension of Time, 18 June 2009.

<sup>5</sup> Response, paras. 1–9.

admission under Rule 92 *quater*, it should rule on the admission of individual elements of it separately.<sup>6</sup>

3. Upon obtaining leave from the Chamber, the Prosecution filed its “Reply to the ‘Response to Prosecution 92 *Quater* Motion: Sixteen Witnesses’” on 17 July 2009 (“Reply”), addressing the Accused’s arguments concerning the admissibility of the witnesses’ evidence. It contends that Rule 92 *quater* evidence which has not been the subject of cross-examination and goes to the acts and conduct of the Accused, or is pivotal to the Prosecution’s case, can be used to establish a conviction if it is corroborated by other evidence, and it addresses some of the specific challenges to certain witnesses raised by the Accused.<sup>7</sup>

## II. Discussion

4. The Chamber has set out the applicable law in its “Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*”, issued on 20 August 2009 (“KDZ198 Decision”), and does not repeat it in detail here. In addition, in the KDZ198 Decision, the Chamber dismissed the first two of the Accused’s arguments against the admission of evidence pursuant to Rule 92 *quater*. It will not discuss these two arguments again in this Decision, including when deciding on the admission of specific evidence.

5. With regard to the unavailability of Đula Leka, the Chamber has considered the confidential medical documentation appended to the “Prosecution Submission Concerning Witnesses KDZ235 and KDZ355”, filed on 26 June 2009. The Chamber is satisfied that Đula Leka is bed-ridden and unable to communicate, and thus she should be considered to be “unavailable” for the purposes of Rule 92 *quater*. With regard to the remaining 14 witnesses, the Chamber is satisfied on the basis of the death certificates provided by the Prosecution that they are indeed deceased and are, therefore, “unavailable”. When addressing below each of the witnesses who are the subject of the Motion, the Chamber will not repeat this finding.

6. The Chamber has previously noted that evidence going to the acts and conduct of the accused is not barred from admission under Rule 92 *quater*, although this may be a factor against admitting that evidence, or parts thereof.<sup>8</sup> Similarly, proposed Rule 92 *quater* evidence is not necessarily excluded on the basis that it goes to critical issues of the Prosecution’s case. The admission of evidence under Rule 92 *quater* remains subject to the general requirements for the

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<sup>6</sup> Response, para. 10.

<sup>7</sup> Reply, paras. 1–2.

<sup>8</sup> KDZ198 Decision, para. 4.

admission of evidence contained in Rule 89, which provides, in sub-paragraph (D), that evidence may be excluded if its probative value is substantially outweighed by the need to ensure a fair trial.<sup>9</sup> It is, therefore, for the Trial Chamber to assess, on a case by case basis, whether the probative value of proposed Rule 92 *quater* evidence is substantially outweighed by the need to ensure a fair trial and, if so, it will decline to admit such evidence.

7. The Accused argues that ten of the witnesses whose evidence the Prosecution seeks to have admitted under Rule 92 *quater* in the present Motion have never been subject to cross-examination and the Chamber should consequently decline to admit their evidence. Referring to a decision in the *Šešelj* case, in which the Trial Chamber noted that it could not base a conviction on the evidence of witnesses who have not been subject to examination by both parties,<sup>10</sup> the Accused suggests that the admission of “a large bundle of evidence that has *never* been under scrutiny of any Bench” would dilute his right to a fair trial.<sup>11</sup> In its Reply, the Prosecution counters that the Appeals Chamber has found that evidence which has not been cross-examined and goes to the acts and conduct of the accused, or is pivotal to the Prosecution case, will require corroboration if used to establish a conviction.<sup>12</sup>

8. The Chamber is unconvinced by the Accused’s general assertion that evidence that has never been subject to cross-examination cannot be admitted under Rule 92 *quater*. This argument fails to differentiate between the admission of evidence and the usage of that evidence to establish a conviction. It is well-established that evidence in a case admitted pursuant to Rule 92 *quater*, and consequently not subject to cross-examination in that particular case, cannot form the basis of the conviction of an accused without corroboration.<sup>13</sup> However, even if certain evidence cannot, by itself, form the basis of a conviction, it can still be admitted into evidence under Rule 92 *quater* if it fulfils the requirements of that Rule. Whether the evidence has been tested on cross-examination in prior proceedings is a matter to be taken into account by the Chamber when assessing the reliability of that evidence, and may also be taken into account in determining the appropriate weight to be attributed to it.

<sup>9</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber’s Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 14.

<sup>10</sup> *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Decision on Prosecution’s Motion to Add one Exhibit to its Rule 65 *ter* list and for Admission of Evidence of Witness Matija Bošković pursuant to Rule 92 *quater*, 9 March 2009, para. 19.

<sup>11</sup> Response, para. 7.

<sup>12</sup> Reply, para. 2, referring to *Prosecutor v. Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber’s Decision on the Evidence of Milan Babić, 14 September 2006, para. 20.

<sup>13</sup> See e.g. *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 June 2002, fn. 34; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 5 March 2007, para. 11.

9. The Chamber now discusses each of the witnesses subject of the Motion in turn.

#### KDZ044

10. KDZ044 has been granted protective measures and his identity cannot therefore be revealed to the public. His evidence pertains to his detention, and that of others, in Sušica and Batković camps in Vlasenica municipality, and the mistreatment that took place there.

11. The Accused submits that even though KDZ044 testified twice before the Tribunal, he has never been subject to cross-examination. He also argues that some of KDZ044's evidence relates to the acts and conduct of the Accused, and about critical issues of the Prosecution case. On this basis, in addition to his general arguments concerning the application of Rule 92 *quater*, he argues that KDZ044's evidence should not be admitted.

12. As noted above, the absence of prior cross-examination is not a bar to the admission of evidence under Rule 92 *quater*. In both cases, KDZ044 testified under oath, on one occasion being questioned by the Prosecution and the Chamber, and on the other the defence waived its right to cross-examine him. The Chamber is satisfied as to the reliability of his evidence, for the purposes of its admission under Rule 92 *quater*, and the fact that KDZ044 has not been previously cross-examined is a matter to be taken into account by the Chamber when deciding on the weight to be ascribed to that evidence.

13. The Chamber notes that KDZ044 gave no evidence connecting the Accused to events at Sušica and Batković camps. The Chamber considers that the single reference to the Accused during his testimony appears to be part of an expression of opinion by the witness, and is not of a nature that renders this part of his evidence inadmissible under Rule 92 *quater*. Rather, the Chamber will ascribe appropriate weight to it in the context of the evidence as a whole.

14. The Prosecution contends that KDZ044's evidence is corroborated by other witnesses and exhibits. The Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of that of KDZ044. However, at least one of the individuals mentioned during the course of his evidence is among the witnesses anticipated to be called by the Prosecution, who will give evidence pertaining to many of the same events described by KDZ044.

15. KDZ044's testimony largely goes to the "crime-base" of the Prosecution's case, specifically in relation to Vlasenica municipality. It is, as a whole, undoubtedly relevant to the Prosecution's case against the Accused.

16. It follows that the general requirements of relevance, set out in Rule 89 of the Rules, is satisfied in relation to KDZ044's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of KDZ044's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit that evidence, under seal, pursuant to Rule 92 *quater*, and will order the Prosecution to prepare public redacted versions of the same.

17. The Prosecution lists as exhibits associated with KDZ044's evidence the documents with Rule 65 *ter* numbers 13320, 13321, and 13322, which are two witness statements given by him and an unsigned supplemental information sheet. However, none of these documents were admitted during the course of his testimony in prior Tribunal proceedings. The Chamber does not, therefore, consider them as "associated exhibits", as they clearly do not form an "inseparable and indispensable part" of his testimony. Nonetheless, the Chamber considers that they may be admitted under Rule 92 *quater* as forming part of his overall evidence, provided that they satisfy the requirements of that Rule and Rule 89.

18. The Chamber notes that documents 13320 and 13221 are formal witness statements taken with the assistance of a Tribunal interpreter and signed by KDZ044, and contain an acknowledgement of the truth of their contents. Much of the evidence contained in these statements is the same as that given by KDZ044 during his oral testimony. The Chamber is satisfied that they are reliable, and the absence of cross-examination of the witness on them will be taken into account in attributing the weight to be given to them. The general requirements of relevance and probative value are also satisfied in relation to these documents and their probative value is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit these two statements, under seal, pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry, and will order the Prosecution to prepare public redacted versions of the same.

19. Document 13322, however, is unsigned by the witness, and is a record of information given by him during an interview conducted by the Prosecution immediately prior to his testimony. The Chamber does not consider such a document to be sufficiently reliable for admission under Rule 92 *quater* and its admission will therefore be denied.

**KDZ218 (Ljubo Bojanović)**

20. Ljubo Bojanović served as an officer in the Army of the Republika Srpska (“VRS”) Zvornik Brigade from 1992 through to and beyond the events in Srebrenica in 1995 that are subject of the Indictment. He testified as a witness for the defence in the *Blagojević and Jokić* case, giving evidence concerning the structure and functioning of the Zvornik Brigade during the time he served as an officer, his recollection of events in and around Srebrenica in July 1995, and various orders and combat reports relevant to the Zvornik Brigade at that time.

21. The only specific argument against the admission of Bojanović’s evidence under Rule 92 *quater* made by the Accused is that it relates to a “critical issue” in the Prosecution’s case, namely events at Srebrenica, and the organisation of elements of the VRS. The Chamber does not consider this to be a factor militating against the admission of this evidence, but reiterates that it cannot base a conviction on the uncorroborated evidence of a deceased witness. The Prosecution contends that Bojanović’s evidence is corroborated by other witnesses and exhibits, and the Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Bojanović’s evidence. The Chamber notes that Bojanović’s testimony was given under oath and was subject to cross-examination by the Prosecution and the Defence for the co-accused in the *Blagojević and Jokić* case. The Chamber further notes that his evidence was admitted pursuant to Rule 92 *quater* in the *Popović* case.<sup>14</sup>

22. The Chamber is satisfied that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Ljubo Bojanović’s evidence, which it finds to be reliable. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, the Chamber finds that the probative value of his evidence is not substantially outweighed by the need to ensure a fair trial. The Chamber will therefore admit that evidence pursuant to Rule 92 *quater*. The Chamber also notes that portions of the transcript contain evidence heard in private session to protect the identity of another witness subject to protective measures.<sup>15</sup> Accordingly, these portions of Bojanović’s testimony are admitted into evidence under seal.

23. With regard to the exhibits associated with Bojanović’s evidence, the Chamber notes that the document with Rule 65 *ter* number 13250 is an extract from the Army of the Federal Republic of Yugoslavia’s manual for the operations of staffs and commands. It was admitted in the

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<sup>14</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 92 *quater*, 21 April 2008.

<sup>15</sup> T. 11728 line 18 to T. 11731 line 21; T. 11733 line 6 to line 19; and T. 11750 line 9 to T. 11751.

*Blagojević and Jokić* case, through expert witness Richard Butler, as exhibit P394, and was shown to Bojanović to facilitate his description of the duties of a duty operations officer, as well as to indicate whether at any time duty operations officers could have been in command of subordinate units, staff units, or battalions. The document with Rule 65 *ter* number 13248 is a Zvornik Brigade combat report dated 14 July 1995, admitted in the *Blagojević and Jokić* case, through Ljubo Bojanović, as exhibit P519. The document with Rule 65 *ter* number 02185 is an interim combat report from the Zvornik Brigade, dated 14 July 1995, which was admitted in *Blagojević and Jokić*, through expert witness Richard Butler, as exhibit P520. The document with Rule 65 *ter* number 13245 is an interim combat report dated 15 July 1995, handwritten by Ljubo Bojanović and admitted in *Blagojević and Jokić*, through expert witness Richard Butler, as exhibit P528. The Chamber is satisfied that these documents form an inseparable and indispensable part of Bojanović's testimony, that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry.

24. The documents with Rule 65 *ter* numbers 13246 and 13247 are excerpts from the notebook of the duty operations officers of the Zvornik Brigade dated 13 to 20 July 1995. Only the English translation of these excerpts has been provided to the Chamber, and both documents are the identical 46 pages of the notebook, in the English version. These pages were admitted in the *Blagojević and Jokić* case as exhibits P133 and P507. Bojanović was shown several of these pages during his testimony and answered questions about them. With regard to an entry from 15 July 1995, Bojanović stated that he did not see his handwriting in the document. With regard to an entry from 16 July 1995, the witness was shown a page (ERN number 03089366 in the English version) which mentions his name, and discussed his actions on that day in relation thereto. With regard to an entry from 18 July 1995, the witness was also shown a page (ERN number 03089372 in the English version) containing his name, and discussed the meaning of this entry. The Chamber is only satisfied that these two particular pages form an inseparable and indispensable part of Ljubo Bojanović's testimony, that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. The Prosecution should therefore provide the Registry with these two pages as new documents, as well as the BCS original versions, which will be admitted into evidence in this case, with exhibit numbers to be assigned by the Registry.

25. The Chamber notes that during his testimony in the *Blagojević and Jokić* case, Bojanović was also shown an excerpt from the notebook of the duty operations officers of the Zvornik Brigade, dated 23 July 1995, which seems to have formed part of exhibit P133. However, this part



of the notebook is not contained in the English translation of the notebook which has been given the Rule 65 *ter* numbers 13246 and 13247 in this case, and cannot therefore be admitted into evidence at this time.

26. The document with Rule 65 *ter* number 31050A is a one-page record of an intercepted conversation, which was admitted in *Blagojević and Jokić*, through Bojanović, as exhibit P232. The Chamber is satisfied that it forms an inseparable and indispensable part of Bojanović's testimony, that it meets the requirements of relevance and probative value, and its probative value is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

27. The document with Rule 65 *ter* number 13249 was admitted in the *Blagojević and Jokić* case as exhibit P134. This document has only been provided to the Chamber, through the e-court system, in the BCS version, which is 199 pages long. It will therefore not be admitted into evidence at the present time.

28. The Prosecution states that the document with Rule 65 *ter* number 13244 was admitted in the *Blagojević and Jokić* case as exhibit P871. Indeed, P871 was used to question Bojanović during his testimony. However, there is no document available to the Chamber through the e-court system with the Rule 65 *ter* number 13244, and this document will therefore not be admitted into evidence at this time.

29. The English translation of the document with Rule 65 *ter* number 02085 is an extract from the Bratunac Brigade military police daily log, dated 1 to 21 July 1995. The BCS version of this document is 236 pages long, and covers a much longer period of time. The document was admitted in the *Blagojević and Jokić* case as exhibit P872, but the part used with Bojanović in that case was an entry dated 23 July 1995, which does not form part of the English translation of the document available to the Chamber through the e-court system as Rule 65 *ter* number 02085. Given that none of the entries from 1 to 21 July 1995, which are translated into English, were discussed with Bojanović, this document will not be admitted into evidence at this time.

#### **KDZ235 (Đula Leka)**

30. Đula Leka was a resident of Sarajevo who was injured in a shelling incident which took place on 28 August 1995, near Markale market. She gave a witness statement to the Bosnian authorities shortly after the incident, and a further statement to the Prosecution in February 1996, describing what happened to her on that date.

31. The Accused argues that Đula Leka has never been subject to examination or cross-examination and that the Chamber should take this into account when deciding on the admissibility and/or the weight of her evidence. As noted above, however, this is not a bar to the admission of her evidence under Rule 92 *quater*. The Accused also points out that Leka's evidence was previously admitted pursuant to Rule 92 *quater* in the *Dragomir Milošević* case in redacted form. The Chamber notes, however, that her 1996 statement was originally admitted in the *Dragomir Milošević* case under Rule 92 *bis* of the Rules, the Trial Chamber in that case finding that it satisfied the requirements of that Rule if the last paragraph of the statement were to be redacted, and subject to the formal requirements of Rule 92 *bis*(B) being completed.<sup>16</sup> In light of Leka's medical condition, the Prosecution then sought to have her evidence, in its redacted form, admitted pursuant to Rule 92 *quater*.<sup>17</sup> Thus the reason for the redaction of her statement concerned the requirements of Rule 92 *bis*, rather than Rule 92 *quater*. This Trial Chamber does not consider it necessary to redact the last paragraph of the statement, in which Leka expresses a personal opinion about the civilian nature of Sarajevo city centre in 1995, for the purposes of admission of that statement, but rather will ascribe appropriate weight to this portion of her evidence at the relevant time.

32. The Prosecution contends that Leka's evidence is corroborated by other witnesses and exhibits, which is not disputed by the Accused. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Leka's evidence. The Chamber is, nonetheless, satisfied that Leka's 1996 statement is reliable, having been taken with the assistance of a Tribunal interpreter and signed by Leka, with an acknowledgement of the truth of its contents. The absence of cross-examination of the witness on this statement will be taken into account in attributing the weight to be given to it. The general requirements of relevance and probative value are also satisfied in relation to this statement and its probative value is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit Leka's 1996 statement (Rule 65 *ter* number 09989) pursuant to Rule 92 *quater*, with an exhibit number to be assigned by the Registry.

33. Having admitted Leka's 1996 statement, the only document associated with it, of which the Prosecution seeks admission, is her 1995 statement to the Bosnian authorities (Rule 65 *ter* number 13263). The Chamber is satisfied that this earlier statement forms an inseparable and indispensable

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<sup>16</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution Motion for Admission of Witness Statements Pursuant to Rule 92 *bis*, 3 April 2007.

<sup>17</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Confidential Prosecution's Motion for Admission of Witness Statement Pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence, with Confidential Annexes A and B, 2 May 2007.

part of Leka's evidence, as it is discussed in her 1996 statement to the Tribunal and her confirmation that its content is subject to two corrections. It meets the requirements of relevance and probative value, and its probative value is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

### **KDZ300 (Ismet Poljak)**

34. Ismet Poljak was a senior police official in Kalinovik up until mid-1992, when he was dismissed from his post. His written witness statement, dated 25 January 1999 (Rule 65 *ter* number 13242), describes the situation in the municipality in 1991 and into 1992, how he was removed from his position and replaced, how he then fled the area, and various incidents that occurred in the municipality in 1992, which were reported to him. He also names several SDS (Serbian Democratic Party) officials, and describes the relationships between them.

35. The Accused argues that Poljak's evidence should not be admitted under Rule 92 *quater* because he has never been subject to cross-examination, and because he mentions the relationship between the Accused and Ratko Mladić. As noted above, the absence of prior cross-examination is not a bar to the admission of evidence under Rule 92 *quater* but is to be taken into account when assessing reliability and deciding on the weight to be given to that evidence. The Chamber considers that parts of Poljak's statement give the witness's personal opinion on relationships between local SDS officials and officials higher up in the Bosnian Serb leadership, as well as relationships between the Accused and other Bosnian Serb leaders. He states that he knew Ratko Mladić, whose family lived in Kalinovik, and that he had personal knowledge of "the friendships between Radovan Karadžić and Ratko Mladić and other senior SDS members and [Boško] Govedarica." He does not give any further details about how he had such knowledge. However, this evidence clearly does not constitute evidence of the acts and conduct of the Accused, as charged in the Indictment, and even if it were considered to be such, this is not a bar to its admission under Rule 92 *quater*. Rather, the Chamber will assess the appropriate weight to be given to these claims by the witness in light of the evidence as a whole, bearing in mind that it cannot base a conviction on the uncorroborated evidence of a deceased witness.

36. The Prosecution contends that Poljak's evidence is corroborated by other witnesses and exhibits. The Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of that of Poljak.

37. Poljak's statement was recorded with the assistance of a Tribunal interpreter and signed by Poljak, with an acknowledgement of the truth of its contents. The Chamber is satisfied as to its reliability and that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are met in relation to this evidence. The Chamber also finds that the probative value of Poljak's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit that evidence pursuant to Rule 92 *quater*, with an exhibit number to be assigned by the Registry.

### KDZ335 (Huso Palo)

38. Huso Palo was a tram driver in Sarajevo in 1994. He gave a written statement to the Prosecution in 1996 (Rule 65 *ter* number 09988), concerning an incident that occurred on 23 November 1994, when the tram he was driving was struck by sniper fire. Attached to this statement is another statement, taken by the Bosnian authorities the day after the incident. These two statements were admitted into evidence in the *Dragomir Milošević* case, and he was cross-examined by the defence in relation to them.

39. The Accused argues that Palo's evidence goes to critical issues of the Prosecution's case, concerning the direction of sniper-fire in the incident on 23 November 1994. He submits that, should this evidence be admitted in the present case, it should only be in a redacted form, relying upon a decision of the Trial Chamber in the *Dragomir Milošević* case concerning another witness, whose evidence was redacted prior to being admitted pursuant to Rule 92 *quater* on the basis that it concerned a critical issue of the Prosecution's case, namely the direction of sniper fire in another sniping incident.<sup>18</sup> This Trial Chamber, however, is not bound to follow the decision taken by the *Dragomir Milošević* Chamber, which was, in any event, taken in the context of a different witness who was a police investigator with ballistics expertise, rather than an eyewitness, and in relation to a different accused and set of charges. The Chamber does not consider it necessary to redact Palo's evidence on this issue, particularly in light of his cross-examination in relation to it during his testimony in *Dragomir Milošević*. It further notes that Palo's evidence was admitted pursuant to Rule 92 *quater*, unredacted, in the *Perišić* case.<sup>19</sup>

40. The Prosecution contends that Palo's evidence is corroborated by other witnesses and exhibits. The Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of that of Palo.

<sup>18</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT98-29/1-T, Decision on Prosecution's Motion for Admission of Witness Statements pursuant to Rule 92 *quater*, 19 April 2007, para. 16.

<sup>19</sup> *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Prosecution's Motion for Admission of Evidence pursuant to Rule 92 *quater*, 23 April 2009.

However, his Tribunal witness statement was recorded with the assistance of a Tribunal interpreter and signed by Palo, with an acknowledgement of the truth of its contents, and his oral testimony was given under oath. In the statement given to the Tribunal he confirmed the contents of his earlier statement to the Bosnian authorities, which he had also signed.

41. The Chamber is therefore satisfied that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Huso Palo's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Palo's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit that evidence, in the form of his written witness statement dated 24 February 1996, his written statement dated 24 November 1994, and his oral testimony in the *Dragomir Milošević* case, pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry.

#### **KDZ353 (Faik Bišćević)**

42. Faik Bišćević was a resident of Sanski Most municipality, and had been a local SDA (Party of Democratic Action) leader in 1991 and early 1992. He testified in 2002 in the *Brđanin* case, and in 2004 in the *Krajišnik* case, concerning events in the municipality in 1991 and 1992, and in particular the takeover of the municipality and of Sanski Most town, and his subsequent detention for several months in the Sanski Most prison and thereafter in Manjača camp.

43. The Accused argues that Bišćević's evidence should not be admitted under Rule 92 *quater*, as it is highly prejudicial, relating to the acts and conduct of the Accused and to critical issues of the Prosecution's case, such as "the arming of Serbs in Sanski Most, Serb efforts to ethnically cleanse Sanski Most, the conditions in Serb detentions centre [*sic*] and the physical perpetration of crimes." The Chamber notes, however, that the only reference to the Accused during Bišćević's testimony was a brief discussion of a meeting held to establish the SDS in Sanski Most municipality in 1991, and a photograph of various SDS members who participated in that meeting, including the Accused. There is no doubt that Bišćević's evidence, being largely crime-base evidence, covers many issues that are critical to the Prosecution's case concerning events in Sanski Most municipality, but the Chamber does not consider this to be a reason for denying its admission under Rule 92 *quater*. Once again, the Chamber notes that it cannot base a conviction on the uncorroborated evidence of a deceased witness.

44. The Prosecution contends that Bišćević's evidence is corroborated by other witnesses and exhibits and the Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Bišćević's evidence. The evidence, as a whole, is undoubtedly relevant to the Prosecution's case against the Accused, and was given under oath and subject to cross-examination by defence counsel in both the *Brđanin* and *Krajišnik* cases. There is, indeed, a significant amount of repetition of his testimony on direct-examination in *Brđanin* during this direct-examination in *Krajišnik*.

45. It follows that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Faik Bišćević's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, the Chamber finds that its probative value is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit that evidence, namely the transcripts of his testimony in *Brđanin* and *Krajišnik*, pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry.

46. With regard to the exhibits associated with Bišćević's evidence, the document with Rule 65 *ter* number 04784 is a photograph that the witness stated was taken during the foundation of the SDS in Sanski Most, showing, *inter alia*, the Accused and Momčilo Krajišnik. It was admitted as exhibit P115 in the *Krajišnik* case. The Chamber is satisfied that it forms an inseparable and indispensable part of Bišćević's testimony in *Krajišnik*, that it meets the requirements of relevance and probative value, and its probative value is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

47. The document with Rule 65 *ter* number 13165 is said to be a transcript of a tape recording of the 34<sup>th</sup> session of the National Assembly of Serb People in Bosnia and Herzegovina held between 29 September and 1 October 1993, which was admitted as exhibit P65, tab 221, in the *Krajišnik* case. However, there is no document available to the Chamber in the e-court system with this Rule 65 *ter* number. Moreover, in *Krajišnik* only a short extract from the transcript was read out to the witness by the Prosecution, and the witness confirmed that the words spoken were consistent with his observations in Sanski Most municipality. There is, therefore, no need for the Chamber to admit this document into evidence in the present case, as the part put to the witness was read out in full and can be found in the *Krajišnik* transcript.

48. The item with Rule 65 *ter* numbers 13164 and 13177 is said to be an audiotape of a statement made by Bišćević in 1992 and broadcast over the radio in Sanski Most. During his

testimony in both *Brđanin* and *Krajišnik*, the witness confirmed that it was his voice on the tape, and explained the circumstances in which the statement was made. The Chamber notes that neither the audiotape itself nor the transcript of its contents have been made available to it, and that there is no item with Rule 65 *ter* number 13177 in the e-court system. While the recorded statement is clearly a crucial part of Bišćević's testimony, the audiotape was played during his evidence in *Brđanin* and *Krajišnik*, and the content interpreted into English and recorded in the transcript. There is, therefore, no need for the Chamber to admit the tape itself into evidence in the present case.

49. The items with Rule 65 *ter* numbers 13151, 13162, 13163, 04841, and 04842 are all said to be photographs of parts of the interior of the prison in Sanski Most where Bišćević was detained for several months in 1992. Items 13162 and 13163 are not, however, available on the e-court system, although, from the description of these photographs provided by the Prosecution, 13162 appears to be a duplicate of 04842. Items 13151, 04841 and 04842 were all admitted in the *Brđanin* case during Bišćević's testimony and were used to question him concerning the conditions inside the prison. The Chamber is satisfied that these three items meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry. Items 13162 and 13163 will not be admitted.

50. The document with Rule 65 *ter* number 11317 is an official record of the identification of a body by Faik Bišćević. It was admitted as exhibit P277 in the *Krajišnik* case, through Bišćević, and he confirmed its contents. The Chamber is satisfied that it forms an inseparable and indispensable part of Bišćević's testimony, that it meets the requirements of relevance and probative value, and its probative value is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

51. The document with Rule 65 *ter* number 11769 is a record of the release of Nedim Bišćević, Faik Bišćević's son, from Manjača Camp in 1992. It was admitted as exhibit P278 in the *Krajišnik* case and as exhibit P832 in the *Brđanin* case, and discussed with the witness. The Chamber is satisfied that it forms an inseparable and indispensable part of Faik Bišćević's testimony, that it meets the requirements of relevance and probative value, and its probative value is not substantially outweighed by the need to ensure a fair trial. The document with Rule 65 *ter* number 11769 will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

52. The document with Rule 65 *ter* number 01582 is a one-page report from the police in Pale, dated 6 July 1992, regarding the transfer of Muslim and Croat citizens out of the municipality. During Bišćević's testimony in the *Krajišnik* case he was questioned about part of an exhibit (P209) which seems to have contained several pages, but the portion discussed with him does not appear in document 01582 in the e-court system. This document will, therefore, not be admitted into evidence in this case at the present time.

53. The documents with Rule 65 *ter* numbers 13161, 13160, 00906, 13158, and 13156, appear to have been admitted in the *Krajišnik* case, either through Bišćević or another witness, but they are not discussed during the parts of Bišćević's testimony tendered by the Prosecution for admission in the present case. They cannot, therefore, constitute an inseparable and indispensable part of the parts of his evidence admitted in this case, and will not be admitted.

54. The documents with Rule 65 *ter* numbers 13168 and 13176 are an April 1992 order and an April 1992 daily combat report from the VRS 5<sup>th</sup> Corps Command, which were shown to Bišćević during his cross-examination in the *Brđanin* case. The Chamber is satisfied these documents form an inseparable and indispensable part of his testimony, that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry.

#### **KDZ355**

55. KDZ355 was withdrawn from the Motion by the Prosecution on 26 June 2009.<sup>20</sup>

#### **KDZ413 (Thomas Knustad)**

56. Thomas Knustad was a United Nations Military Observer ("UNMO") stationed in the Sarajevo area in the second half of 1995, who testified in the *Dragomir Milošević* case primarily in relation to the shelling of Markale market on 28 August 1995.

57. The Accused argues that Knustad's evidence deals with critical issues of the Prosecution's case, as it relates not only to the occurrence of shelling and sniping incidents, but also to the direction of fire and types of weapons used. He therefore submits that, if the Chamber were to consider its admission under Rule 92 *quater*, it should only do so after redacting the "statement". There is no doubt that Knustad's evidence concerns issues that are critical to the Prosecution's case concerning events in Sarajevo, and particularly the shelling incident on 28 August 1995, which is

<sup>20</sup> Prosecution Submission Concerning Witnesses KDZ235 and KDZ355, 26 June 2009.



alleged in Schedule G, item 19, of the Indictment. The witness gave his personal observations concerning the origin of the shell that was fired, and also discussed the investigation carried out after the incident by other members of the UNMO team. The Chamber does not consider this to be a reason for denying admission of his evidence in its entirety under Rule 92 *quater*. Once again, the Chamber notes that it cannot base a conviction on the uncorroborated evidence of a deceased witness. The Prosecution contends that Knustad's evidence is corroborated by other witnesses and exhibits. The Accused has not disputed this contention. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Knustad.

58. Knustad's evidence, as a whole, is clearly relevant to the Prosecution's case against the Accused, and it was given under oath and subject to cross-examination by the defence in the *Dragomir Milošević* case. The Chamber considers that this evidence is reliable and that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to it. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, the Chamber finds that the probative value of Knustad's evidence is not substantially outweighed by the need to ensure a fair trial. The Chamber will therefore admit that evidence pursuant to Rule 92 *quater*.

59. The document with Rule 65 *ter* number 10415 is a handwritten UNMO patrol report dated 28 August 1995, which was admitted in the *Dragomir Milošević* case as exhibit P85. This document was used throughout Knustad's testimony, primarily to question him about the investigation of the Markale market shelling incident. The document with Rule 65 *ter* number 10208 is a colour map of the Sarajevo city area marked by Knustad during his testimony in *Dragomir Milošević* in relation to the Markale shelling incident. The document with Rule 65 *ter* number 10004 is Knustad's seven-page witness statement given to Tribunal investigators on 21 May 1996, which was shown to him during his cross-examination in the *Dragomir Milošević* case and admitted as exhibit D57. The document with Rule 65 *ter* number 09508 is a large format military map, in colour, with Sarajevo in the centre, which was admitted in *Dragomir Milošević* as D59. Knustad was shown this map during his testimony, and commented on what the red and blue lines marked on it signified. The document with Rule 65 *ter* number 10119 is a record of a telephone interview conducted by a Prosecution investigator with Knustad in 2003, concerning the 1995 Markale shelling incident, which was put to the witness during his cross-examination in the *Dragomir Milošević* case as exhibit D58. The Chamber is satisfied that all of these documents form an inseparable and indispensable part of Knustad's testimony, that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the

need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry.

60. The documents with Rule 65 *ter* number 09912 and 09838 are a UNPROFOR daily report on the situation in Sarajevo on 28 August 1995, and a UNMO report concerning the impact of the shelling of the Sarajevo TV building. Item 09912 was admitted in the *Dragomir Milošević* case as exhibit D10, whereas 09838 was marked for identification as D31. Both documents were shown to Knustad during his testimony, but he was unable to give any actual evidence in relation to them. For this reason, the Chamber is not satisfied that they form an inseparable and indispensable part of his testimony and they will not be admitted in this case at the present time.

61. The document with Rule 65 *ter* number 09917 is the 21-page UNPROFOR report of the investigation into the shelling incident in Sarajevo on 28 August 1995, one page of which (00401786) was shown to Knustad during his evidence in the *Dragomir Milošević* case, and he confirmed part of its contents. In light of the fact that Knustad only spoke to one small part of this report, the report in its entirety does not constitute an inseparable and indispensable part of his testimony. The relevant part of the page that was put to him was read into the transcript, and the Chamber does not, therefore, consider it necessary for that portion to be admitted into evidence. This document will therefore not be admitted in this case at the present time.

#### **KDZ416 (Zijad Okić)**

62. Zijad Okić's evidence comprises two written statements given to Prosecution investigators in 1997 and 2002, and a statement given to the Bosnian authorities in 1993. All of these statements are signed by the witness. They describe events in Hadžići municipality, primarily in 1991 and 1992, and particularly concern the takeover of the municipality in May 1992, and the subsequent detention and mistreatment of Okić, who states that he was used as a human shield on three occasions.

63. The Accused argues that Okić's evidence has never been subject to cross-examination, and it relates to critical issues of the Prosecution's case. As noted above, however, neither of these factors is a bar to the admission of the evidence under Rule 92 *quater*. The Chamber considers Okić's evidence to be reliable for the purposes of its admission, as the two statements given to the Prosecution investigators were recorded with the assistance of a Tribunal interpreter and signed by Okić, with an acknowledgement of the truth of their contents. In addition, in the 1997 statement he confirmed the contents of the signed statement he gave in 1993 to the Bosnian authorities and stated he had no corrections to make thereto. The Prosecution contends that Okić's evidence is

corroborated by other witnesses and exhibits, which the Accused does not dispute. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Okić. His evidence, as a whole, is undoubtedly relevant to the Prosecution's case against the Accused.

64. It follows that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Okić's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Okić's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit that evidence, in the form of his three written statements (Rule 65 *ter* numbers 09386, 09047, and 09336), pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry.

#### **KDZ421 (Alija Isaković)**

65. Alija Isaković was a Bosnian Muslim resident of Rogatica, who gave a statement to Prosecution investigators in 1999 concerning the takeover of Rogatica municipality in 1992 and his subsequent detention and maltreatment by Bosnian Serb forces. In this statement he also confirms the content of a written statement he gave to the Bosnian authorities in 1993, which describes the same events.

66. Once again, the Accused contends that the lack of cross-examination of Isaković, as well as the fact that his evidence relates to the acts and conduct of the Accused and to critical issues of the Prosecution's case, render it inadmissible under Rule 92 *quater*. The Chamber does not consider the lack of cross-examination to be a bar to admission, but will take it into account when attributing weight to Isaković's evidence. His evidence clearly relates to events in Rogatica that are central to the Prosecution's case concerning crimes allegedly committed in that municipality, but the one reference to the Accused is made in the context of relating something said to the witness by another person. The Chamber does not consider that the inclusion of this reference renders the statement, or that portion thereof, inappropriate for admission under Rule 92 *quater*, noting that the weight to be ascribed to this particular reference is a matter for the Chamber to determine in light of the evidence as a whole.

67. The Prosecution contends that Isaković's evidence is corroborated by other witnesses and exhibits, which is not disputed by the Accused. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Isaković.

68. The Chamber is satisfied that Isaković's evidence is relevant to the Prosecution's case against the Accused, and considers it to be sufficiently reliable for admission under Rule 92 *quater*, as his statement to the Prosecution investigators was recorded with the assistance of a Tribunal interpreter and signed by the witness, with an acknowledgement of the truth of its contents, and in that statement he confirmed the contents of his signed statement given to the Bosnian authorities in 1993. It follows that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Isaković's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Alija Isaković's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit both of his written statements (Rule 65 *ter* numbers 08093 and 07957) pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry.

#### **KDZ431 (Zlatko Međedović)**

69. Zlatko Međedović was a ballistics expert for the police in Sarajevo, whose written statements describe the nature of his expertise and training and the investigations that he and his colleagues carried out in Sarajevo from 1992 to 1995 in connection with a number of shelling and sniping incidents. He gave two witness statements to Tribunal investigators, one in 1995 and the other in 2000.

70. The Accused argues that Međedović has never been subject to cross-examination and that the Chamber should take this into account when deciding on the admissibility and/or the weight of the evidence. He also notes that in the *Dragomir Milošević* case Međedović's statement was redacted before it was admitted, to remove crucial information about the direction of fire, and argues that this Chamber should do the same. As noted above, the absence of prior cross-examination is not a bar to the admission of evidence under Rule 92 *quater*, but is a matter to be taken into consideration by the Chamber when assessing the reliability of that evidence and in deciding on the weight to be ascribed to it.

71. The Prosecution contends that Međedović's evidence is corroborated by other witnesses and exhibits, which is not disputed by the Accused. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Međedović.

72. The Chamber is satisfied that Međedović's two statements are relevant and reliable, as they were recorded with the assistance of a Tribunal interpreter and signed by the witness, with an

acknowledgement of the truth of their contents. As noted above, this Trial Chamber is not bound to follow the decision taken by the *Dragomir Milošević* Chamber to redact Međedović's statement before admitting it into evidence, which was taken in the context of a different accused and set of charges. The Chamber is satisfied that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to this evidence. Noting that it will attribute appropriate weight to the evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Međedović's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit his two statements pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry.

73. The documents with Rule 65 *ter* numbers 13298, 13300, 13301 are official reports or records of investigations, each referred to by Međedović in his 1995 statement. The Chamber is satisfied that these reports form an inseparable and indispensable part of his evidence, that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry. The Chamber notes, however, that the report with Rule 65 *ter* number 13301 appears in the e-court system only in English, which is listed as its original language, although it would seem that the original language of this report must be BCS. The Prosecution should therefore either provide the original BCS version of this document, or clarify whether the English is indeed the original version.

74. The Prosecution refers to pages 8 and 9 of a statement given by Borislav Stankov, which was referred to by Međedović in his 20 November 1995 witness statement. However this document does not appear to have a Rule 65 *ter* number in this case, nor has it been provided to the Chamber, and it will not, therefore, be admitted into evidence at this time. The Prosecution also refers to a document with Rule 65 *ter* number 10440, which is a report of a shelling incident on 8 November 1994. However, Međedović does not mention this report in either of his two witness statements, and it cannot, therefore, be considered to form an inseparable and indispensable part of his evidence. It will not, therefore, be admitted into evidence in the present case at this time.

#### **KDZ435**

75. The Prosecution has indicated in Confidential Appendix A to its "Submission Pursuant to Rule 73Bis(D)", filed on 31 August 2009, that it will no longer call KDZ435 as a witness due to the

Trial Chamber's decision on judicial notice of adjudicated facts.<sup>21</sup> KDZ435's evidence will not, therefore, be admitted in the present case at this time.

#### **KDZ445 (Asim Hamzić)**

76. Asim Hamzić lived in Knežina village in Sokolac municipality and in his written witness statement recorded in 1996 he describes the situation in and around his village in 1990-1992, and gives details about the activities of a number of local Serbs and SDS politicians in Sokolac. He also sets out his own experiences from May 1992, when his village was "ethnically cleansed."

77. The Accused argues that Hamzić's statement has never been subject to cross-examination, and that the absence of a signature on it casts doubt on its reliability. The Prosecution, however, points out that in November 2001, when a "presiding officer" appointed by the Registrar conducted the necessary formalities required by Rule 92 *bis*(B) of the Rules, Hamzić signed a statement confirming the truthfulness and accuracy of his 1996 statement, with some minor corrections. The Chamber is, indeed, satisfied that the 1996 statement, as corrected, is reliable and notes once again that the absence of cross-examination of the witness in relation to his or her witness statement is not a bar to its admission under Rule 92 *quater*. The Chamber will nevertheless take this into account when deciding on the weight to be ascribed to Hamzić's evidence.

78. The Prosecution contends that Hamzić's evidence is corroborated by other witnesses and exhibits, which the Accused does not dispute. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Hamzić's evidence.

79. The general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Hamzić's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Hamzić's evidence is not substantially outweighed by the need to ensure a fair trial. The Trial Chamber will therefore admit his evidence, in the form of his 1996 and 2001 statements (Rule 65 *ter* numbers 04218 and 13325), pursuant to Rule 92 *quater*, with exhibit numbers to be assigned by the Registry

80. The items with Rule 65 *ter* numbers 13323 and 13324 are photographs of Aleksa Krsmanović and Đorđe Đukić, which were shown to Hamzić, and in which he identified the two individuals. The photographs are discussed in his 1996 statement. The Chamber is satisfied that

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<sup>21</sup> Prosecution Submission Pursuant to Rule 73*Bis*(D), 31 August 2009, para. 4 and Confidential Appendix A.

they form part of his evidence, but is not convinced of their relevance to the present case. They will not, therefore, be admitted in this case at the present time.

#### KDZ504

81. The Prosecution has indicated in Confidential Appendix A to its “Submission Pursuant to Rule 73Bis(D)”, filed on 31 August 2009, that it will no longer call KDZ504 as a witness due to the Trial Chamber’s decision on judicial notice of adjudicated facts.<sup>22</sup> KDZ504’s evidence will, therefore, not be admitted pursuant to Rule 92 *quater* at the present time.

#### KDZ511 (Matija Bošković)

82. Matija Bošković was a Serbian electrician and café owner from Zvornik who volunteered in early April 1992, and was assigned to various units and operations during the conflict in Bosnia and Herzegovina. He also became a leading member of the Serbian Radical Party (“SRS”) in Mali Zvornik in July 1992. His witness statement, given to Prosecution investigators in 2003, describes the situation in and around Zvornik in 1991 and 1992, and Bošković’s various assignments in, *inter alia*, Zvornik, Ilidža and Hadžići, as well as the activities and organisation of several volunteer units.

83. The Accused argues that Bošković’s evidence should not be admitted under Rule 92 *quater* because it has never been subject to cross-examination, and he provides incriminating evidence on critical issues of the Prosecution’s case, as well as evidence concerning the actions of one of the alleged JCE-members, Vojislav Šešelj. None of these factors is a bar to the admission of Bošković’s statement under Rule 92 *quater* although the Chamber will take the absence of cross-examination of this evidence into account when attributing appropriate weight to it. The Prosecution contends that Bošković’s evidence is corroborated by other witnesses and exhibits, which the Accused does not dispute. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Bošković.

84. Bošković’s statement is signed by him, with an acknowledgement of the truth of its contents, and was recorded with the assistance of a Tribunal interpreter. The Chamber is satisfied as to its reliability and notes that it was previously admitted in the *Šešelj* case under Rule 92 *quater*.<sup>23</sup> The Chamber is also satisfied as to the relevance of the statement to the Prosecution’s case against the Accused. It follows that the general requirements of relevance and

<sup>22</sup> Prosecution Submission Pursuant to Rule 73Bis(D), 31 August 2009, para. 4 and Confidential Appendix A.

<sup>23</sup> *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Decision on Prosecution’s Motion to Add one Exhibit to its Rule 65 ter List and for Admission of Evidence of Witness Matija Bošković pursuant to Rule 92 *quater*, 9 March 2009.

probative value, set out in Rule 89 of the Rules, are satisfied in relation to Bošković's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Bošković's evidence is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted into evidence pursuant to Rule 92 *quater*, with an exhibit number to be assigned by the Registry.

85. Three documents were shown to Bošković during his interview and discussed in his witness statement. The first of these, with Rule 65 *ter* number 13332, is a payroll list of 12 people, including Bošković, who belonged to the same unit. The second, with Rule 65 *ter* number 13326, is a similar list containing 22 names, including Bošković's. The third document, with Rule 65 *ter* number 13319, contains receipts for two vehicles confiscated in 1992, in an incident which Bošković describes in his statement. The Chamber is satisfied that these three documents form an inseparable and indispensable part of his evidence, and that they meet the requirements of relevance and probative value, and their probative value is not substantially outweighed by the need to ensure a fair trial. They will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry.

#### **KDZ542 (Adem Balić)**

86. Adem Balić was a journalist who also worked for the Hadžići Municipal Assembly until the outbreak of the conflict in 1992. His written witness statement (Rule 65 *ter* number 11487) pertains to the political situation in Hadžići and the takeover of the municipality in May 1992, and refers to a statement he had given to the Bosnian authorities in 1993, describing his detention and mistreatment from May to November 1992.

87. The Accused again points out that Balić's evidence has never been subject to cross-examination, and states that it relates to critical issues of the Prosecution's case. As noted above, however, neither of these factors is a bar to the admission of the evidence under Rule 92 *quater*. The Prosecution contends that Balić's evidence is corroborated by other witnesses and exhibits, which the Accused does not dispute. The Chamber is not in a position, at this stage, to assess for itself the extent to which other evidence is indeed corroborative of Balić, although it notes that Zijad Okić's evidence, discussed above, also relates to the takeover of Hadžići municipality.

88. Balić's statement was signed by him, with an acknowledgement of the truth of its contents, and was recorded with the assistance of a Tribunal interpreter. The Chamber is satisfied as to its reliability, as well as its relevance to the Prosecution's case against the Accused insofar as it relates



to events in Hadžići municipality. It follows that the general requirements of relevance and probative value, set out in Rule 89 of the Rules, are satisfied in relation to Balić's evidence. Noting that it will attribute appropriate weight to that evidence in its overall consideration of the evidence in the case, and that it cannot base a conviction on the uncorroborated evidence of a deceased witness, the Chamber finds that the probative value of Balić's evidence is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted into evidence pursuant to Rule 92 *quater*, with an exhibit number to be assigned by the Registry.

89. The Prosecution has not tendered the 1993 statement given by Balić to the Bosnian authorities (with Rule 65 *ter* number 11488) as part of his evidence pursuant to Rule 92 *quater*, but rather as an associated exhibit to his 1997 statement. In his 1997 statement he affirms the content of the 1993 statement. The Chamber is satisfied that this statement is an inseparable and indispensable part of his evidence, as well as being relevant, reliable and of probative value that is not substantially outweighed by the need to ensure a fair trial. This statement will therefore also be admitted in this case, with an exhibit number to be assigned by the Registry.

### III. Disposition


90. For these reasons, pursuant to Rules 54, 89, and 92 *quater* of the Rules, the Trial Chamber hereby:

- (i) **GRANTS** the Motion in part,
- (ii) **ADMITS** the evidence of **KDZ044** (two transcripts with no Rule 65 *ter* numbers and two witness statements with Rule 65 *ter* numbers 13320 and 13321, admitted under seal, with public redacted versions to be prepared by the Prosecution), **Ljubo Bojanović** (one transcript with no Rule 65 *ter* number, with portions set out above in paragraph 22 admitted under seal), **Đula Leka** (one statement with Rule 65 *ter* number 09989), **Ismet Poljak** (one statement with Rule 65 *ter* number 13242), **Huso Palo** (two statements together with Rule 65 *ter* number 09988, and a transcript with Rule 65 *ter* number 13307), **Faik Bišćević** (two transcripts with no Rule 65 *ter* numbers), **Thomas Knustad** (one transcript with Rule 65 *ter* number 10369), **Zijad Okić** (three statements with Rule 65 *ter* numbers 09386, 09047, and 09336), **Alija Isaković** (two statements with Rule 65 *ter* numbers 08093 and 07957), **Zlatko Međedović** (two statements with Rule 65 *ter* numbers 13296 and 13297),

**Asim Hamzić** (two statements with Rule 65 *ter* numbers 04218 and 13325), **Matija Bošković** (one statement with Rule 65 *ter* number 10776), and **Adem Balić** (one statement with Rule 65 *ter* number 11487), all with exhibit numbers to be assigned by the Registry,

- (iii) **ADMITS** the following associated exhibits with exhibit numbers to be assigned by the Registry: the documents with Rule 65 *ter* numbers 13250, 13248, 02185, 13245, two pages only of 13246 (pages 03089366 and 03089372, with BCS versions also to be provided), 31050A, 13263, 04784, 13151, 04841, 04842, 11317, 11769, 13168, 13176, 10415, 10208, 10004, 09508, 10119, 13298, 13300, 13301, 13332, 13326, 13319, and 11488, and
- (iv) **DENIES** the Motion in all other respects.

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



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Judge O-Gon Kwon,  
Presiding

Dated this thirtieth day of November 2009  
At The Hague  
The Netherlands

[Seal of the Tribunal]