



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: 21 December 2009

Original: English

**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:** 21 December 2009

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

*Public*

**DECISION ON PROSECUTION'S SEVENTH MOTION FOR ADMISSION OF  
TRANSCRIPTS OF EVIDENCE IN LIEU OF *VIVA VOCE* TESTIMONY PURSUANT TO  
RULE 92 *BIS*: DELAYED DISCLOSURE WITNESSES**

**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 Seventh Motion for Admission of Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*: Delayed Disclosure Witnesses”, filed publicly with confidential and *ex parte* appendices on 29 May 2009 (“Motion”), and of the “Corrigendum to Confidential and *Ex Parte* Appendices A and B of the Prosecution’s Seventh Motion for Admission of Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*: Delayed Disclosure Witnesses”, filed confidentially and *ex parte* on 11 June 2009 (“Corrigendum”), and hereby renders its decision thereon.

### **I. Procedural background**

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of transcripts of previous testimony given by four witnesses in the *Popović et al.* case, namely KDZ114, KDZ228, KDZ365, and KDZ486, pursuant to Rules 54, 89, and 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). Through the Corrigendum, the Prosecution added to Appendix A of the Motion the witness summary and table of associated exhibits for KDZ228, and updated Appendix B by removing transcripts inadvertently included in its filings.
2. The Trial Chamber in the *Popović et al.* case previously granted protective measures, including delayed disclosure, to KDZ114,<sup>1</sup> KDZ228,<sup>2</sup> KDZ365,<sup>3</sup> and KDZ486.<sup>4</sup> However, at the request of the Prosecution, the *Popović et al.* Chamber subsequently removed the protective measure of delayed disclosure of KDZ228’s identity,<sup>5</sup> and ordered the disclosure to the Accused

<sup>1</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Confidential Oral Decision on Protective Measures, 15 November 2006, T. 3925; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Confidential Decision on Prosecution’s Order of Protection, 1 August 2006 (“*Popović et al.* 1 August Decision”), p. 6.

<sup>2</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion Requesting Protective Measures for Witness 166, 13 July 2007, p. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Delayed Disclosure of the Identity and Any Other Information Concerning the Identity of PW-108, 9 February 2007, p. 4.

<sup>3</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Prosecution’s Motion for Requesting Protective Measures for Witness 98, 15 November 2006, p. 2; *Popović et al.* 1 August Decision, p. 6.

<sup>4</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Oral Decision on Image Distortion, 29 January 2007, T. 6502; *Popović et al.* 1 August Decision, p. 6.

<sup>5</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Variance of Protective Measures, 12 June 2009, p. 1.

of the identities and all related materials for the remaining delayed disclosure witnesses not more than 30 days prior to the start of trial.<sup>6</sup>

3. On 24 July 2009, the Prosecution filed the “Submission on Withdrawal of Nine Witnesses Contained in the Prosecution’s Fifth Rule 92 *bis* Motion and One Witness Contained in the Prosecution’s Seventh Rule 92 *bis* Motion” (“Submission on Withdrawal of Nine Witnesses”), in which it withdrew one witness, KDZ114, from the Motion, stating that this witness’s evidence was supplanted by facts judicially noticed in the “Trial Chamber’s Decision on Third Prosecution Motion for Judicial Notice of Adjudicated Facts”.<sup>7</sup> The Prosecution retains KDZ114 on its Rule 65 *ter* witness list as a “reserve witness”, and states that it may seek to re-submit the witness’s transcripts and exhibits pursuant to Rule 92 *bis* in the event that the Accused challenges the adjudicated facts or in order to rebut evidence adduced by the Accused at trial.<sup>8</sup>

4. On 8 July 2009, the Accused filed his “Omnibus Response to all Rule 92 *bis* Motions” (“Omnibus Response”), opposing the Rule 92 *bis* applications for every witness, and requesting to cross-examine each witness.<sup>9</sup> At the 23 July 2009 Status Conference, the Pre-trial Judge indicated to the Accused that decisions on the Rule 92 *bis* motions would be made by the Trial Chamber, but that the Accused could respond to each motion any time before the decisions had been made.<sup>10</sup> During the Pre-trial Conference on 6 October 2009, the Pre-trial Judge informed the Accused that decisions on the Rule 92 *bis* motions would be issued in the coming few weeks, and added that, should the Chamber admit the evidence of a witness under Rule 92 *bis*, whose evidence the Accused would wish to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.<sup>11</sup>

5. On 31 August 2009, the Prosecution filed the “Prosecution Submission Pursuant to Rule 73 *bis*(D)” (“Rule 73 *bis* Submission”), in which it proposed reducing the number of witnesses it will call, and designated certain other witnesses as “reserve” witnesses.<sup>12</sup> The witnesses remaining in the Motion following the Submission on Withdrawal of Nine Witnesses, that is, KDZ228, KDZ365, and KDZ486, are unaffected by the Rule 73 *bis* Submission. Their status is

<sup>6</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Karadžić Motion for Variance of Protective Measures with Dissenting Opinion of Judge Kwon, 24 June 2009, p. 2.

<sup>7</sup> Submission on Withdrawal of Nine Witnesses, Appendix A.

<sup>8</sup> Submission on Withdrawal of Nine Witnesses, para. 4.

<sup>9</sup> Omnibus Response, para. 3.

<sup>10</sup> Status Conference (23 July 2009), T. 370.

<sup>11</sup> Pre-trial Conference (6 October 2009), T. 490.

<sup>12</sup> Rule 73 *bis* Submission, paras. 6, 11.

also unchanged as a result of the “Prosecution Second Submission Pursuant to Rule 73 *bis*(D)”, filed on 18 September 2009.<sup>13</sup>

## II. Submissions

6. In the Motion, the Prosecution argues that the proposed evidence of KDZ228, KDZ365, and KDZ486 is relevant to the crimes committed during the fall of Srebrenica as charged in Counts 2 through 8 of the Third Amended Indictment (“Indictment”), and that the evidence is reliable and has probative value.<sup>14</sup> It submits that the proposed evidence includes only testimony from “crime-base witnesses”, who describe events that occurred on the ground in their local municipalities.<sup>15</sup> The Prosecution argues that the proposed evidence does not “describe the actions of the Accused himself, his participation in the joint criminal enterprises alleged in the Indictment or matters indicating his effective control over perpetrating forces.”<sup>16</sup> It also argues that there is “no (longer an) overriding public interest in oral presentation of this evidence”.<sup>17</sup> The Prosecution submits that the admission of this evidence pursuant to Rule 92 *bis* will: (i) substantially expedite the proceedings, (ii) ensure that witnesses who have already testified before this Tribunal are not unnecessarily required to come to the Tribunal again, and (iii) cause no unfair prejudice to the Accused.<sup>18</sup>

7. The Prosecution further argues that the Chamber should not exercise its discretion to require the presence of the witnesses for cross-examination, as the proposed evidence relates to the “crime-base”, is corroborated by the testimony of other witnesses, and does not concern any “critical elements” of its case.<sup>19</sup> The Prosecution also indicates that all proposed witnesses have previously appeared for cross-examination.<sup>20</sup>

8. The Prosecution requests the admission into evidence of several associated exhibits for KDZ228, KDZ365, and KDZ486. It argues that each proposed associated exhibit was previously admitted into evidence in other cases dealing with the same alleged crimes, and that they may be properly admitted into evidence as inseparable and indispensable parts of the KDZ228, KDZ365, and KDZ486’s written evidence in this case.<sup>21</sup> It further argues that it has

<sup>13</sup> See Prosecution Second Submission Pursuant to Rule 73 *bis*(D), 18 September 2009, confidential Appendix A.

<sup>14</sup> Motion, paras. 2, 10–12.

<sup>15</sup> Motion, paras. 6, 8.

<sup>16</sup> Motion, para. 8.

<sup>17</sup> Motion, para. 16.

<sup>18</sup> Motion, para. 2.

<sup>19</sup> Motion, paras. 19–20.

<sup>20</sup> Motion, para. 21.

<sup>21</sup> Motion, paras. 22–23

“selected only those exhibits accompanying witness transcripts which it deems relevant and probative.”<sup>22</sup>

9. The Accused has made no submissions specifically addressing the Motion.

#### **IV. Discussion**

10. On 15 October 2009, the Trial Chamber issued the “Decision on the Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)” (“Decision on Third Motion”), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Motion.<sup>23</sup>

##### **A. Summary of Proposed Evidence**

11. The Chamber has reviewed the transcripts of previous testimony given by KDZ228, KDZ365, and KDZ486 in the *Popović et al.* case. Summaries of the witnesses’ testimony that was provided in public session during that case are set out below.

12. KDZ228 testified that in July 1995, he accompanied KDZ446, who is also a Prosecution witness in the present case, on a visit to the Zvornik Brigade barracks in the municipality of Zvornik.<sup>24</sup> The purpose of the visit was to ask the Commander of the Zvornik Brigade, Vinko Pandurević, about the “bad” things which KDZ446 believed were happening in the area. Vinko Pandurević was unavailable, but KDZ446 had a conversation with Drago Nikolić. KDZ228 was not privy to this conversation, and testified only that KDZ446 was upset after the meeting. According to KDZ228, KDZ446 told him that prisoners were being held at schools in the Zvornik region, that “they were doing all sorts of things and that only madmen could do that kind of that kind of thing”, and that Ljubiša Beara was involved. KDZ228 further testified that during this time he was aware that Srebrenica was blockaded, preventing the population from leaving the city, and that he had seen a convoy of buses carrying citizens to Zvornik from the direction of Bratunac and Vlasenica. On cross-examination, KDZ228 acknowledged the participation of the paramilitary units of Željko Ražnatović (also known as “Arkan”) in the takeover of the Zvornik in 1992.

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<sup>22</sup> Motion, para. 24.

<sup>23</sup> Decision on Third Motion, paras. 4–11.

<sup>24</sup> In relation to KDZ446, see Decision on Accused’s Motion for Disclosure of *ex parte* Appendix for Two Rule 92 *quater* Witnesses, 10 July 2009, p. 3; Prosecution’s Submission Concerning Protective Measures for Witnesses KDZ044 and KDZ446, with confidential and *ex parte* Appendix A, 26 June 2009, p. 2.

13. KDZ365 participated in a police operation in the Snagovo area close to Zvornik from about 14 to 24 July 1995. Although he was unaware of any direct co-operation between the Army of the Republika Srpska (“VRS”) and the Republika Srpska Ministry for Interior Police (“RS MUP”) at the municipal or regional levels, he testified that his unit was organised under the civilian authority of the Regional Security Centre in Bijeljina. Upon his police unit’s arrival in Snagovo, the company commander informed them that they were to “mop up terrain”. During the operation, KDZ365 heard distant gunfire and saw the bodies of men and children, as well as bloody clothes and shoes, throughout the forest. KDZ365 also described how three Muslim males surrendered to his unit. Two of these men were executed shortly after their surrender by an unidentified police officer. KDZ365 took the third, a teenage boy, prisoner.

14. KDZ486 testified about the events that he witnessed at the Zvornik Brigade barracks and at the Orahovac School on a day shortly after the fall of Srebrenica in July 1995. He witnessed the transport to and detention of prisoners at the barracks. At the Orahovac School, he saw Sreten Milošević and VRS soldiers and military police. He witnessed 25 to 30 bound and blindfolded prisoners being led out of the school’s gymnasium and placed in the back of a truck. KDZ486 testified that two prisoners attempted to flee, but were followed by VRS soldiers, and, subsequently, he heard shots from behind the school building. KDZ486 described the transportation of these prisoners to a field near the school where the prisoners were killed. At the field, KDZ486 saw Drago Nikolić, as well as an unidentified VRS officer. KDZ486 also described how a young, wounded boy crawled from under the pile of bodies and how he took the boy to the hospital in Zvornik.

**B. Analysis pursuant to Rule 92 bis(A)**

15. The evidence of KDZ228, KDZ365, and KDZ486 concerns the activities of the VRS and the MUP in and around the municipality of Zvornik after the fall of the Srebrenica enclave. The Chamber considers that it is relevant as it relates to a number of the charges against the Accused, namely, genocide (Count 2), persecutions (Count 3), and extermination and murder (Counts 4, 5, and 6), and inhumane acts (forcible transfer) (Count 8). The transcripts are from a previous case before this Tribunal, and the Chamber is satisfied that the evidence of these witnesses has probative value.

16. In respect to the admissibility of the proposed written evidence pursuant to Rule 92 bis, the Chamber is satisfied that this evidence does not pertain to the acts and conduct of the Accused. KDZ228, KDZ365, and KDZ486 testified about members of the Zvornik Brigade and the MUP, and specifically about Arkan, Ljubiša Beara, Drago Nikolić, and Sreten Milošević. Arkan is

identified in paragraph 11 of the Indictment as a member of a joint criminal enterprise (“JCE”), and the others may be considered members of the JCE as provided for in paragraph 12 of the Indictment as officers of the VRS. However, the testimony of the witnesses neither indicates that the Accused participated in the alleged JCE, nor that he shared the intent of any of the individuals named by KDZ228, KDZ365, and KDZ486 for the acts of these individuals as described by the witnesses in their previous testimony. The Chamber does not consider that the identifications of Arkan, Ljubiša Beara, Drago Nikolić, and Sreten Milošević in the witnesses’ testimonies alone are sufficient to render the proposed evidence inadmissible.

17. The Chamber also considers that the evidence of KDZ228, KDZ365 and KDZ486 is “crime base” evidence, as it relates to specific events that are relevant to the takeover of Zvornik municipality and their impact on victims. Furthermore, while the Chamber is not in a position, at this stage, to fully assess the extent to which the three witnesses’ evidence is cumulative of other witnesses’ evidence that the Prosecution intends to present, the Chamber has reviewed the Prosecution’s Rule 65 *ter* Witness List and is satisfied that KDZ486 provides evidence that is cumulative of that of KDZ039, KDZ064, Cvijetin Ristanović, Damjan Lazarević, and Milorad Birčaković regarding the transportation, detention, and execution of Muslim prisoners at the Orahovac school and nearby fields. KDZ228’s testimony is cumulative of KDZ446’s evidence concerning his visit to the Zvornik Brigade barracks, Nebojša Jeremić’s evidence in respect of buses of civilians being transferred to Zvornik, and aspects of KDZ122’s evidence relating to the events following the fall of Srebrenica. The Trial Chamber notes the Prosecution submission that KDZ365’s evidence is partially corroborated by that of KDZ114, but that the Prosecution has since withdrawn KDZ114. As such, the Chamber will not take into consideration this factor in favour of admissibility with regard to KDZ365’s testimony.

18. In addition to the above factors in favour of admissibility of the proposed written evidence, the Chamber considers that there are no factors that weigh against its admission into evidence pursuant to Rule 92 *bis*. The Chamber notes that, as transcripts of previous testimony, Rule 92 *bis*(B) is not applicable. On the basis of the above, the Chamber will admit into evidence the transcripts of previous testimony of KDZ228, KDZ365, and KDZ486.

### **C. Analysis pursuant to Rule 92 *bis*(C)**

19. With regard to whether KDZ228, KDZ365 and KDZ486 should appear for cross-examination, the Chamber stresses that Article 21 of the Tribunal’s Statute (“Statute”) guarantees to each accused the right to “examine, or have examined, the witnesses against him”.

However, Rule 92 *bis*(C) gives discretion to the Chamber to decide if cross-examination is appropriate under the circumstances.<sup>25</sup>

20. The Chamber has considered the “crime base” character of the evidence, that the evidence does not relate to any “pivotal” or “critical elements” of the Prosecution’s case, and that the three witnesses were subject to extensive cross-examination in the *Popović et al.* case. In addition, the Chamber notes that KDZ486 identified Drago Nikolić and Sreten Milošević as being present at the Orahovac School, and Drago Nikolić as being present during the execution of prisoners at the nearby field. KDZ228 refers to Ljubiša Beara in the context of discussing the meeting that KDZ446 had with Drago Nikolić and the participation of Arkan’s units in the takeover of the Zvornik municipality in 1992. However, while mentioning these individuals, the Chamber does not consider that the acts and conduct described are sufficiently proximate to the Accused to require KDZ228 or KDZ486 to appear for cross-examination solely on this ground. On the basis of these considerations, the Chamber is satisfied that KDZ228, KDZ365 and KDZ486 do not need to appear for cross-examination by the Accused.

#### **D. Associated Exhibits**

21. The Prosecution seeks to admit several exhibits in relation to each witness. As set out in the Decision on the Third Motion, only those documents that “form an inseparable and indispensable part of the testimony” are admissible as associated exhibits. To fall into this category, the witness must have discussed the document in his or her transcript or written statement, and that transcript or written statement would become incomprehensible or of less probative value if the document is not admitted.<sup>26</sup>

22. KDZ228, KDZ365 and KDZ486 are subject to various protective measures, including the use of pseudonyms. The Prosecution requests the admission of the pseudonym sheets for KDZ228 (Rule 65 *ter* number 03839), KDZ365 (Rule 65 *ter* number 03322), and KDZ486 (Rule 65 *ter* number 03447), which were admitted previously during the *Popović et al.* case. The pseudonym sheets for KDZ228 and KDZ365 are necessary for their identification, and will be admitted under seal. The Chamber has been unable to verify the pseudonym sheet for KDZ486, as the document is not present in e-court. The Prosecution’s request for its admission is therefore denied without prejudice to the Prosecution uploading the correct pseudonym sheet into e-court, enabling verification by the Chamber.

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<sup>25</sup> See Lukić Decision, para. 24.

<sup>26</sup> Decision on Third Motion, para. 11.



23. In relation to KDZ228, the Prosecution requests the admission of four associated exhibits in addition to the pseudonym sheet. The first proposed associated exhibit is a photograph (Rule 65 *ter* number 14104), which KDZ228 marked during trial, indicating members of the Zvornik Brigade. The Prosecution also requests admission into evidence of an unmarked version of this photograph (Rule 65 *ter* number 03838). The marked photograph was discussed during KDZ228's testimony and the Chamber is satisfied that it forms an indispensable and inseparable part of his testimony, and will, therefore, be admitted into evidence. However, the Chamber is of the view that KDZ228's testimony would not be incomprehensible or have lesser probative value if the unmarked version of the photograph is not admitted into evidence and will, for this reason, not admit it.

24. The Prosecution also seeks the admission of two decisions of the Interim Government of the Serbian Municipality of Zvornik (Rule 65 *ter* numbers 02562 and 02557). These two decisions formed an important part of the cross-examination of the witness in the *Popović et al.* case, and the Chamber considers that they form an indispensable and inseparable part of KDZ228's testimony. It will, therefore admit them into evidence.

25. In relation to KDZ365, the Prosecution seeks the admission into evidence of three additional associated exhibits. The first associated exhibit is a document issued by Bijeljina Public Security Centre (Rule 65 *ter* number 03323). The witness was confronted with this document during both direct examination and cross-examination, and the absence of the document from the record would render parts of the testimony incomprehensible and of lesser probative value. As such, it is an inseparable and indispensable part of KDZ365's testimony, and will be admitted into evidence.

26. The other two proposed associated exhibits are a Zvornik Public Security Report (Rule 65 *ter* number 01933) and a map of Zvornik and Kozluk (Rule 65 *ter* number 03213). The Public Security Report states that the Bijeljina police company, of which KDZ365's unit was a part, was guarding the city of Zvornik, and was discussed during his testimony. KDZ365 was shown the map during his cross-examination, and indicated the location of his police unit on it. The Chamber is satisfied that these two documents form an inseparable and indispensable of his testimony and will, therefore, admit them into evidence.

27. In relation to KDZ486, the Prosecution requests the admission into evidence of seven additional associated exhibits. The first proposed associated exhibit (Rule 65 *ter* number 14164) is a photograph of the Orahovac schoolyard, which KDZ486 marked during trial. The Prosecution also requests the admission of an unmarked version of this photograph (Rule 65 *ter*

number 02869). The marked version of the photograph was discussed during KDZ486's testimony and the Chamber is satisfied that the exhibit forms an inseparable and indispensable part of his testimony and will be admitted into evidence. However, the Chamber is of the view that KDZ486's testimony would not be incomprehensible or have lesser probative value if the unmarked version of the photograph is not admitted into evidence, and will, for this reason, not admit it into evidence.

28. The third proposed associated exhibit is a photograph depicting a young boy with two representatives from the International Committee of the Red Cross (Rule 65 *ter* number 03451), and it was presented to KDZ486 for the purposes of identifying the young boy he testified to rescuing. While shown to KDZ486 during his testimony, the photograph was not discussed at any length and does not in itself provide any indication of the identification of the young boy. Moreover, the comprehension and probative value of the witness's evidence is not affected by the photograph. As such, the Chamber considers that this photograph does not form an inseparable and indispensable part of KDZ486's testimony, and will not admit it into evidence.

29. The Prosecution also requests the admission into evidence of the "Zvornik Hospital Logbook" (Rule 65 *ter* number 03056), which consists of over 100 entries that appear to note the admission of individuals into the hospital at Zvornik. However, this Logbook was not discussed during KDZ486's testimony, and neither the testimony itself nor the Motion gives any guidance to the Chamber as to the relevance of the document. The Chamber considers that this document is not an inseparable and indispensable part of KDZ486's testimony, and it will not admit the Logbook into evidence.

30. With regard to the fifth proposed associated exhibit, a document entitled "Zvornik Brigade July 1995 Transportation Record" (Rule 65 *ter* number 02165), the Chamber is not convinced that it is the document discussed in KDZ486's testimony. The Chamber notes that the ERN number referred to by the Prosecution during the witness's testimony and that of the proposed associated exhibit are different, and that the details of the document discussed do not match the information contained in the proffered associated exhibit. Therefore, the Chamber will deny the admission into evidence of this document, without prejudice to the correct document being uploaded into e-court for review by the Chamber.

31. The final two exhibits proffered by the Prosecution are a roster from the Command of the 1<sup>st</sup> Zvornik Infantry Brigade Headquarters, which sets out the attendance, rank and duties of the members of the Brigade (Rule 65 *ter* number 02171), and a Zvornik Hospital Discharge Form for the young boy who was rescued by KDZ486 (Rule 65 *ter* number 03450). Both documents

were put to KDZ486 during cross-examination. The Chamber finds that both documents from an indispensable and inseparable part of KDZ486's testimony and will admit them into evidence.

#### **V. Disposition**

32. For the above stated reasons, the Trial Chamber, pursuant to Rules 54, 89 and 92 *bis* of the Rules, hereby **GRANTS** the Motion **IN PART** and:


#### **ORDERS** that:

- (a) The transcripts of KDZ228, KDZ365, and KDZ468's testimony in the *Popović et al.* case shall be admitted into evidence without requiring the witnesses to appear for cross-examination;
- (b) The Prosecution shall provide the Registry, as soon as possible, confidential and public versions of the transcripts. The public version of the transcripts shall include all necessary redactions;
- (c) The associated exhibits with Rule 65 *ter* numbers 14104, 02562, 02557, 03323, 01933, 03213, 14164, 02171, and 03450 shall be admitted into evidence;
- (d) The confidential associated exhibits with Rule 65 *ter* numbers 03839 and 03322 shall be admitted into evidence under seal; and
- (e) The associated exhibits with Rule 65 *ter* numbers 03447 and 02165 shall not be admitted into evidence without prejudice to the Prosecution uploading the correct documents into e-court, and reapplying for their admission into evidence;

**REQUESTS** the Registry to assign exhibit numbers to both the public and confidential versions of the transcripts, and to the associated exhibits with Rule 65 *ter* numbers 03839, 03322, 14104, 02562, 02557, 03323, 01933, 03213, 14164, 02171, and 03450.

**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 twenty-first day of December 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**