



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: 18 June 2010

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: 18 June 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION AND SUBMISSION PURSUANT TO
"DECISION ON PROSECUTION'S FOURTH MOTION FOR ADMISSION OF
STATEMENTS AND TRANSCRIPTS OF EVIDENCE IN LIEU OF *VIVA VOCE*
TESTIMONY PURSUANT TO RULE 92 *BIS* (SARAJEVO SIEGE WITNESSES)"**

Office of the Prosecutor

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The Accused

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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 and Submission Pursuant to ‘Decision on Prosecution’s Fourth Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Sarajevo Siege Witnesses)’”, filed on 6 April 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 29 May 2009, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Fourth Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Siege Witnesses” (“Fourth Rule 92 *bis* Motion”), in which it requested, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the admission of the transcripts of prior testimony and/or witness statements of what was ultimately 29 witnesses, and numerous associated exhibits in relation to that written evidence.¹

2. On 5 March 2010, the Chamber issued the “Decision on Prosecution’s Fourth Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Siege Witnesses” (“Decision on Fourth Rule 92 *bis* Motion”), in which it granted the Fourth Rule 92 *bis* Motion in part, admitting into evidence the written statements and/or transcripts of prior testimony of 16 witnesses, including Faris Gavrankapetanović, as well as various associated exhibits related to their written evidence.² Additionally, the Chamber denied admission of *inter alia* the associated exhibits with Rule 65 *ter* numbers 10315, 14216, 14228, 14230, and 14232 on the basis that they had not been discussed by the relevant witness in his or her written evidence.³ The Chamber also denied admission without prejudice of the associated exhibits with Rule 65 *ter* numbers 09572, 10419, 10422, 40251, and 09933, on the basis that it was unable to review them.⁴

3. In the Motion, the Prosecution resubmits Faris Gavrankapetanović’s complete Rule 92 *bis*(B) package, which contains *inter alia* a supplemental witness statement dated 11

¹ Fourth Rule 92 *bis* Motion, paras. 1, 29, Appendix A; Prosecution’s Submission on Withdrawal of Seventeen Witnesses Contained in the Prosecution’s Fourth Rule 92 *bis* Motion, 25 June 2009; Prosecution Submission Pursuant to Rule 73 *bis*(D), 31 August 2009, paras. 6, 11, Appendix A. *See also* Pre-trial Conference, T. 467–468 (6 October 2009); Decision on Application of Rule 73 *bis*, 8 October 2009.

² Decision on Fourth Rule 92 *bis* Motion, para. 77(C)(i)–(vi), (x)–(xi).

³ Decision on Fourth Rule 92 *bis* Motion, para. 74.

⁴ Decision on Fourth Rule 92 *bis* Motion, paras. 75–76, 77(C)(xii)–(xiv).

January 2002 (document with Rule 65 *ter* number 22476) (“11 January 2002 statement”), previously omitted by the Prosecution in the Fourth Rule 92 *bis* Motion, and requests its admission on the basis that it “clarifies certain aspects of [the witness’s] previous statements, as well as the admission of certain exhibits associated with this statement”.⁵ The Prosecution further requests the Chamber to admit into evidence the associated exhibits with Rule 65 *ter* numbers 14216, 14228, 14230, and 14232, previously denied admission by the Chamber, on the basis that they form an inseparable and indispensable part of Faris Gavrankapetanović’s 11 January 2002 statement.⁶ In relation to this, the Prosecution informs the Chamber that it proposes to upload Faris Gavrankapetanović’s two witness statements previously admitted by the Chamber through its Decision on Fourth Rule 92 *bis* Motion, together with the 11 January 2002 statement tendered through the Motion, as well as the required Rule 92 *bis*(B) attestation of the three documents, and requests the Chamber to admit them into evidence with a single exhibit number assigned.⁷

4. The Prosecution further notifies the Chamber that it has now uploaded into ecourt the associated exhibit with Rule 65 *ter* number 09933, as well as the English translation of the associated exhibit with Rule 65 *ter* number 09572, and requests the admission into evidence of these documents.⁸ Furthermore, the Prosecution confirms that it has provided to the Chamber, on a CD-ROM, the associated exhibits with Rule 65 *ter* numbers 10419 and 10422, as well as an excerpt of the associated exhibit with Rule 65 *ter* number 40251, all of which are videos not previously available for review by the Chamber.⁹ In relation to the associated exhibit with Rule 65 *ter* number 40251, the Prosecution points the Chamber to the relevant portions of KDZ090’s prior testimony where the video was discussed.¹⁰ The Prosecution then requests the admission of the three associated exhibits, clarifying that the excerpt of the associated exhibit with Rule 65 *ter* number 40251 should be admitted under seal.¹¹

5. Finally, the Prosecution requests the Chamber to reconsider its Decision on Fourth Rule 92 *bis* Motion and admit the associated exhibits with Rule 65 *ter* numbers 10153 and 10315, which were denied admission on the basis that they did not form an inseparable and indispensable part of KDZ090 and Šefik Bešlić’s evidence, respectively, as they had not been

⁵ Motion, paras. 1(b), 5–6, 17(a).

⁶ Motion, paras. 5, 17(a).

⁷ Motion, para. 7.

⁸ Motion, paras. 9, 11, 17(b).

⁹ Motion, para. 10.

¹⁰ Motion, para. 10; Appendix B, para. 1.

¹¹ Motion, paras. 10, 17(b).

discussed by the relevant witness in his or her evidence.¹² The Prosecution identifies the relevant portions of the witnesses' prior testimony where these associated exhibits were discussed.¹³

II. Applicable Law

6. 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 Rule 92 *bis* Motion"), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis* of the Rules. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Rule 92 *bis* Motion.¹⁴ However, the Chamber notes that, according to the Tribunal's case-law, only those associated exhibits that form an inseparable and indispensable part of a witness's evidence may be admitted.¹⁵

III. Discussion

A. Written evidence of John Hamill

7. In the Decision on Fourth Rule 92 *bis* Motion, the Chamber noted that the Prosecution had failed to provide the Chamber with a portion of John Hamill's transcript of prior testimony in the *Stanislav Galić* case (T. 6229–6243, 26 March 2002), of which it sought admission, and that it was therefore unable to analyse its content. However, given that the pages only formed a small part of John Hamill's proposed evidence, the Chamber decided to analyse the rest of his evidence in order to make a determination as to its admissibility pursuant to Rule 92 *bis*.¹⁶ On the basis of that analysis, the Chamber decided that John Hamill shall appear for cross-examination, and that his evidence shall be presented in accordance with Rule 92 *ter*. It, therefore, postponed the determination of the admission into evidence of the witness's transcripts of prior testimony, written statements, and associated exhibits, until such time as he is brought to give evidence before the Chamber.¹⁷

8. In the Motion, the Prosecution notifies the Chamber that it has uploaded into ecourt the missing portion of John Hamill's transcript of prior testimony in the *Stanislav Galić* case.¹⁸ As

¹² Motion, paras. 12–13, 16, 17(c).

¹³ Motion, paras. 14–15.

¹⁴ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹⁵ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹⁶ Decision on Fourth Rule 92 *bis* Motion, para. 42.

¹⁷ Decision on Fourth Rule 92 *bis* Motion, paras. 64, 77(C)(ix), 77(E).

¹⁸ Motion, paras. 1(a), 2.

with the rest of his proposed evidence, the Chamber will postpone any decision on the admissibility of this portion until such time as John Hamill is brought before the Chamber.

B. Written evidence and associated exhibits of Faris Gavrankapetanović

9. The Chamber has analysed the 11 January 2002 statement, including in the context of the previously admitted statements, and is satisfied that this document fulfils the requirements for admission pursuant to Rule 92 *bis*. In that regard, the Chamber notes that exhibit P474, which is already in ecourt, contains Faris Gavrankapetanović's witness statements dated 11 October 2001 and 13 December 2001, as well as the 11 January 2002 statement, and the Rule 92 *bis*(B) attestation for the three documents. Thus, there is no need for the Prosecution to upload the 11 January 2002 statement again in ecourt.

10. Having determined the admissibility of the 11 January 2002 statement, the Chamber will now analyse the associated exhibits with Rule 65 *ter* numbers 14216, 14228, 14230, and 14232, which were previously denied admission by the Chamber, but which, according to the Prosecution, form an inseparable and indispensable part of the 11 January 2002 statement. The Chamber notes that the documents are medical records of victims of sniping or shelling incidents from the University Medical Centre in Sarajevo. All four documents were authenticated by Faris Gavrankapetanović in his 11 January 2002 statement, and the original documents in BCS bare the witness's signature and date of authentication. The Chamber is satisfied that the medical records form an inseparable and indispensable part of Faris Gavrankapetanović's 11 January 2002 statement, and will, therefore, admit them into evidence.

C. Other Associated Exhibits

11. In the Decision on Fourth Rule 92 *bis* Motion, the Chamber denied without prejudice the admission into evidence of the associated exhibit with Rule 65 *ter* number 09572 because the document did not have an English translation.¹⁹ In the Motion, the Prosecution notifies the Chamber that it has uploaded the English translation in ecourt, and requests its admission into evidence.²⁰ The Chamber notes that this document is a compilation of medical-related forms describing Asida Fazlić's injuries and treatment referred to by the witness in her witness statement, which has already been admitted into evidence pursuant to the Decision on Fourth Rule 92 *bis* Motion. Thus, the Chamber is satisfied that this document forms an inseparable and indispensable part of Asida Fazlić's testimony, and will, therefore, admit it into evidence.

¹⁹ Decision on Fourth Rule 92 *bis* Motion, paras. 75(i), 76, 77(C)(xii).

²⁰ Motion, paras. 9, 17(b).

12. In the Decision on Fourth Rule 92 *bis* Motion, the Chamber also denied without prejudice the admission into evidence of the associated exhibit with Rule 65 *ter* number 09933 because it had not been uploaded into ecourt.²¹ The Chamber notes that, contrary to the Prosecution's assertion in the Motion, the document has still not been uploaded in ecourt. Consequently, the Chamber has been unable, once again, to analyse the content of this document and, for this reason, will not admit it into evidence.

13. In the Motion, the Prosecution is reapplying for admission of certain videos which were denied admission without prejudice by the Chamber on the basis that it was unable to review them.²² The Prosecution has now provided a CD to the Chamber containing the videos. The Chamber has reviewed the files in conjunction with the relevant witness's written evidence, and will discuss them in the two paragraphs below.

14. As a first consideration, the Chamber notes that the document with Rule 65 *ter* number 10419 is in fact not a video, as stated by the Prosecution in the Motion, but an interactive map of the city of Sarajevo which can only be viewed through the use of QuickTimePlayer.²³ This document was tendered in relation to Tarik Žunić's evidence, and the Chamber has reviewed this witness's previous testimony in the *D. Milošević* case. The Chamber notes that portions of the interactive map were put to the witness in his direct examination, but such portions are not specified in the transcript of his testimony. The whole map was eventually admitted into evidence; however, since Tarik Žunić was not able to mark the document in court, the *D. Milošević* Trial Chamber requested the Prosecution to produce stills of the map, and it was these that were the documents actually marked by the witness. The Chamber further notes that these stills have already been admitted into evidence through the Chamber's Decision on Fourth Rule 92 *bis* Motion, and now bear exhibit numbers P451 and P452. Notwithstanding the existence of the stills, the Chamber, given the interactive nature of the map, cannot determine which portions were put to the witness, and thus which, if any, may be considered an inseparable and indispensable part of Tarik Žunić's testimony. Furthermore, the Chamber does not see why admission into evidence of the interactive map is necessary, taking into consideration that the stills taken from the interactive map, which were actually marked by the

²¹ Decision on Fourth Rule 92 *bis* Motion, paras. 75(iii), 76, 77(C)(xiv).

²² Motion, paras. 10, 17(b); Decision on Fourth Rule 92 *bis* Motion, paras. 75(ii), 76, 77(C)(xiii).

²³ The Chamber wishes to note in that respect that despite the fact that this proposed associated exhibit was admitted in a prior case before the Tribunal, QuickTime is now unavailable to the Chamber, and was only exceptionally made available in order to enable it to view this exhibit. While the Chamber has endeavoured to obtain permanent access to this software for it and its staff, the matter has yet to be solved satisfactorily. As such, and until the Registry resolves this administrative issue, the Chamber strongly advises the parties against tendering exhibits in this format in the future.

witness, have already been admitted into evidence. As such, the Chamber will deny the Prosecution's request for the admission of this document.

15. With respect to the associated exhibit with Rule 65 *ter* number 10422, the Chamber notes that there are nine video clips in the corresponding folder of the CD provided by the Prosecution. Having analysed the nine videos, the Chamber notes that only the first video in the folder, i.e. the one named ACE68293R0000252231, relates to witness KDZ090's evidence. It is an excerpt of a video footage of KDZ090 herself providing details of the incident where she was injured to an ICTY investigator, and which was played during her prior testimony so that the witness could comment on it. The video with Rule 65 *ter* number 40251 consists of two clips, one of which is identical to the video clip of KDZ090, which is part of Rule 65 *ter* number 10422, and another one which is a slightly longer version of that video clip, and which provides the name of the people who participated in it. The Chamber is satisfied that the video depicting KDZ090 forms an inseparable and indispensable part of her testimony. However, in order to avoid repetition and confusion, the Chamber will only admit into evidence the two video clips contained in the associated exhibit with Rule 65 *ter* number 40251. Given that these video clips disclose KDZ090's identity, they shall be admitted under seal.

16. The Prosecution also requests the Chamber to reconsider its Decision on Fourth Rule 92 *bis* Motion, and admit into evidence the associated exhibits with Rule 65 *ter* numbers 10153 and 10315, the admission of which was denied on the basis that they did not form an inseparable and indispensable part of the evidence of KDZ090 and Šefik Bešlić, respectively, as they had not been discussed by the witnesses in their evidence.²⁴

17. With respect to the associated exhibit with Rule 65 *ter* number 10153, the Chamber notes that, contrary to the Prosecution's assertion, the document was admitted in the Decision on Fourth Rule 92 *bis* Motion in relation to KDZ090's evidence.²⁵ However, the same associated exhibit was also listed in paragraph 74 of the Decision on Fourth Rule 92 *bis* Motion as one of the documents denied admission on the basis that it had also been tendered as an associated exhibit for witness Slavica Livnjak, but it had not been discussed by the witness in her written evidence. Thus, for the purposes of clarity, the Chamber confirms that the associated exhibit with Rule 65 *ter* number 10153 is admitted into evidence, but only in relation to witness KDZ090. In that regard, the Chamber notes that the document now bears exhibit number P432; however, the title of this document in ecourt is erroneous (the document is listed as a map instead of a photograph), and, again for purposes of clarity, the Prosecution should amend it.

²⁴ Motion, paras. 12–13, 16, 17(c).

²⁵ See Decision on Fourth Rule 92 *bis* Motion, paras. 72–73, 77(C)(x).

18. Regarding the associated exhibit with Rule 65 *ter* number 10315, which was denied admission by the Chamber in the Decision on Fourth Rule 92 *bis* Motion,²⁶ the Chamber notes that the document is a medical record for witness Dženana Sokolović. In the Motion, the Prosecution identifies the pages of Šefik Bešlić's prior testimony where the document was discussed, as he was the doctor who examined Dženana Sokolović after she was injured, and requests the Chamber to admit the associated exhibit on this basis.²⁷ The Chamber has reviewed the document against the relevant pages of Šefik Bešlić's prior testimony, and is satisfied that it forms an inseparable and indispensable part of his testimony. It will, therefore, admit it into evidence.

D. Additional matters

19. The associated exhibit with Rule 65 *ter* number 10155, which is a marked photograph, was tendered by the Prosecution in the Fourth Rule 92 *bis* Motion in relation to KDZ090 and Slavica Livnjak's proposed evidence. The Chamber admitted the associated exhibit in the Decision on Fourth Rule 92 *bis* Motion, but it did not specify that its admission was only in relation to KDZ090's evidence, and KDZ090 was the one who marked the photograph during her prior testimony.²⁸ Thus, in order to make this clear, the Chamber will modify the relevant portions in the Decision on Fourth Rule 92 *bis* Motion.

20. Finally, the Chamber notes that it inadvertently omitted to include the last name of witness Ašida Fazlić in the Disposition of the Decision on Fourth Rule 92 *bis* Motion.²⁹ The Chamber will modify the relevant part of the Disposition to rectify this omission.

IV. Disposition

21. Accordingly, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Trial Chamber hereby:

A. GRANTS the Motion IN PART and ORDERS that:

- (i) Faris Gavrankapetanović's 11 January 2002 statement (document with Rule 65 *ter* number 22476) is admitted into evidence. The document shall form part of exhibit P474, already in court;

²⁶ See Decision on Fourth Rule 92 *bis* Motion, para. 74.

²⁷ Motion, para. 2.

²⁸ Decision on Fourth Rule 92 *bis* Motion, paras. 73, 77(C)(xi).

²⁹ See Decision on Fourth Rule 92 *bis* Motion, para. 77(A).

- (ii) The associated exhibits with Rule 65 *ter* numbers 09572, 10315, 14216, 14228, 14230, and 14232 are admitted into evidence;
- (iii) The associated exhibit with Rule 65 *ter* number 40251 is admitted into evidence under seal;
- (iv) The last sentence of paragraph 73 of the Decision on Fourth Rule 92 *bis* Motion shall read as follows:

Similarly, the associated exhibits with Rule 65 *ter* numbers 10153 and 10155, which have been tendered with two different witnesses, will only be admitted into evidence in relation to KDZ090.

- (v) The reference to the associated exhibit with Rule 65 *ter* number 10153 in paragraph 74 of the Decision on Fourth Rule 92 *bis* Motion shall be deleted;
- (vi) Paragraph 77(C)(x) of the Decision on Fourth Rule 92 *bis* Motion shall read as follows:

The confidential associated exhibits with Rule 65 *ter* numbers 09531, 09537, 09569, 09791, 10153 (only in relation to KDZ090's evidence), 10272, and 14111, are admitted into evidence under seal;

- (vii) Paragraph 77(C)(xi) of the Decision on Fourth Rule 92 *bis* Motion shall read as follows:

The associated exhibits with Rule 65 *ter* numbers 09733, 10154, 10155 (only in relation to KDZ090's evidence), 10158, 10159, 10160, 10181, 10182, 10183, 10184, 10193, 10194, 10195, 10196, 10202, 10203, 10204, 10205, 10206, 10255, 10256, 10273, 10293, 10399, 10418, 10441, 10442, 10443, 10444, 10446, 10464, 10465, 13330 (only in relation to Sabina Šabanić's evidence), 14118, and 14178 are admitted into evidence;

- (viii) Paragraph 77(A) of the Decision on Fourth Rule 92 *bis* Motion shall read as follows:

GRANTS the Prosecution's request for leave to reply to the Accused's Partial Response on Ašida Fazlić;

- (ix) The Prosecution shall amend the title given to exhibit P432 in court to properly reflect the content of the document.
- B. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence.
- C. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]