



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: 6 July 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: 6 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION AND SUBMISSION PURSUANT TO
TRIAL CHAMBER'S 18 MARCH 2010 DECISION
(RULE 92 *BIS* WITNESSES ARK MUNICIPALITIES)**

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 seized of the “Prosecution’s Motion and Submission pursuant to Trial Chamber’s 18 March 2010 Decision (Rule 92 *bis* Witnesses ARK Municipalities)”, filed publicly on 26 April 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 18 March 2010, the Chamber issued its “Decision on Prosecution’s Second Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses ARK Municipalities)” (“Decision on Second Rule 92 *bis* Motion”), in which it admitted into evidence the written statements and/or transcripts of prior testimony of 24 witnesses, as well as various associated exhibits related to their written evidence, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. In the Decision on Second Rule 92 *bis* Motion, the Chamber admitted under seal the transcripts of prior testimony and/or witness statements of KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392, as well as seven associated exhibits related to these witnesses, despite the fact that the Office of the Prosecutor (“Prosecution”) had not requested the admission of these documents under seal, as they could reveal the relevant witness’s identity; it then requested confirmation from Prosecution regarding the intended status of the documents.² The Chamber also partially admitted Nermin Karagić’s transcript of prior testimony in the *Stakić* case, as the Prosecution had incorrectly tendered some transcript pages which did not correspond to the witness’s prior testimony.³ Furthermore, the Chamber denied without prejudice a number of associated exhibits, largely on the basis that the Chamber was unable to review them or that the associated exhibits uploaded in ecourt did not appear to be the ones which the Prosecution sought the admission into evidence in the “Prosecution’s Second Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses ARK Municipalities)” (“Second Rule 92 *bis* Motion”).⁴ Finally, the Chamber ordered the Prosecution to redact certain portions of KDZ024, KDZ074,

¹ Decision on Second Rule 92 *bis* Motion, para. 63.

² Decision on Second Rule 92 *bis* Motion, para. 63(A)(b), (d), (f), (j).

³ Decision on Second Rule 92 *bis* Motion, para. 27.

⁴ Decision on Second Rule 92 *bis* Motion, para. 61–62, 63(E).

and Charles McLeod's transcripts of prior testimony which were not admitted into evidence, and to prepare public redacted versions of certain admitted transcripts and witness statements.⁵

3. In the Motion, the Prosecution seeks the admission into evidence of certain transcript pages of Nermin Karagić's prior testimony in the *Stakić* case, which had not been previously tendered in the Second Rule 92 *bis* Motion, as well as of the associated exhibits which had been previously denied admission without prejudice, and requests the Chamber to withdraw one previously admitted associated exhibit.⁶ It also confirms the status of the transcripts of prior testimony and/or witness statements, as well as of the associated exhibits which were admitted under seal by the Chamber,⁷ and notifies the Chamber that: (i) redacted transcripts of KDZ024, KDZ074, and Charles McLeod's prior testimony have been uploaded into ecourt; (ii) the number of the associated exhibit with Rule 65 *ter* number 18942 was cited incorrectly in the Decision on Second Rule 92 *bis* Motion; and (iii) four previously admitted associated exhibits should be admitted under seal.⁸

4. The Accused did not file a response to the Motion.

II. Applicable Law

5. 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*. 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.⁹ However, the Chamber notes that, according to the Tribunal's case-law, associated exhibits that form an inseparable and indispensable part of a witness's evidence may be admitted.¹⁰

⁵ Decision on Second Rule 92 *bis* Motion, para. 63(A)(c), (d), (g).

⁶ Motion, paras. 1(a)–(b), (d), 2–10, 12, 17.

⁷ Motion, paras. 1(c)–(d), (f), 11–12.

⁸ Motion, paras. 1(e), (g)–(h), 13–17.

⁹ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹⁰ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

III. Discussion

A. Nermin Karagić's transcript of prior testimony

6. In the Decision on Second Rule 92 *bis* Motion, the Chamber denied the admission into evidence of transcript pages T. 5302–5310 tendered as part of Nermin Karagić's 27 June 2002 testimony in the *Stakić* case, on the basis that they were not related to the witness's testimony, but record proceedings that took place after the witness had withdrawn from the courtroom.¹¹ It also noted that the Prosecution had not sought the admission of transcript pages T. 5287–5296 from Nermin Karagić's 27 June 2002 testimony, which were still a part of his direct examination.¹² In the Motion, the Prosecution states that due to an inadvertent oversight, an incorrect transcript reference of Nermin Karagić's evidence was provided in the Second Rule 92 *bis* Motion. It therefore requests the Chamber that the correct transcript pages of Nermin Karagić's 27 June 2002 testimony in the *Stakić* case, namely T. 5287–5296, be admitted into evidence, and become a part of exhibit number P651, which is the transcript of Nermin Karagić's prior testimony admitted pursuant to the Decision on Second Rule 92 *bis* Motion.¹³

7. Having reviewed the re-submitted portion of Nermin Karagić's transcript of prior testimony, the Chamber notes that it contains information about the attack on Hambarine and the "ethnic cleansing" which took place in Rizvanović in the context of the takeover of the municipality. Given that the re-submitted portion of Nermin Karagić's evidence is a continuation of his direct examination, and only provides additional details about two of the issues already discussed in the witness's prior testimony, which was admitted in the Decision on Rule 92 *bis* Second Motion and now bears exhibit number P651, the Chamber will not repeat the analysis of the re-submitted portion of Nermin Karagić's evidence but refers to paragraphs 11, 28, 30–31, 34, 40, 43–44, and 49 of the Decision on Rule 92 *bis* Second Motion. The Chamber is satisfied that the re-submitted portion forms a part of exhibit number P651, and will admit that portion of Nermin Karagić's evidence pursuant to Rule 92 *bis*.

B. Associated exhibits denied without prejudice

8. In the Decision on Second Rule 92 *bis* Motion, the Chamber denied without prejudice the admission into evidence of the associated exhibit with Rule 65 *ter* number 14954 because the document did not have an English translation.¹⁴ In the Motion, the Prosecution notifies the

¹¹ Decision on Second Rule 92 *bis* Motion, para. 27.

¹² Decision on Second Rule 92 *bis* Motion, para. 27, fn.19.

¹³ Motion, para. 2.

¹⁴ Decision on Second Rule 92 *bis* Motion, para. 61(i).

Chamber that it has uploaded the English translation in ecourt, and re-applies for its admission into evidence.¹⁵ The Chamber notes that this document is described by the Prosecution as a “Banja Luka Military Court file of Goran Amidžić and others”, and that several pages of this document (ERN numbers 0205–2230 to 0205 2232, 0205–2241, and 0205–2250) were discussed by KDZ024 in his prior testimony. The Chamber is satisfied that only those pages discussed by KDZ024 form inseparable and indispensable parts of KDZ024’s testimony, and will, therefore, only admit these pages into evidence.

9. In the Decision on Second Rule 92 *bis* Motion, the Chamber also denied without prejudice the admission into evidence of the associated exhibits with Rule 65 *ter* numbers 08936, 18814, and 18834 because they had not been uploaded in ecourt.¹⁶ The Chamber notes that contrary to the Prosecution’s assertion in the Motion, these associated exhibits still have not been unloaded in ecourt, and, consequently, the Chamber once again has not been able to view and analyse their content.¹⁷ For this reason, the Chamber will not admit these associated exhibits into evidence.

10. In the Decision on Second Rule 92 *bis* Motion, the Chamber also denied without prejudice the admission into evidence of the associated video exhibits with Rule 65 *ter* numbers 13778 and 40085, on the basis that the Chamber was unable to review them. In the Motion, the Prosecution notifies the Chamber that it has provided a CD-ROM containing the associated video exhibits with Rule 65 *ter* numbers 40085 and 40467 (the original source video from which Rule 65 *ter* number 13778 was clipped), and requests their admission into evidence.¹⁸ The Chamber notes that the associated exhibit with Rule 65 *ter* number 40085, which is a video footage of exhumations conducted in various locations, including an exhumation site in Hanifiži, was played during the testimony of Nicolas Sébire, and the witness commented on it. The Chamber is therefore satisfied that the video forms an inseparable and indispensable part of Nicolas Sébire’s prior testimony, and it will admit it into evidence.

11. With respect to the associated exhibit with Rule 65 *ter* number 40467, which is a video footage of a camp and its surrounding area, the Chamber notes that the clipped version of the video, i.e. the associated exhibit with Rule 65 *ter* number 13778, was shown to KDZ092 during her examination-in-chief, for her to identify the buildings or houses depicted in the video. However, the point at which the particular building or house appears in the video is not specified

¹⁵ Motion, para. 4.

¹⁶ Decision on Second Rule 92 *bis* Motion, para. 61(ii).

¹⁷ The Chamber further notes that in the Motion, the Prosecution requests the associated exhibit with Rule 65 *ter* number 08936 be admitted under seal. *See* Motion, para. 8.

¹⁸ Motion, paras. 5–6.

in the transcript of KDZ092's prior testimony. As such, it is impossible for the Chamber to determine which portion of the video may be considered an inseparable and indispensable part of KDZ092's testimony, and, for this reason, the Chamber will not admit it into evidence.

12. In the Decision on Second Rule 92 *bis* Motion, the Chamber denied without prejudice the associated exhibits with Rule 65 *ter* number 04790 (described by the Prosecution as an "Addendum to the report on exhumation and proof of death"), which was tendered through Nicolas Sébire, and the associated exhibit with Rule 65 *ter* number 10997 (described by the Prosecution as a "Photograph of Kozarac"), which was tendered through KDZ048, KDZ074, and KDZ092. The description for both associated exhibits provided by the Prosecution in the Second Rule 92 *bis* Motion did not correspond with the document or the photograph found in ecourt, and the associated exhibit with Rule 65 *ter* number 10997 was not discussed by KDZ074 during his prior testimony.¹⁹ In the Motion, the Prosecution submits that it has uploaded into ecourt the correct versions of both associated exhibits, and re-applies for their admission into evidence.²⁰ Having reviewed the re-submitted associated exhibits in conjunction with the written evidence of KDZ048, KDZ392, and Nicolas Sébire, the Chamber is satisfied that the re-submitted version of the associated exhibit with Rule 65 *ter* number 04790 is the correct exhibit discussed by Nicolas Sébire during his prior testimony, and that the associated exhibit with Rule 65 *ter* number 10997 is the correct exhibit discussed by KDZ048 and KDZ392 during their prior testimony. Consequently, both associated exhibits form inseparable and indispensable parts of those witnesses' written evidence, and, as such, the Chamber will admit them into evidence. With respect to the associated exhibit with Rule 65 *ter* number 10997, in order to avoid repetition, the Chamber will only admit it once.

13. In the Decision on Second Rule 92 *bis* Motion, the Chamber also denied without prejudice the associated exhibits with Rule 65 *ter* numbers 07392, 08315, 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, 13954, and 14960 which were described in the Second Rule 92 *bis* Motion as maps and photographs annotated or marked by the witnesses, but which were in fact not marked.²¹ In the Motion, the Prosecution notifies that the marked versions of these exhibits have been uploaded in ecourt, and re-applies for their admission into evidence. It further requests that the associated exhibits with Rule 65 *ter* numbers 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, and 13954 be admitted under seal.²²

¹⁹ Decision on Second Rule 92 *bis* Motion, para. 61(iii).

²⁰ Motion, para. 7.

²¹ Decision on Second Rule 92 *bis* Motion, para. 61(iv).

²² Motion, para. 8.

14. Having reviewed the re-submitted maps and photographs, the Chamber notes that the associated exhibits with Rule 65 *ter* numbers 07392 and 08315 were discussed and marked by Rajif Begić during his prior testimony in the *Krajišnik* case, the associated exhibits with Rule 65 *ter* numbers 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, and 13954 were discussed and marked by KDZ094 during his prior testimony, and the associated exhibit with Rule 65 *ter* number 14960 was discussed and marked by KDZ024 during his prior testimony. The Chamber is satisfied that these marked maps and photographs form inseparable and indispensable parts of Rajif Begić, KDZ024, and KDZ094's testimony, and will therefore admit them into evidence. The Chamber further notes that although the associated exhibits with Rule 65 *ter* numbers 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, and 13954 were admitted under seal in the prior case, they do not contain any information that may reveal KDZ094's identity. The Chamber will therefore admit them as public documents.

15. In the Decision on Second Rule 92 *bis* Motion, the Chamber also denied the admission into evidence of the associated exhibit with Rule 65 *ter* number 14966 without prejudice because the English version of the document did not correspond to the B/C/S version.²³ In the Motion, the Prosecution informs the Chamber that it has uploaded the correct B/C/S version of the document, and requests its admission into evidence.²⁴ The document, which is a regular combat report, was discussed by KDZ024 during his prior testimony. The Chamber is satisfied that the document forms an inseparable and indispensable part of KDZ024's testimony, and will therefore admit it into evidence.

C. Confirmation of Status of Admitted Written evidence and Associated Exhibits

16. In the Decision on Second Rule 92 *bis* Motion, the Chamber admitted the transcripts of prior testimony and/or witness statements of KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392, and the associated exhibits with Rule 65 *ter* numbers 00825,²⁵ 13329,²⁶ 13710,²⁷ 14743,²⁸ 14745,²⁹ 14968,³⁰ and 14990,³¹ provisionally under seal, and requested the Prosecution to confirm whether the documents needed to be admitted under seal or as public documents.³² In the Motion, the Prosecution confirms that the transcripts and/or witness statements of those

²³ Decision on Second Rule 92 *bis* Motion, para. 61(v).

²⁴ Motion, para. 10.

²⁵ Now exhibit P524.

²⁶ Now exhibit P525.

²⁷ Now exhibit P526.

²⁸ Now exhibit P527.

²⁹ Now exhibit P528.

³⁰ Now exhibit P529.

³¹ Now exhibit P530.

witnesses, including the provisionally admitted supplemental statement of KDZ097 tendered by the Accused, should be admitted under seal. It also confirms that all the associated exhibits should be admitted under seal, with the exception of the associated exhibit with Rule 65 *ter* number 14745. The Chamber will thus make the requisite orders regarding the status of these transcripts and/or witness statements, and the associated exhibits mentioned above, excluding the associated exhibit with Rule 65 *ter* number 14745.

17. In the Motion, the Prosecution requests the Chamber to withdraw the associated exhibit with Rule 65 *ter* number 14745, in order to avoid duplication. The Chamber notes that this exhibit is a compilation of five photographs, and that the same five photographs are also appended to KDZ097's witness statement of 11 December 2001, which has already been admitted into evidence as exhibit P715, pursuant to the Decision on Second Rule 92 *bis* Motion. In order to avoid repetition, the Chamber will accept the Prosecution's request, and will therefore not admit the associated exhibit with Rule 65 *ter* number 14745 into evidence.

D. Additional Matters

18. The Chamber confirms that, as stated in the Motion,³³ the Prosecution has uploaded in court a redacted version of the transcripts of KDZ024, KDZ074, and Charles McLeod's prior testimony, in accordance with the Chamber's orders in paragraphs 63(A)(c) and (d) in the Decision on Second Rule 92 *bis* Motion. It also confirms that the Prosecution has uploaded in court the public redacted versions of the transcripts of prior testimony and/or witness statements of KDZ014, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, KDZ074, KDZ092, and KDZ093, in accordance with the Chamber's order in paragraph 63(A)(g) in the Decision on Second Rule 92 *bis* Motion.

19. The Chamber notes that, as stated by the Prosecution in the Motion, when admitting into evidence the associated exhibit with Rule 65 *ter* number 18942, it erroneously referred to it as "18842". Thus, for the purposes of clarity, the Chamber confirms that the associated exhibit admitted into evidence is the one with Rule 65 *ter* number 18942.

20. In the Motion, the Prosecution requests that the status of the associated exhibits with Rule 65 *ter* numbers 13813³⁴, 14728,³⁵ 14738,³⁶ and 14755³⁷ be changed from public to under

³² Decision on Second Rule 92 *bis* Motion, para. 63(A)(b), (d), (f).

³³ Motion, para. 13.

³⁴ Now exhibit P573.

³⁵ Now exhibit P614.

³⁶ Now exhibit P615.

³⁷ Now exhibit P617.

seal, because they were admitted under seal in prior cases. The Chamber notes that the associated exhibit with Rule 65 *ter* number 13813 lists names of men who were taken from the village of Jaskići on 14 June 1992, and that it was admitted under seal during Senija Elkasović's testimony in the *Tadić* case. It also notes that the associated exhibits with Rule 65 *ter* numbers 14728, 14734, and 14755 were not only admitted under seal during KDZ097's prior testimony, but also similar photographs appended to KDZ097's witness statement have already been admitted under seal as part of the 92 *bis* package of KDZ097's evidence.³⁸ For all the reasons set out above, the Chamber will change the status of these exhibits to under seal.

21. The Chamber will further address two minor issues arising from the Decision on Second Rule 92 *bis* Motion, which have not been raised by the Prosecution in the Motion. In the Decision on Second Rule 92 *bis* Motion, the Chamber admitted the associated exhibit with Rule 65 *ter* number 15892³⁹ which is a document of the European Community Monitoring Mission used by Charles McLeod during his testimony in the *Brđanin* case. The cover page of this document uploaded in eCourt states "ECMM Document Use In Closed Session". The Chamber however notes that the document was discussed in open session by Charles McLeod in the *Brđanin* case⁴⁰ and in the Second Rule 92 *bis* Motion the Prosecution did not request the admission under seal of this document. The Chamber will therefore admit this document into evidence under seal pending confirmation from the Prosecution as to the meaning of the phrase written on the cover page, and to the intended status of this document.

22. Finally, in the Decision on Second Rule 92 *bis* Motion, the Chamber admitted 13 out of 440 photographs tendered under the associated exhibit with Rule 65 *ter* number 18944. As one of those 13 photographs admitted, the Chamber listed a photograph with ERN number 0212-2976, which was used by Nicolas Sébire during his prior testimony in the *Brđanin* case. However, having reviewed again the 440 photographs tendered under the associated exhibit with Rule 65 *ter* number 18944, the Chamber notes that it inadvertently admitted the photograph with ERN number 0212-2976 which is not included in that associated exhibit. The Chamber will therefore not admit this photograph, and will rectify the relevant part of the disposition in the Decision on Second Rule 92 *bis* Motion.

IV. Disposition

³⁸ The 92 *bis* package of KDZ097's evidence now bears exhibit number P751. The Chamber notes that the photographs with Rule 65 *ter* numbers 14728, 14734, and 14755 depicted the same objects as the photographs included in exhibit number P751, but show slightly zoomed in or zoomed out images, or bear markings made by the witness.

³⁹ Now exhibit P624.

⁴⁰ *Prosecutor v. Brđanin* case, T. 7319–7320 (21 June 2002).

23. 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:

1. transcript pages T. 5287–5296 of Nermin Karagić’s prior testimony in the *Stakić* case on 27 June 2002 are admitted into evidence, and shall form part of exhibit P651, already in court;
2. the associated exhibits with Rule 65 *ter* numbers 14954 (only pages with ERN numbers 0205–2230 to 0205 2232, 0205–2241, and 0205–2250), 40085, 04790, 07392, 08315, 10997, 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, 13954, 14960, and 14966 are admitted into evidence;
3. the transcripts and/or witness statements of KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392, and the exhibits with numbers P524, P525, P526, P527, P529, and P530 are admitted into evidence under seal;
4. the reference to the associated exhibit with Rule 65 *ter* number “18842” in paragraph 63(A)(k) of the Decision on Second Rule 92 *bis* Motion shall read as Rule 65 *ter* number “18942”;
5. the status of the exhibits with numbers P573, P614, P615, and P617 is changed from public to under seal, and the status of the exhibit number P624 is changed from public to under seal pending confirmation of its status by the Prosecution;
6. paragraph 63(A)(l) of the Decision on Second Rule 92 *bis* Motion shall read as follows:

The specified pages of the following associated exhibits shall be admitted: Rule 65 *ter* numbers 18891 (only pages with ERN numbers 01843960–01844012, 01844013–01844285, 01847968–01847969 and 01848865), 18928 (only the photographs with ERN numbers 0100-6970-33A, 0100-6963-03 and 0100-6966-24A), 18933 (only the sections II.3–II.6 on pages with ERN numbers R1095470 to R1095472), 18936 (only the photographs with ERN numbers X009-4702 and X009-4862), and 18944 (only the photographs with ERN numbers 0212-9871, 0212-9882, 0212-9883, 0212-

9889, 0212-9892, 0212-9893, 0212-9963, 0212-9965, 0212-9968, 0213-0067, 0213-0100, and 0213-0298).

- B. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence;
- C. **REQUESTS** the Registry to remove exhibit number P528 from court; and
- D. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this sixth day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]