



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: 9 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: 9 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION REGARDING SECOND DECISION
ON PROSECUTION FIFTH RULE 92 *BIS* MOTION (SREBRENICA) WITH
ANNEXES A AND B**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby 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 Regarding Second Decision on Prosecution Fifth Rule 92 *bis* Motion (Srebrenica) with Annexes A and B”, filed on 9 June 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 21 December 2009, the Chamber issued the “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” (“First Decision on Fifth Rule 92 *bis* Motion”), in which it considered the admissibility into evidence of the written statements and/or transcripts of prior testimony of 66 witnesses, as well as numerous associated exhibits.¹ It *inter alia* denied without prejudice various proposed associated exhibits subject to the Office of the Prosecutor (“Prosecution”) addressing problems with those associated exhibits, and reapplying for their admission into evidence.
2. On 18 March 2010, the Trial Chamber issued the “Decision on Prosecution Motion and Clarification Regarding Decision on Prosecution Fifth Rule 92 *bis* Motion (Srebrenica)” (“Second Decision on Fifth Rule 92 *bis* Motion”). In this Decision, the Chamber admitted a number of associated exhibits or parts of associated exhibits, which the Chamber had previously denied without prejudice in the First Decision on Fifth Rule 92 *bis* Motion, and had been re-tendered by the Prosecution. The Chamber also denied the admission into evidence of a number of other associated exhibits.
3. In the Motion, the Prosecution informs the Chamber that it has uploaded the parts of the associated exhibits that were admitted in the Second Decision on Fifth Rule 92 *bis* Motion, and provides the exhibit numbers that have been given to those exhibits. It also notifies the Chamber that it has addressed the problems the Chamber found in respect of a vehicle log, and two videos, or portions of the videos, and reapplies for the admission into evidence of these proposed associated exhibits.
4. The Accused did not file a response to the Motion.

¹ See Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses), 29 May 2009 (“Prosecution’s Fifth Rule 92 *bis* Motion”). The Chamber also notes that on 9 February 2010, the Chamber issued *proprio motu* the Addendum to the Trial Chamber’s Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses).

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* of the Tribunal’s Rules of Procedure and Evidence (“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.² 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.³

III. Discussion

a) The Prosecution’s request

6. The Chamber notes that it admitted into evidence certain pages of documents with Rule 65 *ter* numbers 02158, 03340, 35009A, 02590, and 04761, and ordered the Prosecution to upload into ecourt only the pages admitted. The Prosecution has now uploaded those pages, and they have been assigned the following exhibit numbers: P108, P112, P114, P195, and P766, respectively.

7. With regard to the document with Rule 65 *ter* number 02156, the Chamber found in the Second Decision on Fifth Rule 92 *bis* Motion that the Prosecution had provided incorrect page numbers, both for the document itself and for the transcript of previous testimony where the witness Mitar Lazarević had discussed the document; the Chamber then identified the pages it believed to be the correct ones.⁴ In the Motion, the Prosecution submits that it has identified the correct pages of the BCS version of the document and of the transcript.⁵ The Chamber notes that these pages of the BCS version, as well as the pages of the English version identified by the Chamber in the Second Decision on Fifth Rule 92 *bis* Motion, have been correctly uploaded into ecourt and have been assigned exhibit number P110.

8. In relation to the proposed associated exhibits for which the Prosecution reapplies for admission into evidence, the Chamber notes that it denied the admission of the document with Rule 65 *ter* number 02160 because the English version in ecourt did not appear to equate with

² Decision on Third Rule 92 *bis* Motion, paras. 4–11.

³ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

⁴ Second Decision on Fifth Rule 92 *bis* Motion, para. 23.

⁵ Motion, para. 5.

the BCS version and, in his previous testimony, the witness Cvijetin Ristanović appeared to be testifying about a different document.⁶ In the Motion, the Prosecution submits that it has uploaded the correct document into e-court.⁷ The Chamber has reviewed the document now uploaded under the same Rule 65 *ter* number together with Cvijetin Ristanović's previous testimony in the *Blagojević* case, and is satisfied that this document forms an inseparable and indispensable part of his evidence. The Chamber will, therefore, admit the document with Rule 65 *ter* number 02160 into evidence.

9. The Prosecution also reapplies for admission into evidence of various sections of a video, the "Srebrenica Trial Video" (Rule 65 *ter* number 40010), shown to witnesses Vincentius Egbers, Mevludin Orić, Zoran Petrović-Piroćanac, and KDZ425. In the Second Decision on Fifth Rule 92 *bis* Motion, the Chamber denied the admission of the sections of the Srebrenica Trial Video ostensibly shown to these witnesses, as well as others,⁸ and tendered by the Prosecution, because the Prosecution had not identified these particular sections, and it was not possible for the Chamber to find the sections itself amongst the video as a whole.⁹ In the Motion, the Prosecution has identified particular sections of the Srebrenica Trial Video put to these witnesses, and the relevant pages of the transcripts of their previous testimony.¹⁰ The Chamber has reviewed these sections in conjunction with the witnesses' previous testimony, and it is satisfied that these sections form inseparable and indispensable parts of that testimony. Therefore, the Chamber will admit these sections into evidence.¹¹

10. Finally, the Prosecution provides, together with the Motion, a new version of the video with Rule 65 *ter* number 40027, the admission of which was denied by the Chamber in the Second Decision on Fifth Rule 92 *bis* Motion.¹² The Prosecution submits that the new version is part of the video originally given Rule 65 *ter* number 40027, and now contains solely a documentary entitled "Operation Srebrenica", made by witness Zoran Petrović-Piroćanac. It requests the Chamber to admit the documentary in its entirety because, during his previous testimony in the *Popović et al.* case, the witness authenticated the documentary by confirming he was its author, and stated that it was aired in Belgrade between 15-17 July 1995.¹³ In the

⁶ Second Decision on Fifth Rule 92 *bis* Motion, para. 19.

⁷ Motion, para. 8.

⁸ The Chamber notes that the Prosecution is not seeking readmission of portions of the Srebrenica Trial Video shown to KDZ229, KDZ284, KDZ329, and KDZ117, *see* Motion, para. 10.

⁹ Second Decision on Fifth Rule 92 *bis* Motion, para. 38.

¹⁰ Motion, para. 10.

¹¹ The Rule 65 *ter* numbers for these sections are: 40010A, 40010B, 40010C, 40010D, 40010E, 40010F, 40010G, 40010H, 40010I, 40010J, 40010K, 40010L, 40010M, 40010N, 40010O, 40010P, 40010Q, 40010R, 40010S, and 40010T.

¹² Second Decision on Fifth Rule 92 *bis* Motion, para. 40.

¹³ Motion, para. 12.

alternative, should the Chamber decide not to admit the documentary in its entirety, the Prosecution requests the Chamber to admit into evidence three sections of the documentary, which it has identified, and which were discussed by Zoran Petrović-Piroćanac during his previous testimony.¹⁴

11. The Chamber has reviewed the documentary in conjunction with the relevant parts of Zoran Petrović-Piroćanac's previous testimony. It notes that the witness testified in the *Popović et al.* case that he had edited the raw footage that he had shot in and around Srebrenica, and with which he made the documentary "Operation Srebrenica". After being shown a section of it in court, Zoran Petrović-Piroćanac confirmed that what he had been shown was the beginning of this documentary. The Chamber is satisfied that, on this basis, taken together with his recognition of and evidence regarding certain other sections put to him during his testimony in the *Popović et al.* case, the witness authenticated the documentary with Rule 65 *ter* number 40027, and it will therefore admit it in its entirety. As such, it does not need to consider the Prosecution's alternative request.

b) Additional matter

12. The Chamber will now address an additional issue relating to the original request by the Prosecution for the admission of written evidence relating to the Srebrenica aspect of its case pursuant to Rule 92 *bis*.¹⁵ In the Prosecution's Fifth Rule 92 *bis* Motion, the Prosecution tendered transcripts of previous testimony as both written evidence and as associated exhibits for a number of witnesses. The Chamber decided to admit the transcripts as written evidence and, therefore, it did not also consider their admission into evidence as associated exhibits.¹⁶ However, in relation to witness Mile Janjić, the Prosecution tendered the transcript of his previous testimony in the *Blagojević* case (Rule 65 *ter* number 03911) as an associated exhibit only. In the First Decision on Fifth Rule 92 *bis* Motion, the Chamber denied the admission of this transcript because the Chamber was not satisfied that it was an inseparable and indispensable part of Mile Janjić's evidence, and it consequently did not satisfy the test for admission of associated exhibits in accordance with the Tribunal's case law.¹⁷ However, following a review of Mile Janjić's evidence that was admitted, and despite the fact that the Prosecution failed to tender his *Blagojević* testimony as written evidence, the Chamber has determined that it is necessary to consider its admissibility pursuant to Rule 92 *bis*, so as to have a full understanding of the witness's evidence as a whole.

¹⁴ Motion, para. 13.

¹⁵ Prosecution's Fifth Rule 92 *bis* Motion.

13. Mile Janjić was a member of the military police platoon of the Bratunac Brigade of the Army of the Republika Srpska. The evidence that he provided in the *Blagojević* case concerns the provision of security around Fontana Hotel in Bratunac on 11 July 1995, events that occurred in and around Potočari on 12 and 13 July 1995, including the separation of Bosnian Muslim men and woman and the witness's role in counting the numbers of Bosnian Muslims on the buses, and hearing shooting during the night of 13-14 July 1995 coming from the direction of the Vuk Karadžić school.

14. The Chamber has reviewed Mile Janjić's *Blagojević* testimony and, with regard to the requirements of Rule 92 *bis*(A), the Chamber considers that his evidence is cumulative of the evidence of witnesses who were the subject of the First Decision on Fifth Rule 92 *bis* Motion, in particular Vicentius Egbers, KDZ284, and KDZ360. Moreover, the Chamber considers that Mile Janjić's evidence is "crime-base" evidence, as it describes certain events that took place in and around Srebrenica on 11-14 July 1995, and the witness's involvement in some of those events.

15. The Chamber is satisfied that none of Mile Janjić's evidence goes to the acts and conduct of the Accused, as charged in the Third Amended Indictment ("Indictment"). However, it notes that Mile Janjić testified about certain acts and conduct of Ratko Mladić, who is named in the Indictment as a member of the joint criminal enterprise ("JCE") that is charged in respect of the Srebrenica events. In particular, he testified that: (i) he saw Mladić at Potočari; (ii) he heard from others that Mladić told those waiting at Potočari that they should be patient and that they would be transported to Kladanj or wherever else they wanted to go, that they were safe, and that the women and children should leave first because they had priority; and (iii) he heard from others that Mladić gave orders for groups of men to be taken across the street rather than be allowed to move toward the buses, as well as orders relating to the distribution of food and water to the civilian population. The Chamber considers that this evidence does not bear directly upon the Accused's responsibility as alleged in the Indictment and, thus, is not sufficient to render either these portions of Mile Janjić's evidence, or his evidence in the *Blagojević* case as a whole, inadmissible pursuant to Rule 92 *bis*. Furthermore, the Chamber is satisfied that Mile Janjić's evidence does not relate to a "live and important issue" between the parties, and that it is not "pivotal" or "critical" to the Prosecution's case. The Chamber is also of the view that there are no factors, as set out in Rule 92 *bis*(A)(ii), which would lead the Chamber to conclude that the

¹⁶ First Decision on Fifth Rule 92 *bis* Motion, para. 50.

¹⁷ First Decision on Fifth Rule 92 *bis* Motion, para. 63.

transcript should not be admitted pursuant to Rule 92 *bis*. Therefore, the Chamber will admit into evidence the transcript of Mile Janjić's previous testimony in the *Blagojević* case.

16. The Chamber recalls that it also has discretion to require witnesses to appear for cross-examination pursuant to Rule 92 *bis*(C); if it does so decide, the provisions of Rule 92 *ter* shall apply. In assessing whether Mile Janjić's *Blagojević* testimony requires him to come for cross-examination, the Chamber notes firstly that, in that case, Mile Janjić was subject to fairly extensive cross-examination by the Prosecution. The Chamber has also considered whether the evidence is cumulative, crime-base, touches upon a "live and important issue between the parties", describes the acts and conduct of a person or persons for whose acts and conduct the Accused is charged with responsibility, and how proximate the acts and conduct of this person or persons are to the Accused. The Chamber has found above that Mile Janjić's evidence is crime-base and cumulative of the evidence of other Prosecution witnesses. In relation to evidence describing the acts and conduct of persons for whom the Accused is charged with responsibility, the Chamber has already concluded that the witness's evidence concerning the acts and conduct of Mladić does not bear directly upon the Accused's responsibility as alleged in the Indictment. However, Mile Janjić also describes certain actions of Radislav Krstić, Colonel Janković, and Momir Nikolić. In relation to Krstić, the witness testified that he saw him at Potočari. Regarding Janković and Nikolić, the witness testified that Nikolić told him that he would be assisting Janković with counting the people who were getting on the buses, which he did, reporting his findings to Janković. Nikolić also ordered the witness and other military police to secure the Bratunac school and nearby busses. Janković told the witness to drive towards Srebrenica and tell any people he saw to go to Potočari, where they would be put on buses.

17. The Chamber considers that none of the evidence pertaining to these individuals, goes to the Accused's responsibility as charged in the Indictment, and that it is not sufficiently proximate to the Accused to require Mile Janjić to appear for cross-examination. It further considers that it does not relate to a "live and important issue" between the parties or represent a "critical" or "pivotal" element of the Prosecution's case. Accordingly, the Chamber will not exercise its discretion to require Mile Janjić to come to the Tribunal for cross-examination.

IV. Disposition

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

- a) **ORDERS** that the items with the following Rule 65 *ter* numbers are admitted into evidence: 02160, 40010A, 40010B, 40010C, 40010D, 40010E, 40010F, 40010G, 40010H, 40010I, 40010J, 40010K, 40010L, 40010M, 40010N, 40010O, 40010P, 40010Q, 40010R, 40010S, 40010T, and 40027;
- b) **ORDERS** that the transcript of the previous testimony of Mile Janjić in the *Blagojević* case (Rule 65 *ter* number 03911) is admitted into evidence;
- c) **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]