



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-03-69-T
Date: 7 October 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 7 October 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION'S MOTIONS FOR ADMISSION
OF WRITTEN EVIDENCE PURSUANT TO RULE 92 *BIS***

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I. PROCEDURAL HISTORY

1. On 21 May 2007, the Prosecution filed a confidential and partly *ex parte* motion (“First Motion”) wherein it sought the admission of the written evidence of 60 witnesses pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal (respectively, “92 *bis* witnesses” and “Rules”).¹ On 9 July 2007, both Defence teams filed their responses.² On 16 July 2007, the Prosecution requested leave to reply and replied to the Defence responses.³
2. On 18 June 2007, the Prosecution filed a notification that 14 of the 92 *bis* witnesses would be giving partial *viva voce* testimony.⁴ On the same day, the Prosecution filed a Rule 92 *bis* motion in relation to Witness B-071⁵ and a partial Rule 92 *bis* motion in relation to Witness Strinović.⁶
3. On 25 February 2008, the Prosecution filed a motion to withdraw 15 of the 92 *bis* witnesses.⁷ This motion was granted by Trial Chamber III.⁸
4. On 18 March 2008, Trial Chamber III decided that two 92 *bis* witnesses would more appropriately be considered under Rule 92 *ter* of the Rules.⁹
5. On 26 August 2008, the Prosecution filed a motion to withdraw and replace the written statement of Witness Ahmetović (one of the 92 *bis* witnesses).¹⁰ The Stanišić Defence responded on

¹ Motion for Admission of Written Evidence Pursuant to Rule 92 *bis* with Confidential Annexes A through K and *Ex Parte* and Confidential Annex L, confidential and partly *ex parte*, 21 May 2007.

² Defence Response to ‘Prosecution Motion for Admission of Written Evidence Pursuant to Rule 92*bis*’ with Confidential Annex, partly confidential, 9 July 2007 (“Simatović Response”); Defence Response to Prosecution Motions Pursuant to Rule 92*bis*, Notification Pursuant to Rule 94*bis*, and Request for Leave to Exceed Page Limit, confidential, 9 July 2007 (“Stanišić Response”). On 29 May 2007, the Simatović Defence filed a request to extend the time period allotted to respond to the First Motion, Defence Motion to Postpone Deadline for Filing Response on Prosecution Motions for Admission of Written Evidence Pursuant to Rule 92*bis*, 92*ter* and 92*quater*, 29 May 2007. The request was granted by Trial Chamber III, then seised of the case, Decision on Several Applications to Modify Terms of the Work Plan and Order Following a Rule 65 *ter* Conference, 1 June 2007.

³ Prosecution’s Leave to Reply and Reply to Defence Responses to Prosecution’s Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*, 16 July 2007 (“Reply”).

⁴ Prosecution’s Notification of Crime Base Witnesses the Prosecution Intends to Call for Partial *Viva Voce* Testimony with Confidential Annex A, partly confidential, 18 June 2007.

⁵ Prosecution’s Motion for the Admission of Written Evidence of Witness B-071 Pursuant to Rule 92*bis* with Confidential and *Ex Parte* Annex, partly confidential, 18 June 2007.

⁶ Prosecution’s Submission of the Expert Report of Professor Dr Davor Strinović Pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts Pursuant to Rule 92 *bis*(D), 18 June 2007.

⁷ Prosecution Motion to Withdraw 17 Pending Applications for Admission of Evidence in Written Form under 92 *bis* and 92 *quater*, confidential, 25 February 2008.

⁸ Decision on Prosecution Motion to Withdraw 17 Pending Applications for Admission of Evidence in Written Form under Rules 92 *bis* and 92 *quater* of the Rules, 18 March 2008.

⁹ Decision on Prosecution’s Motion for Admission of Written Statements and Associated Exhibits Pursuant to Rule 92 *bis* of the Rules, 18 March 2008.

¹⁰ Prosecution Motion for Replacement of Written Evidence of Witness Husein Ahmetović Pursuant to Rule 92 *bis* with Confidential Annexes A through C, partly confidential, 26 August 2008 (“Ahmetović Motion”).

9 September 2008.¹¹ The Simatović Defence did not file a response. The Prosecution then requested leave to reply and replied on 16 September 2008.¹²

6. On 5 May 2009, the Prosecution changed the mode of testimony of two further 92 *bis* witnesses to partial *viva voce* testimony.¹³

7. On 6 July 2009, the Chamber granted the Prosecution's request to call 11 additional witnesses, six of whom were 92 *bis* witnesses who had previously been removed and were thereby reinstated.¹⁴

8. On 13 October 2009, 24 November 2009, and 5 July 2010, the Prosecution provided the Chamber with an update on protective measures for all witnesses, proposing that the unredacted evidence of all 92 *bis* witnesses with protective measures be admitted under seal while any public versions be redacted to protect the witnesses' identities.¹⁵

9. On 14 October 2009, the Prosecution filed a motion requesting protective measures for selected witnesses, including two 92 *bis* witnesses ("Protective Measures Motion").¹⁶ The Stanišić Defence response to the Protective Measures Motion was filed on 25 November 2009.¹⁷ The Simatović Defence did not respond.

¹¹ Defence Response to Prosecution Motion for Replacement of Written Evidence of Witness Husein Ahmetović Pursuant to Rule 92 *bis*, confidential, 9 September 2008 ("Stanišić Ahmetović Response").

¹² Prosecution Request for Leave to Reply and Reply to "Defence Response to Prosecution Motion for Replacement of Written Evidence of Witness Husein Ahmetović Pursuant to Rule 92 *bis*," confidential, 16 September 2009 ("Ahmetović Reply").

¹³ Prosecution Notification of Change of Mode of Testimony (Witnesses [C-1230 and C-1232]), confidential, 5 May 2009.

¹⁴ Hearing of 6 July 2009, T. 1824 ("Witness Order"). The witnesses are C-1102, B-1626, C-1175, B-1638, C-1201, C-1211.

¹⁵ Prosecution Reassessment of Protective Measures with Annex, confidential and *ex parte*, 13 October 2009 ("Reassessment"), Prosecution Submissions on Status of Protective Measures with Annex, confidential, 24 November 2009 ("Second Reassessment"); Prosecution Update on Status of Protective Measures, confidential, 5 July 2010 ("Third Reassessment"). See Reassessment, para. 9, Second Reassessment, para. 6.

¹⁶ Prosecution Motion for Protective Measures with Confidential and *Ex-Parte* Annex, confidential and partly *ex parte*, 14 October 2009 (92 *bis* witnesses at issue are Witnesses C-1202 and C-1231).

¹⁷ Defence Response to Prosecution Motion for Protective Measures, confidential, 25 November 2009 ("Protective Measures Response"). The Stanišić Defence submitted on 28 October 2009 that it could not properly respond to the Protective Measures Motion because it contained an *ex parte* annex, Defence Response to the Prosecution Motion for Protective Measures with Confidential and *Ex-Parte* Annex, confidential, 28 October 2009. On 11 November 2009, the Chamber ordered the *ex parte* status of the annex be lifted, Order Lifting *Ex Parte* Status of Annex to Confidential Prosecution Motion for Protective Measures, confidential, 11 November 2009.

10. On 13 November 2009, the Prosecution filed a submission giving an updated presentation of the evidence proffered for every 92 *bis* and 92 *ter* witness (“Submission”).¹⁸ Neither Defence team filed a response.

11. On 20 January 2010, the Prosecution requested re-classification of Witness C-1089 as a 92 *bis* witness, seeking admission of his evidence pursuant to Rule 92 *bis* or, alternatively, under Rule 92 *quater*.¹⁹

12. The most recent Prosecution witness list was filed on 23 February 2010 and identified 25 92 *bis* witnesses.²⁰

13. On 29 March 2010, due to the death of a witness, the Prosecution requested re-classification of the First Motion in relation to Witness Ahmetović, seeking admission of his evidence pursuant to Rule 92 *quater*.²¹

14. On 6 September 2010, due to the death of a witness, the Prosecution requested re-classification of the First Motion in relation to Witness B-1775 seeking admission of his evidence pursuant to Rule 92 *quater*.²²

II. SUBMISSIONS OF THE PARTIES

A. First Motion

15. The Prosecution submits that the evidence it seeks to have admitted (“Proffered Evidence”) is relevant and does not go to the acts and conduct of Jovica Stanišić and Franko Simatović (collectively, “the Accused”). The Prosecution submits that parts of the Proffered Evidence are cumulative in nature, concern the relevant historical, political or military background to the conflict or relate to the impact of crimes upon victims.²³

¹⁸ Prosecution Submission on 92 *ter* and 92 *bis* witnesses with Confidential Annexes A and B, partly confidential, 13 November 2009; Corrigendum to Prosecution Submission on 92 *ter* and 92 *bis* witnesses with Confidential Annexes A & B, partly confidential, 16 November 2009 (“Corrigendum”).

¹⁹ Prosecution Motion to Convert Mode of Testimony for C-1089, 20 January 2010. This Chamber had initially dealt with the testimony of Witness C-1089 in a previous decision, Decision on Prosecution’s Motion for Admission of Written Statements and Associated Exhibits Pursuant to Rule 92 *bis* of the Rules, 18 March 2008.

²⁰ Corrigendum to Prosecution Updated Witness List, confidential, 23 February 2010 (“Updated Witness List”).

²¹ Prosecution Motion for Admission of Evidence of Witness Husein Ahmetović Pursuant to Rule 92 *quater*, public with confidential Annex B, 29 March 2010 (“Reclassification Motion”).

²² Prosecution Motion for Admission of Evidence of Witness JF-070 Pursuant to Rule 92 *quater*, public with confidential Annexes A and B, 6 September 2010.

²³ First Motion, paras 10-11.

16. The Prosecution asserts that the Proffered Evidence should be admitted in order to reduce the length of trial as well as to lessen the burden upon victims and spare them having to travel to the Tribunal again to provide evidence they have already given in previous cases.²⁴ The Prosecution also points out that some of the Proffered Evidence was admitted in previous cases under Rule 92 *bis*.²⁵

B. Simatović Response

17. The Simatović Defence submits that evidence cannot be admitted under Rule 92 *bis* of the Rules if it pertains to the acts and conduct of the Accused and that, accordingly, no evidence can be admitted under this rule if it pertains to the acts of people who were subordinated to the Accused or who were members of the same alleged joint criminal enterprise (“JCE”).²⁶ The Simatović Defence alternatively argues that such evidence must be tested by cross-examination.²⁷ The Simatović Defence submits that cross-examination is essential to Simatović’s right to a fair trial, in light of both his right under the Statute to confront witnesses and the fact that the evidence the Prosecution seeks to admit relates to critical and live issues between the parties.²⁸

C. Stanišić Response

18. The Stanišić Defence requests leave to exceed the word limit in its Response.²⁹

19. The Stanišić Response asserts that the First Motion should be rejected in light of the Accused Stanišić’s right to a fair trial and, more specifically, to cross-examine witnesses.³⁰ Alternatively, the Stanišić Defence requests that the witnesses be required to appear for cross-examination.³¹ In support of this request, the Stanišić Defence argues that it should be able to cross-examine witnesses when their evidence constitutes proof of a critical element of the Prosecution’s case; when a substantial part of the evidence is hearsay; or when cross-examination of a witness in other proceedings does not deal adequately with issues that are relevant to the current proceedings.³²

²⁴ First Motion, para. 12.

²⁵ First Motion, para. 13.

²⁶ Simatović Response, para. 5.

²⁷ Simatović Response, para. 12.

²⁸ Simatović Response, paras 13-14.

²⁹ Stanišić Response, para. 7.

³⁰ Stanišić Response, paras 8-9.

³¹ Stanišić Response, para. 14.

³² Stanišić Response, paras 15-16.

20. The Stanišić Defence submits that the acts or conduct of co-members of the alleged JCE, as well as the organisation, movement, and acts of special units which are attributed to the State Security Service (“DB”), are pivotal issues in the Prosecution’s case; evidence relating to these matters is not merely crime-base evidence and should be subject to cross-examination.³³ The Stanišić Defence also singles out specific witnesses whom it seeks to cross-examine on these grounds.³⁴

21. The Stanišić Defence cites the Appeals Chamber in *Prosecutor v. Radoslav Brđanin*, which held that members of a “first category” JCE can be held responsible for acts committed by physical perpetrators who are not members of that JCE.³⁵ The Stanišić Defence therefore argues that, in light of this case law, evidence relating to the acts and conduct of physical perpetrators is pivotal to the Prosecution’s case.³⁶

22. The Stanišić Defence further submits that the documents associated with the written statements and transcripts should not be admitted under Rule 92 *bis*.³⁷ The Stanišić Defence opposes the admission of certain documents by arguing that they were not tendered through the relevant witness,³⁸ while others relate to witnesses who have never testified before the Tribunal.³⁹

23. Finally, the Stanišić Defence opposes the admission of associated documents that were not included on the Prosecution’s Rule 65 *ter* exhibit list.⁴⁰ The Stanišić Defence argues that they were not informed in an adequate and timely manner of the Prosecution’s intention to request for admission of these documents into evidence.⁴¹

D. Reply

24. The Prosecution rejects the Defence’s understanding of the scope of the term “acts and conduct of the Accused”.⁴² According to the Prosecution, Rule 92 *bis* material going to the acts and

³³ Stanišić Response, paras 15-16, 19.

³⁴ Stanišić Response, para. 17. The 92 *bis* witnesses specifically objected to by the Stanišić Defence include: C-1211, B-1626, C-1175, C-1102, C-1141, B-1108, B-1459, B-1778, B-1115, JF-003, C-1129, C-1162, C-1194, C-1215, B-1049, B-1047, MM-043, C-1091, C-1166, B-1517, B-1237, and B-1769. Other 92 *bis* witnesses specifically objected to by the Stanišić Defence have been subsequently removed from the Prosecution’s Updated Witness List or are no longer put forth as 92 *bis* witnesses.

³⁵ Stanišić Response, para. 18; see also *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007, paras 410-414.

³⁶ Stanišić Response, para. 18.

³⁷ Stanišić Response, paras 27-37. See also argument from Simatović Response, para. 14.

³⁸ Stanišić Response, paras 31-32.

³⁹ Stanišić Response, para. 33.

⁴⁰ Stanišić Response, para. 36.

⁴¹ *Ibid.*

⁴² Reply, para. 6.

conduct of others can be admitted, even if later relied upon to establish the state of mind of an accused.⁴³ The Prosecution avers that none of the evidence called into question in the Defence Responses, including evidence pertaining to the organisation, movement, and acts of special units elsewhere attributed to the DB, is so proximate to the Accused's acts and conduct as to warrant the denial of their admission into evidence.⁴⁴ The Prosecution asserts that the disputed evidence will be linked to the Accused through other witnesses who will be called to give *viva voce* testimony or as partial 92 *bis/92 ter* witnesses.⁴⁵

E. Ahmetović Motion, Response, Reply and Reclassification Motion

25. The admission of Witness Ahmetović's evidence pursuant to Rule 92 *quater* was dealt with by the Chamber's oral decision of 1 June 2010.⁴⁶

F. Protective Measures Motion and Response

26. Also relevant to this Decision are the Prosecution's requests for protective measures for Witnesses C-1202 and C-1231.⁴⁷ The Prosecution asserts that Witness C-1202 would suffer psychological harm "from hearing his name mentioned in court" without such measures and refers to a medical report dated 25 April 2006 that describes the witness's struggles with Post Traumatic Stress Disorder ("PTSD").⁴⁸ Witness C-1231 lives close to the former Serbian Krajina and sees former Army of Republic of Serbian Krajina ("SVK") members on a daily basis.⁴⁹ The Prosecution argues these facts expose the witnesses to present danger.⁵⁰ Accordingly, the Prosecution seeks that their names and identifying details be redacted from any publicly admitted statements and that they be referred to only by pseudonym in any public filing.⁵¹

27. The Stanišić Defence argues that protective measures for these two witnesses should be denied as an objective basis for their fears has not been established.⁵² The Stanišić Defence further asserts that Witness C-1202's fears are substantiated by a medical report that has not been disclosed

⁴³ Reply, para. 7.

⁴⁴ Reply, para. 8.

⁴⁵ Ibid.

⁴⁶ T. 5585-5589.

⁴⁷ Protective Measures Motion, para. 1.

⁴⁸ Protective Measures Motion, para. 6; Annex A.

⁴⁹ Protective Measures Motion, para. 8; Annex A.

⁵⁰ Ibid.

⁵¹ Protective Measures Motion, para. 14.

⁵² Protective Measures Response, para. 12.

to the Defence, and that Witness C-1231's fear of Serbs returning to the witness's neighbourhood is an insufficient basis to grant protective measures.⁵³

G. Submission and Corrigendum

28. In its Submission, in addition to asking for consideration on the updated Proffered Evidence of every 92 *bis* witness in the Corrigendum Annex, the Prosecution asks to convert the mode of testimony for Witness B-1237 from 92 *bis* to 92 *ter* and Witness B-1115 from 92 *ter* to 92 *bis*.⁵⁴ The Prosecution also requests that 65 *ter* numbers be given for all proposed pieces of Rule 92 *bis* evidence in the Corrigendum Annex which have not had 65 *ter* numbers formally assigned to them.⁵⁵

III. APPLICABLE LAW

29. As the Rules and jurisprudence indicate, determining whether to admit evidence pursuant to Rule 92 *bis* of the Rules involves a six-part analysis. First, as with all evidence, the Rule 92 *bis* material must be relevant and have probative value. Second, the Chamber must verify that the written statement or transcript does not concern the acts and conduct of the Accused. Third, the Chamber must evaluate the statement or transcript's contents pursuant to the discretionary factors outlined in Rule 92 *bis* (A). Fourth, the written statement must meet the formal requirements outlined in Rule 92 *bis* (B). Fifth, even if all requirements of admission pursuant to Rule 92 *bis* are met, the Chamber may decide in its discretion to require the maker of the statement to appear for cross-examination. Sixth, once the written statements and transcripts are deemed admissible, the Chamber must decide whether to admit associated exhibits, if any.

A. Relevance and Probative Value

30. The general admissibility of evidence is governed by Rule 89 of the Rules: Relevant evidence with probative value may be admitted, although it may be excluded when the probative value of the evidence is substantially outweighed by the need to ensure a fair trial.⁵⁶

⁵³ Protective Measures Response, paras 5-6.

⁵⁴ Submission, para. 13.

⁵⁵ Submission, para. 17. This request was granted in Decision on Eleventh, Twelfth, and Thirteenth Prosecution Motions for Leave to Amend Its Rule 65 *ter* Exhibit List, 10 February 2010, paras 43-44.

⁵⁶ Rules 89(C) and (D) of the Rules.

B. Acts and Conduct of the Accused

31. Rule 92 *bis* (A) of the Rules allows for written materials to be admitted as evidence when the content of the materials does not go to the acts and conduct of the accused as charged in the indictment. The term “acts and conduct of the accused” should be given its ordinary meaning: relating to the deeds or behaviour of the accused.⁵⁷ As the *Slobodan Milošević* Trial Chamber discussed, acts and conduct of the accused “should not be extended by fanciful interpretation”.⁵⁸ Where the Prosecution case alleges the existence of a JCE, Rule 92 *bis* (A) of the Rules also excludes any written statement relied upon to establish that the accused participated in the JCE or shared with the person who actually did commit the crimes charged the requisite intent for those crimes.⁵⁹

32. The Appeals Chamber in *Galić* made a distinction between (a) the acts and conduct of others who commit the crimes for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the indictment which establish his responsibility.⁶⁰ The Appeals Chamber also held that it is only a written statement which goes to prove the latter acts and conduct which Rule 92 *bis* (A) excludes from the procedure laid down in that Rule.⁶¹

C. Discretionary Factors

33. The Chamber has the discretion to admit evidence under Rule 92 *bis*. Rule 92 *bis* (A)(i) introduces a non-exhaustive list of factors that may be taken into account by the Chamber in favour or against admission of a transcript or a written statement. Factors in favour of admission include situations where the evidence in question is of a cumulative nature; relates to relevant historical, political or military background; consists of an analysis of the ethnic composition of the population; concerns the impact of crimes upon the victims; relates to issues of the character of the accused; or relates to sentencing factors.⁶² Factors militating against admission include situations where there is an overriding public interest in such evidence being presented orally; where a party objecting can demonstrate that its nature and source renders it unreliable or that its prejudicial effect outweighs its

⁵⁷ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002 (“*Galić Appeals Decision*”), paras 9-12; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92 *bis*, 21 March 2002 (“*Milošević Decision*”), para. 22.

⁵⁸ *Milošević Decision*, para. 22.

⁵⁹ *Galić Appeals Decision*, para. 10.

⁶⁰ *Galić Appeals Decision*, para. 9.

⁶¹ *Ibid.*

⁶² Rule 92 *bis* (A)(i) of the Rules.

probative value; or where there are other factors which make it appropriate for the witness to attend for cross-examination.⁶³

D. Formal Requirements

34. In the event that a written statement is sought for admission under Rule 92 *bis* of the Rules, the written statement must comply with the requirements of Rule 92 *bis* (B). A written statement must have a declaration attached wherein the person making the written statement attests to its truthfulness.⁶⁴ The declaration must be witnessed and correctly verified by an appropriate person, either a person authorised to witness such a declaration in accordance with the law and procedure of a State or a Presiding Officer appointed by the Registrar of the Tribunal for that purpose.⁶⁵

E. Appearance for Cross-Examination

35. Pursuant to Rule 92 *bis* (C), a Chamber may require the witness who gave the written statement or whose testimony is recorded by the transcript to appear for cross-examination.⁶⁶ Once it is determined that the witness must appear for cross-examination, the admission of any prior statements or testimony is governed by Rule 92 *ter*. The jurisprudence has considered several factors in making this determination. First, the witness may have to appear for cross-examination if the acts and conduct of persons described in the testimony reach a certain degree of proximity to the accused.⁶⁷ Second, Trial Chambers have considered the nature of the evidence in the context of the case against the accused, and have indicated that cross-examination will be necessary where the evidence relates to a “live and important issue between the parties,”⁶⁸ is a “critical element of the Prosecution’s case,”⁶⁹ or is “pivotal” to the Prosecution’s case.⁷⁰ Whether the issues in the proffered evidence are live and important, thus necessitating cross-examination, involves considering them in the context of the specific circumstances of the case. In doing so it is important to assess whether the accused has put this evidence into issue and vigorously put forward a contrary case.⁷¹ Other factors have been considered by various Chambers, including the cumulative nature of the

⁶³ Rule 92 *bis* (A)(ii) of the Rules.

⁶⁴ Rule 92 *bis* (B) of the Rules.

⁶⁵ Rule 92 *bis* (B)(i) of the Rules. Rule 92 *bis* (B)(ii) lists some content requirements for the attesting declarations.

⁶⁶ See Rules 92 *bis* (C) and 92 *ter* of the Rules.

⁶⁷ *Galić* demonstrates how this word should be interpreted literally by giving an example of proximity as being when the actions committed by others occur in the presence of the Accused. See *Galić* Appeals Decision, para. 13.

⁶⁸ *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution’s Motions for the Admission of Written Evidence Pursuant to Rule 92 *Bis* of the Rules, 16 January 2006 (“*Martić* Decision”), para. 15; *Milošević* Decision, paras 24-25.

⁶⁹ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-T, Decision on Prosecutor’s Application to Admit Transcripts Under Rule 92 *bis*, 23 May 2001, para. 4.

⁷⁰ *Martić* Decision, para. 14.

⁷¹ *Milošević* Decision, para. 24.

evidence⁷² and whether the cross-examination in earlier proceedings adequately addressed the issues relevant to the current proceedings.⁷³

F. Associated Exhibits

36. It is well established in the jurisprudence of the Tribunal that exhibits accompanying written statements or transcripts can be admitted along with statements or transcripts where they form an inseparable and indispensable part of the evidence.⁷⁴ However, not every document referred to in a written statement or a transcript of a witness automatically forms an “inseparable and indispensable part” of the testimony of that witness. A document falls into this category if the witness actually discussed the document and if it is one without which the written statement or the transcript would become incomprehensible or would be of lesser probative value.⁷⁵

G. Protective Measures

37. Article 20 (1) of the Statute of the Tribunal (“Statute”) provides that the Trial Chamber shall guarantee the rights of the accused and ensure the protection of victims and witnesses, while Article 21 (2) guarantees a public trial to all accused subject to the dispositions of Article 22 of the Statute concerning the protection of victims and witnesses. Rule 75 (F) of the Rules provides that “once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures: i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) or another jurisdiction unless and until they are rescinded, varied, augmented in accordance with the procedure set out in this Rule”.⁷⁶

⁷² Milošević Decision, para. 23.

⁷³ Martić Decision, para. 15.

⁷⁴ The Chamber thus rejects the Stanišić Defence argument that Rule 92 *bis* does not apply to the admission of associated exhibits. See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *ter*, 22 February 2007, p. 3; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-PT, Decision Regarding Prosecutor’s Notice of Intent to Offer Transcripts Under Rule 92 *bis*(D), 9 July 2001 (“*Naletilić Decision*”), para. 8; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Prosecution Motion for Admission of Transcript of Evidence Pursuant to Rule 92 *bis* of the Rules, 28 September 2006, para. 24.

⁷⁵ Decision on Prosecution’s Motion for the Admission of Written Evidence of Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008, para. 19; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses pursuant to Rule 92 *ter*, 9 July 2008, para. 15; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Admission of Written Evidence in Lieu of Viva Voce Testimony Pursuant to Rule 92*bis*, 12 September 2007, para. 23; *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution’s Motion on Admission of Transcripts Pursuant to Rule 92*bis* (D), 23 January 2004, p. 5; *Naletilić Decision*, para. 8.

⁷⁶ Rule 75(F).

38. Rule 75 (A) of the Rules allows the Trial Chamber to “order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused”.⁷⁷ The moving party must demonstrate an objectively grounded risk to the security or welfare of the witness or the witness’s family.⁷⁸

IV. DISCUSSION⁷⁹

39. Since the First Motion was filed, several 92 *bis* witnesses have been withdrawn by the Prosecution.⁸⁰ Other 92 *bis* witnesses from the First Motion have been re-classified as 92 *ter/or viva voce* witnesses on the Updated Witness List.⁸¹

40. The Proffered Evidence of the remaining 24 proposed 92 *bis* witnesses will be analysed under the six part analysis outlined above.

A. Relevance and Probative Value

41. The Proffered Evidence is relevant and of probative value to various parts of the Indictment. It involves crime-base witnesses describing the circumstances of the crimes they observed in Dubica (Witness C-1211),⁸² Doboij (Witness B-1115),⁸³ Bosanski Šamac (Witnesses B-1626 and B-1638),⁸⁴ Erdut (Witnesses JF-003, C-1162, C-1194, C-1175 and C-1089),⁸⁵ Saborsko-Poljanak (Witnesses C-1247, C-1231 and C-1234),⁸⁶ Sanski Most (Witnesses B-1049 and B-1047),⁸⁷ Škabrnja (Witnesses MM-043, C-1123, C-1202, C-1102 and C-1201),⁸⁸ Trnovo (Witnesses JF-065, PW-125 and JF-071)⁸⁹ and Zvornik (Witnesses B-1517 and B-1769).⁹⁰ There is nothing substantially prejudicial about any of the Proffered Evidence that justifies exclusion in order to ensure the need for a fair trial.

⁷⁷ Rule 75(A).

⁷⁸ See e.g. Reasons for the decision granting protective measures for Witness JF-015, 25 May 2010, T. 5283-5284.

⁷⁹ All witnesses in this draft (except for Witnesses JF-065 and JF-071 who were not previously assigned any pseudonyms) are being referred to by their old pseudonyms for ease of reference. However, should some of them be called for cross-examination and accordingly appear in court, their new pre-assigned pseudonyms should be used by the parties.

⁸⁰ See e.g. Prosecution Submission of Amended Consolidated Witness List and Request for Permission to Present Additional Witnesses Within Allotted Time, 5 June 2009.

⁸¹ See Updated Witness List.

⁸² Third Amended Indictment, 10 July 2008 (“Indictment”), para. 27.

⁸³ Indictment, paras 48-51.

⁸⁴ Indictment, paras 46-50.

⁸⁵ Indictment, paras 33-40.

⁸⁶ Indictment, paras 24-28.

⁸⁷ Indictment, paras 52-54.

⁸⁸ Indictment, paras 29-32.

⁸⁹ Indictment, paras 55-59.

⁹⁰ Indictment, paras 60-61.

B. Acts and Conduct of the Accused

42. All of the Proffered Evidence describes the acts and conduct of people other than the Accused. Both Defence teams argue that the Proffered Evidence goes to proof of the Accused's acts and conduct because they are charged on a JCE theory. This argument loads the term "acts and conduct" with legal content that is inconsistent with the Appeals Chamber's interpretation of the term in *Galić*.

43. Nor is the Chamber persuaded by the Stanišić Defence's argument based on the *Brđanin* Judgement. The JCE analysis in *Brđanin* did not relate either to Rule 92 *bis* or to analysing the acts and conduct of the accused pursuant to Rule 92 *bis*. *Brđanin* does not undermine or otherwise change the *Galić* conception of acts and conduct of the accused. The Chamber finds that none of the Proffered Evidence involves acts and conduct of the Accused.

C. Discretionary Factors

44. All Proffered Evidence is *prima facie* cumulative with oral testimony which was offered or is expected to be offered by at least one other witness in the Prosecution's case. None of the factors against admitting the Proffered Evidence are present: there is no overriding public interest for denying its admission, the proposed evidence has not been demonstrated to be unreliable by its nature or source, and the proposed evidence's prejudicial effect does not outweigh its probative value.

45. The Chamber finds that the discretionary factors favour admission of the Proffered Evidence.

D. Formal Requirements

46. The written statements of seven of the 92 *bis* witnesses – Witnesses B-1049, JF-003, MM-043, B-1638, PW-125, B-1626 and JF-065 – have been offered with no declarations by the witnesses and verifications by a Presiding Officer or by another appropriate official who meets the requirements of Rule 92 *bis* (B).⁹¹ The Chamber will defer its decision on the admissibility of this evidence until such declarations and verifications are obtained.

47. Incomplete sets of translated verifications and declarations have been offered for 14 of the 92 *bis* witnesses: Witnesses C-1089, C-1211, C-1175, C-1247, C-1123, C-1162, B-1769, C-1194,

⁹¹ Witnesses B-1517 and B-1047's materials in the Corrigendum Annex also lack attesting declarations, but these shortcomings are immaterial after the finding below that their evidence is to be assessed under Rule 92 *ter*.

C-1202, C-1231, C-1234, C-1102, C-1201, and JF-071. Specifically, these witnesses⁹² have only English versions of their verifications and B/C/S versions of their declarations. The Chamber will admit the evidence provided that English versions of the declarations and B/C/S versions of the verifications are provided.

48. The Proffered Evidence for Witness B-1115 meets the formal requirements of Rule 92 *bis* (B) of the Rules.

E. Appearance for Cross-Examination

49. Both Defence Responses indicate that all of the Proffered Evidence goes to live and important issues because these crimes underlie the JCE theory in the Indictment. The Defence's expansive interpretation of "live and important issue" leads to a conclusion that every piece of evidence relating to any alleged crime underlying the JCE theory would necessitate cross-examination. The view that the Defence urges the Chamber to adopt would functionally rule out the possibility that a written statement could be admitted into evidence without the author being subjected to cross-examination; however, this is precisely the possibility for which Rule 92 *bis* provides, subject to the Chamber's discretion.

50. For the purpose of this Rule 92 *bis* determination, the Chamber is of the opinion that, as a general rule, the evidence of perpetrated crimes should not be considered as such as sufficiently "live and important" in this case to give the Defence a right to cross-examining the 92 *bis* witnesses who attest to the occurrence of these crimes.

51. In analysing whether the acts and conduct of persons described in the testimony reach such a degree of proximity to the Accused as to warrant cross-examination, the Chamber notes that two proposed 92 *bis* witnesses – Witness C-1175 and Witness B-1517 – identify DB agents as parties present during the actions of paramilitaries described in the Proffered Evidence.⁹³ Considering that the Accused are alleged to have had leadership positions in the DB,⁹⁴ this evidence concerns acts and conduct of persons sufficiently proximate to the Accused as to warrant their cross-examination. The references to the DB in Witness C-1175's statements are incidental to the witness's overall testimony and redactions can be reasonably made.⁹⁵ If preferred, the Prosecution may tender the

⁹² For Witness C-1201 only an English version of the 92 *bis* verification is submitted.

⁹³ See Proffered Evidence of Witnesses C-1175 and B-1517.

⁹⁴ The Chamber notes that the Parties agreed that the Accused Stanišić held leadership positions within the DB at the time relevant to the Indictment and that the Accused Simatović worked in the DB in various roles in the period between 1978 and 2001, see Prosecution Submission on Agreed Facts, 15 June 2007 (partly confidential).

⁹⁵ See 0203-4644 (4th from last sentence in 4th paragraph regarding DB member); 0302-8268 (same); T.25464, lines 13-15 (sentence referencing same man who was identified as DB member in written statement).

evidence of this witness in its totality by producing this witness for cross-examination. By contrast, the Chamber finds that Witness B-1517's interactions with DB agents are so integral to his overall testimony that redactions would be impractical.

52. In relation to Witness B-1047, the Chamber notes that his evidence refers to *inter alia* both black and red berets worn by Arkan's men. In order to clarify aspects related to the attire and membership of the Red Berets, something which other witnesses testified about⁹⁶ but which in the opinion of the Chamber requires further attention, notwithstanding the fact that it may not be considered live and important in this case, or sufficiently proximate to the Accused, the Chamber decides to use its discretion to require Witness B-1047 to appear for cross-examination.

53. Finally, the Chamber notes that, as explained above, the Proffered Evidence is *prima facie* cumulative with the testimony of other witnesses in this case. The Defence points out that some of the Proffered Evidence has never been subject to cross-examination. However, the Chamber notes that Rule 92 *bis* of the Rules does not require cross-examination before evidence can be admitted.

54. Accordingly, in its discretion, the Chamber considers that the nature of the testimony offered does not require calling the 92 *bis* witnesses for cross-examination, with the exception of Witnesses B-1517 and B-1047.

F. Associated Exhibits

55. The Chamber notes handwritten annotations attached to Witness B-1638's written statement (ERN 0025-8364-00245-8372). They appear to the Chamber as notes made by participants in the interview. While the witness refers to the names mentioned in the handwritten notes, the witness does not refer to the notes themselves in his statement. The Chamber therefore finds the handwritten notes inadmissible.

56. Several associated exhibits were tendered twice with two different witnesses: the exhibits of 65 *ter* numbers 2812 and 2813 with Witnesses MM-043 and C-1201; 65 *ter* numbers 1667 and 1657 with Witnesses JF-003 and C-1162; ERN number 0363-9711-0363-9711 with Witnesses PW-125 and JF-071; 65 *ter* number 1936 with Witnesses C-1102 and C-1201; 65 *ter* numbers 20, 3536 and 4699 with Witnesses B-1638 and B-1626. So as not to overburden the record, the Chamber will only consider these exhibits once. Moreover, only selected pages of 65 *ter* 1936 are referred to in the underlying evidence and therefore the Chamber will only consider the following pages - ERN number: 0336-6267-0336-6267; 0336-6294-0336-6294.

57. Additionally, Witness C-1202 has only an English version of his clarifying additional statement (ERN 0295-5079-0295-5079) offered without a corresponding B/C/S version. The Prosecution is requested to provide the Chamber with a B/C/S version.

58. Witness C-1194 has an unredacted English version of a statement offered but a redacted B/C/S version. The Chamber requests the Prosecution to submit an unredacted version in B/C/S.

59. Rule 65 *ter* number 2829 has been tendered through Witness B-1115 with an incorrect English translation. The Prosecution is requested to provide the Chamber with the proper translation.

60. Turning to the arguments of the Parties, the Defence argues that the exhibits were not tendered through the relevant witnesses in past proceedings and that some witnesses have never testified before the Tribunal. The Chamber notes that these asserted criteria are not required by the jurisprudence and recalls that associated exhibits may be admitted whenever they form an “inseparable and indispensable” part of the Proffered Evidence.

61. The Chamber finds that the rest of associated exhibits form an “inseparable and indispensable” part of the Proffered Evidence and are therefore admissible under Rule 92 *bis*.

G. Protective Measures

62. As regards Witness C-1231, the Chamber recognises the witness’s proximity to the territory of the Krajina, the fact that the witness sees former SVK members on a daily basis, and the fact that his evidence pertains to the crimes committed by SVK soldiers. Taking these circumstances into account, and balancing the risks that the witness and his family may face after his evidence becomes public against the Accused’s right to a public trial, the Chamber considered that protective measures should be granted. Accordingly, the evidence of Witness C-1231 shall be admitted under seal and he shall be referred to as Witness C-1231 in all public filings.

63. In relation to Witness C-1202, his PTSD and emotional suffering, even if allegedly corroborated by a medical report, do not establish an objectively grounded risk to the welfare of the witness or the witness’s family. The Chamber considers that if the witness’s evidence is deemed admissible pursuant to Rule 92 *bis*, without a need for the witness to appear for cross-examination, he will not bear any additional emotional burden by having to re-live the events during *viva voce* testimony. The request for protective measures with respect to Witness C-1202 is therefore denied.

⁹⁶ See e.g. T. 2314, 2585, 3626-3627.

64. The Chamber reminds the Prosecution that evidence admitted pursuant to Rule 92 *bis* of the Rules is public unless a request for protective measures in relation to the relevant witness has been submitted and granted. The Proffered Evidence is admissible under seal as specified in the disposition.⁹⁷ However, until the Prosecution is in a position to re-affirm that protective measures are not required for Witnesses C-1089, C-1247, C-1123, C-1162, B-1769, C-1194, C-1234, C-1102, C-1201, JF-071, B-1049, JF-003, MM-043, B-1626 and JF-065 also the evidence of these witnesses should be provisionally treated as confidential. The Prosecution is given 28 days to report to the Chamber as to whether it will apply for protective measures in relation to these witnesses.

V. CONCLUSION

65. Accordingly, evidence of the following 92 *bis* witnesses is admissible pursuant to Rule 92 *bis* without a need for redaction or requiring them to appear for cross-examination: Witnesses B-1049, JF-003, C-1247, MM-043, C-1123, B-1626, C-1089, C-1162, PW-125, B-1769, B-1115, C-1194, C-1202, C-1234, C-1102, B-1638, C-1201, C-1211, C-1231, JF-065 and JF-071. Witness C-1175's Proffered Evidence is admissible in redacted form as indicated above unless the Prosecution prefers to have the entire statement admitted by calling this witness to appear for cross-examination under Rule 92 *ter*. Witnesses B-1517 and B-1047's evidence is admissible only subject to their appearance for cross-examination.

VI. DISPOSITION

66. For the foregoing reasons and pursuant to Rules 75, 89 and 92 *bis* of the Rules, the Chamber

GRANTS the Stanišić Defence leave to exceed the word limit in the Stanišić Response;

GRANTS the Prosecution leave to file a reply to the Simatović Response and Stanišić Response;

GRANTS the First Motion in part;

GRANTS the Protective Measures Motion as regards Witness C-1231;

GRANTS the Submission as regards changing the mode of testimony for Witnesses B-1237 and B-1115;

67. **ADMITS** into evidence the following provided that proper translations of verifications and declarations are provided within 28 days of the rendering of this decision:

⁹⁷ See *infra*, paras 67-69.

- 1) C-1211: Statement by 65 *ter* number: 5497 (under seal); Testimony: IT-95-11 (under seal).
- 2) C-1175 with redactions:⁹⁸ Statement by 65 *ter* number: 5477 (under seal), 5479 (under seal), 5478 (under seal); Statements by ERN number: *Eng*: 0203-4642-0203-4648 (under seal);⁹⁹ *BCS*: 0302-8266-0302-8273 (under seal), 0333-9147-0333-9147 (under seal); Testimony: IT-02-54 (T.25462:18-T.25476:22, T.25477:7-T.25490:24); Associated Exhibits by 65 *ter* number: 1749 (under seal), 1741 (under seal), 5468 (under seal), 5469, 5470, 5471, 5472, 5473, 5474, 5475, 5476.
- 3) C-1089: Statements by ERN Number: *Eng*: 0081-7557-0081-7562, 0089-5072-0089-5074, 0295-9289-0285-9291¹⁰⁰, 0295-9333-0295-9333; *BCS*: 0295-9332-0295-9332, 0295-9292-0295-9292, 0295-9293-0295-9298, 0295-9299-0295-9301;¹⁰¹ Associated Exhibits by 65 *ter* number: 1865.
- 4) C-1247: Statements by 65 *ter* number: 561; Testimony: IT-02-54-T (T.25514-T.25538).
- 5) C-1123:¹⁰² Statements by ERN Number: *Eng*: 0104-7885-0104-7889, 0469-0687-0469-0688; *BCS*: 0469-0689-0469-0692, 0469-0724-0469-0724; Statements by 65 *ter* number: 5441; Associated Exhibits by 65 *ter* number: 5432, 5435, 5434, 4634, 5436, 5437, 5439, 5440.¹⁰³
- 6) C-1162:¹⁰⁴ Statements by 65 *ter* number: 5452, 5453, 5454, 5456; Associated Exhibits by 65 *ter* number: 1667,¹⁰⁵ 1657,¹⁰⁶ 5455.

⁹⁸ See 0203-4644 (4th from last sentence in 4th paragraph regarding DB member); 0302-8268 (same); T.25464, lines 13-15 (sentence referencing same man who was identified as DB member in written statement).

⁹⁹ The Chamber notes that only personal details are redacted and the redactions do not reach the substance of the witness's statement.

¹⁰⁰ The Chamber notes that it has been provided by the Prosecution with the declaration of Witness C-1089 under this ERN number. However, a different document with the same ERN number appears uploaded in E-court. The Chamber requests the Prosecution to verify this issue.

¹⁰¹ These are the corrected ERN numbers as they appear on the exhibits; the original ERN numbers 0302-2484-0302-2489 and 0302-9997-0302-9999 as listed by the Prosecution on the 09-11-13 Corrigendum are crossed out on the exhibits. Moreover, the Chamber notes that the 92 *bis* package of this witness, as admitted in the *Milošević* case, contains additional statement making corrections to 0081-7557-0081-7562 as well as English version of Rule 92 *bis* verification and B/C/S version of Rule 92 *bis* declaration. The Chamber finds that the whole package should be considered together.

¹⁰² The Chamber notes that the Prosecution has requested no protective measures for this witness. Still, the Corrigendum Annex lists all items as tendered under seal. See *supra*, para. 64.

¹⁰³ The Chamber notes that 65 *ter* 2832 and 5438 were also tendered as P909 and P910 through Witness Strinović and will deal with their admission together with other documents marked for identification during Witness Strinović's testimony.

¹⁰⁴ The Prosecution has requested no protective measures for this witness. Still, the Corrigendum Annex lists all items as tendered under seal. See *supra*, para. 64.

- 7) B-1769: Statements by 65 *ter* number: 5459, 5460; Statements by ERN number: *Eng*: 0461-5698-0461-5699; *BCS*: 0461-5718-0461-5718; Associated Exhibits by ERN numbers: 0038-6915-0038-6915, 0038-6920-0038-6920, 0038-6927-0038-6927.
- 8) C-1194: Statements by 65 *ter* number: 5489, 5490, 5491.¹⁰⁷
- 9) C-1202: Statements by 65 *ter* number: 5495;¹⁰⁸ Statements by ERN number: *Eng*: 0295-5068-0295-5070, 0295-5079-0295-5079; *BCS*: 0295-5078-0295-5078.¹⁰⁹
- 10) C-1231: all evidence under seal; Statements by 65 *ter* number: 5500; Statements by ERN number: *Eng*: 0465-6619-0465-6620; *BCS*: 0465-6627-0465-6627.
- 11) C-1234: Statements by 65 *ter* number: 5502 (in *BCS* only 0295-5035-0295-5040), 5503, 5504; Testimony: IT-02-54-T (T.23686-T.23719), IT-95-11 (T.2647-T.2720; T.2721-T.2734); Associated Exhibits by 65 *ter* number: 650.¹¹⁰
- 12) C-1102: Statements by 65 *ter* number: 4785, 5422; Statement by ERN number: *Eng*: 0295-5125-0295-5125; *BCS*: 0295-5125-0295-5125; Testimony: IT-02-54-T (T.24969:5-T.25004:9), IT-95-11 (T.3864:23-T.3880:15); Associated Exhibits by 65 *ter* number: 282; 285; 283; 4615; 1936 – only selected pages - ERN number: 0336-6267-0336-6267, 0336-6294-0336-6294.¹¹¹
- 13) C-1201: Statements by 65 *ter* number: 5492, 5493¹¹² Testimony: IT-95-11 (T.2829-T.2858); Associated Exhibits by 65 *ter* number: 2813.¹¹³
- 14) JF-071: Statements by 65 *ter* number: 5487, 5488; Associated Exhibits by ERN numbers: 3363-9697-0363-9697, 0363-9699-0363-9699, 0363-9701-0363-9701, 0363-9703-0363-9703, 0363-9711-0363-9711.¹¹⁴

¹⁰⁵ See supra, para. 56.

¹⁰⁶ See *ibid*.

¹⁰⁷ See supra, para. 58.

¹⁰⁸ The Chamber notes that the personal details of the witness are redacted. The Chamber finds that the unredacted version of this statement should be considered for admission. The Prosecution is requested to provide the Chamber with the unredacted version of 65 *ter* 5495.

¹⁰⁹ See supra, para. 57.

¹¹⁰ The Chamber notes that 65 *ter* 45 has already been admitted as exhibit P70 and will be simply cross-referenced.

¹¹¹ See supra, para. 56. The Chamber notes that 65 *ter* 45 has already been admitted as exhibit P70 and 65 *ter* 31 as P141; they will be simply cross-referenced.

¹¹² See supra, para. 47, ft 92.

¹¹³ See *ibid*. 65 *ter* number 1936, although relevant here, is admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record it will not be admitted here for a second time but rather simply cross-referenced. Moreover, the Chamber notes that 65 *ter* 2811 has already been admitted as exhibit P100 and 65 *ter* 2812 as P101; they will be simply cross-referenced.

68. **FINDS** otherwise admissible but **DEFERS** admitting the following Proffered Evidence until the required attesting declarations and verifications are provided:

- 1) B-1049: Statements by 65 *ter* number: 5401.
- 2) JF-003: Statements by 65 *ter* number: 5402, 5403; Associated Exhibits by 65 *ter* number: 5404.¹¹⁵
- 3) MM-043: Statements by 65 *ter* number: 5415; Testimony: IT-95-11 (T.3223-T.3292; T.3385-T.3444); Associated Exhibits by 65 *ter* number: 5416, 5417; 5418.¹¹⁶
- 4) B-1638: Statements by ERN number: *Eng*: 0025-8344-0025-8363 (under seal); *BCS*: 0063-7563-0063-7578 (under seal);¹¹⁷ Testimony: IT-95-9 (T.11676-T.11716; T.11717-T.11810; T.11811-T.11875) (under seal - all closed session); Associated Exhibits by 65 *ter* number: 4690 (under seal), 4599, 4700 (under seal), 20,¹¹⁸ 3536,¹¹⁹ 3746, 3690, 3552, 3541, 3743, 4699,¹²⁰ 757, 3555, 3635, 3630, 3783; Associated Exhibits by ERN number: *Eng*: 0117-9104-0117-9104 (under seal).¹²¹
- 5) PW-125: Statements by 65 *ter* number: 5457 (under seal); Testimony: IT-05-88-T (T.3300-T.3321) (under seal); Associated Exhibits by ERN numbers: 0363-9681-0363-9681; 0363-9683-0363-9683; 0363-9685-0363-9685 (under seal); 0363-9687-0363-9687; 0363-9689-0363-9689.¹²²
- 6) B-1626: Statements by 65 *ter* number: 5148; Testimony: IT-95-9 (T.1516:16-T.1552:18, T.1553:13-T.1622:20; T.1634:5-T.1692:9; T. 1693:17-T.1758:4; T.1760:12-T.1834:21, T.1840:7-T.1905:13; T.1906:13-T.1986:5; T.1987-21-T.2074:16; T.2075:18-T.2107:18,

¹¹⁴ See supra, para. 56.

¹¹⁵ See *ibid.* 65 *ter* numbers 1657 and 1667, although relevant here, are to be admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record, they will not be admitted here for a second time but rather simply cross-referenced. The Chamber also notes that 65 *ter* 1628 has already been admitted as exhibit P321 and will be simply cross-referenced.

¹¹⁶ See *ibid.* 65 *ter* numbers 2812 and 2813, although relevant here, are to be admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record they will not be admitted here for a second time but rather simply cross-referenced.

¹¹⁷ The Chamber notes that only personal details are redacted and the redactions do not reach the substance of the witness's statement.

¹¹⁸ See supra, para. 56.

¹¹⁹ See *ibid.*

¹²⁰ See *ibid.*

¹²¹ The Chamber notes that 65 *ter* 3678 has already been admitted as exhibit P209 and will be simply cross-referenced.

¹²² See *ibid.* ERN number 0363-9711-0363-9711, although relevant here, is admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record it will not be admitted here for a second time but rather simply cross-referenced.

T.2159:15-T.2179:5) (under seal); Associated Exhibits by 65 *ter* number: 20,¹²³ 91, 752, 753, 3539, 3553, 3570, 3571, 3575, 3577, 3586, 3605, 3606, 3608, 3614, 3616, 3627, 3632, 3636, 3637, 3645, 3659, 3668, 3672, 3687, 3689, 3702, 3705¹²⁴, 5146, 5147, 5159, 5160, 5167; Associated Exhibits: IT-95-9 (P15; P12/F15) (no ERN numbers).¹²⁵

- 7) JF-065: Statements by 65 *ter* number: 5430; Associated Exhibits by ERN numbers: 0363-9705-0363-9705, 0363-9707-0363-9707, 0363-9713-0363-9713, 0363-9715-0363-9715, 0363-9717-0363-9717, 0363-9719-0363-9719.

69. **ADMITS** the following evidence of B-1115: Statements by 65 *ter* number: 5463 (under seal); Statements by ERN number: *Eng*: 0213-2273-0213-2274 (under seal), 0304-8716-0304-8716 (under seal); *BCS*: 0304-9129-0304-9130 (under seal), 0213-2289-0213-2289 (under seal); Testimony: IT-02-54 (T.27561-T.27602); Associated Exhibits by 65 *ter* number: 2829 (under seal)¹²⁶, 5464 (under seal); Associated Exhibits by ERN number: *Eng*: 0038-3731-0038-3735 (under seal); *BCS*: 0062-1930-0062-1935 (under seal).

70. **INSTRUCTS** the Prosecution within fourteen days of the filing of this decision to inform the Chamber whether it prefers to call Witness C-1175 for cross-examination under Rule 92 *bis* (C) or whether to accept the admission of redacted statements of the witness and **REQUESTS** the Prosecution to make such redactions if it chooses the latter;

REQUESTS the Registry, the moment the evidence of Witnesses C-1089, C-1247, C-1123, C-1162, B-1769, C-1194, C-1234, C-1102, C-1201, JF-071, B-1049, JF-003, MM-043, B-1626 and JF-065 is admitted into evidence, to provisionally place it under seal; **REQUESTS** the Prosecution within twenty-eight days of the filing of this decision to report to the Chamber as to whether it will apply for protective measures in relation to these witnesses;

REQUESTS the Registry to change the status of admitted documents in relation to those 15 witnesses mentioned in paragraph 64 to public unless the Prosecution files a request for protective measures within the time specified above;

¹²³ 65*ter* number 20, although relevant here, is also tendered into evidence through other 92 *bis* witness. In order not to overburden the trial record it will be admitted here (as opposed to being simply cross-referenced) only in case the evidence of Witness B-1638 is not admitted.

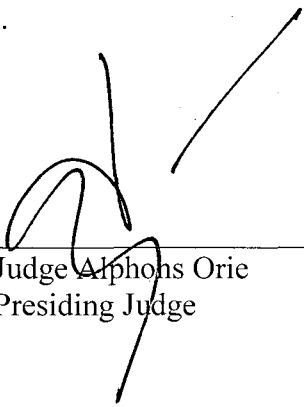
¹²⁴ Appearing in e-court as a duplicate of 65 *ter* 21 and containing only one photograph.

¹²⁵ See *supra*, para. 56. 65 *ter* numbers 3536 and 4699, although relevant here, are also tendered into evidence through other 92 *bis* witness. In order not to overburden the trial record they will be admitted here (as opposed to being simply cross-referenced) only in case the evidence of Witness B-1638 is not admitted. Similarly, the Chamber notes that 65 *ter* 754 has already been admitted as exhibit D17, 65 *ter* 3316 as P194, 65 *ter* 3569 as P197, 65 *ter*

REQUESTS the Registry to assign exhibit numbers to the documents admitted and inform the Chamber and the parties of the numbers so assigned; and

DENIES the Protective Measures Motion as regards Witness C-1202.

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



Judge Alphons Orie
Presiding Judge

Dated this seventh day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

3591 as P200, 65 *ter* 3609 as P93, 65 *ter* 3663 as P205, 65 *ter* 3670 as D18, 65 *ter* 3673 as P207, 65 *ter* 3695 as P212, 65 *ter* 3696 as P213, 65 *ter* 3699 as P214, 65 *ter* 3709 as P215 and 65 *ter* 3712 as P216.

¹²⁶ The Prosecution is requested to submit the proper translation of Rule 65 *ter* number 2829. See *supra*, para. 59.