



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-08-91-T

Date: 2 November 2010

Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Burton Hall, Presiding  
Judge Guy Delvoie  
Judge Frederik Harhoff

**Registrar:** Mr. John Hocking

**Decision of:** 2 November 2010

**PROSECUTOR**

**v.**

**MİĆO STANIŠIĆ & STOJAN ŽUPLJANIN**

***PUBLIC***

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**WRITTEN REASONS FOR ORAL DECISION OF  
4 SEPTEMBER 2009 ADMITTING EVIDENCE OF 24 WITNESSES  
PURSUANT TO RULE 92 *BIS***

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## I. INTRODUCTION

1. During the pre-trial conference held on 4 September 2009, Trial Chamber II (“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”) issued an oral ruling (“Oral Decision”)<sup>1</sup> on the following motions:

- “Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92*bis*”, filed publicly with confidential annexes on 29 February 2008 (“Rule 92 *bis* Motion”);<sup>2</sup> and
- “Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92 *bis* and 92 *ter*, with confidential annexes”, filed publicly with confidential annexes on 28 July 2009 (“Supplemental Motion”).<sup>3</sup>

2. The Oral Decision was as follows:

all the 92 *bis* witnesses that you have proposed [except two] can, in our view, be called as 92 *bis* witnesses. They all fulfil the requirements, and so in respect of the Defence objections to it that part is overruled [...] There are, in fact, two of the witnesses on your proposed 92 *bis* list that, in our view, do not meet the requirements, that is, ST56 and ST68. Both of their statements seem to go to the acts and conducts of the accused, and they should therefore be called either *ter* or *viva voce*.<sup>4</sup>

3. The Trial Chamber also directed that experts “should be presented under the Rule for experts which is Rule 94 *bis*.”<sup>5</sup> Therefore, these written reasons do not address aspects of the above-mentioned motions insofar as they seek admission of evidence of expert witnesses.<sup>6</sup> At that time, i.e., 4 September 2009, the Rule 92 *bis* Motion concerned 33 witnesses excluding experts.<sup>7</sup>

<sup>1</sup> Pre-trial conference, 4 Sep 2009, T. 102.

<sup>2</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92*bis*, 29 Feb 2008. In the Rule 92 *bis* Motion, the Prosecution sought the admission of transcripts and witness statements of 64 witnesses. However, the Trial Chamber notes that only 63 witnesses, and not 64, are listed on Annex A to the Rule 92 *bis* Motion. The Motion was filed on the same date as four other motions seeking amendments of the Prosecution’s witness list and admission of evidence pursuant to Rule 92 *ter*, Rule 92 *quater* and Rule 94 *bis*. See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Motion to amend its Rule 65 *ter* witness list, with confidential annexes; Prosecution motion for admission of evidence pursuant to Rule 92*ter*; Prosecution motion for admission of evidence pursuant to Rule 92*quater*; Prosecution notice of disclosure of expert witness statements under Rule 94*bis*.

<sup>3</sup> In the Supplemental Motion, the Prosecution, *inter alia*, withdrew 15 Rule 92 *bis* witnesses and amended the mode of testimony of a further six witnesses from Rule 92 *bis* to Rule 92 *ter*. With these amendments the Prosecution sought to reduce the number of its Rule 92 *bis* witnesses from 63 to 42.

<sup>4</sup> Pre-trial conference, 4 Sep 2009, T. 102.

<sup>5</sup> Pre-trial conference, 4 Sep 2009, T. 104.

<sup>6</sup> Through its Rule 92 *bis* Motion the Prosecution sought to tender evidence of nine expert witnesses: Ewan Brown, Robert Donia, Albert Hunt, Colin Kaiser, Thomas Parsons, András Riedlmayer, Nicolas Sebire, Ewa Tabeau and Richard Wright. On 17 August 2009 the Prosecution filed its Prosecution’s supplemental motion for admission of evidence pursuant to Rules 94*bis*, 92*bis* and 92*ter*, with confidential annexes, 17 Aug 2009 (“Second Supplemental Motion”). Through the Second Supplemental Motion the Prosecution reduced to five the number of expert witnesses whose evidence the Prosecution sought to tender pursuant to Rule 92 *bis*: Dorothea Hanson, Albert Hunt, Thomas

4. At the pre-trial conference, the Trial Chamber, acting pursuant to Rule 73 *bis*(C)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), set the number of witnesses the Prosecution may call at 131.<sup>8</sup> Subsequently, on 10 September 2009, the Prosecution filed its reduced list of witnesses (“Reduced Witness List”), by which the Prosecution reduced the overall number of Rule 92 *bis* witnesses to 25.<sup>9</sup>

5. On 15 October 2009, the Prosecution sought leave to amend, *inter alia*, the mode of testimony of witness ST004 from Rule 92 *bis* to Rule 92 *ter*.<sup>10</sup> On 13 November 2009, the Trial Chamber issued an oral ruling granting this request.<sup>11</sup>

6. Consequently the overall number of witnesses whose evidence was admitted by the Oral Decision has been reduced to 24. This decision provides the written reasoning for the Oral Decision as rendered on 4 September 2009 but provides specific analysis only in respect of those 24 witnesses who appear on the Reduced Witness List, as amended on 13 November 2009.<sup>12</sup> Furthermore, this decision does not address requests, procedural or substantive, that have become moot through the passage of time.

## II. PROCEDURAL BACKGROUND

7. The Rule 92 *bis* Motion was filed on 29 February 2008. On 7 April 2008, the Defence of Mićo Stanišić (“Stanišić Defence”) filed its response, opposing the Rule 92 *bis* Motion (“Stanišić Response”).<sup>13</sup> On 11 April 2008, the Prosecution sought leave to reply and filed a proposed reply (“Reply”).<sup>14</sup>

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Parsons, Ewa Tabeau and Richard Wright. The Second Supplemental Motion deals only with evidence pertaining to expert witnesses and therefore is not addressed in this decision.

<sup>7</sup> Supplemental Motion, Confidential Annex G.

<sup>8</sup> Pre-trial conference, 4 Sep 2009, T. 91-93.

<sup>9</sup> Prosecution’s reduced list of witnesses, with confidential annexes, 10 Sep 2009. The Reduced Witness List classifies 28 witnesses as Rule 92 *bis* witnesses. However, the Trial Chamber notes that ST056 mistakenly appeared on the Reduced Witness List as a Rule 92 *bis* witness. ST056 testified on 1 October 2009 as a *viva voce* witness. The Reduced Witness List also erroneously classifies expert witnesses Ewa Tabeau and Dorothea Hanson as Rule 92 *bis* witnesses. The Trial Chamber also notes that the Prosecution removed ST068 from its list of witnesses.

<sup>10</sup> Prosecution’s notice on the mode of testimony of witnesses, public with confidential annexes, 15 Oct 2009.

<sup>11</sup> Hearing, 13 Nov 2009, T. 3110 - 3111.

<sup>12</sup> Calculated as follows: Annex A to the Rule 92bis Motion listed 63 witnesses, minus 21 witnesses withdrawn/changed to Rule 92 *ter* by the Supplemental Motion, minus 9 expert witnesses, minus 8 witnesses dropped from the Reduced Witness List, minus ST004 (changed to Rule 92 *ter* in November 2009).

<sup>13</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Defence’s response to Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92bis, 7 Apr 2008. The Trial Chamber had granted a motion by the Stanišić Defence see king, *inter alia*, an extension of time to file responses to the Rule 92 *bis* Motion, see *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision regarding responses to Prosecution motions pursuant to Rules 92 *bis* and 92 *quater* and the Defence notice pursuant to Rule 94 *bis*, 10 Mar 2008.

<sup>14</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution’s motion for leave to reply and proposed reply to Defence’s response to Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92bis, 11 Apr 2008.

8. On 23 September 2008, following the arrest of Stojan Župljanin, the cases against the two Accused were joined.<sup>15</sup> On 19 November 2008, the Prosecution requested, *inter alia*, that the Rule 92 *bis* Motion apply also to Stojan Župljanin.<sup>16</sup> The Defence of Stojan Župljanin (“Župljanin Defence”) responded on 26 January 2009, objecting to the Rule 92 *bis* Motion (“Župljanin Response”).<sup>17</sup>

9. On 30 January 2009, the Stanišić Defence filed a submission in relation to the Rule 92 *bis* Motion, by which it, *inter alia*, joined the Župljanin Response (“Stanišić Submission”).<sup>18</sup>

10. On 2 February 2009, the Prosecution sought leave to reply and filed a proposed reply to the Župljanin Response (“Consolidated Reply”).<sup>19</sup> The Župljanin Defence filed a rejoinder to the Consolidated Reply on 9 February 2009 (“Župljanin Rejoinder”).<sup>20</sup>

11. On 28 July 2009, the Prosecution filed the Supplemental Motion, to which the Stanišić Defence responded on 31 August 2009, approximately three weeks after the expiry of the relevant time limit pursuant to Rule 126 *bis*.<sup>21</sup>

12. On 29 September 2009, the Trial Chamber issued a decision,<sup>22</sup> by which it:

- granted the Prosecution leave to file the Reply and the Consolidated Reply;<sup>23</sup>

<sup>15</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT and *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, Decision on the Prosecution’s motion for joinder and for leave to consolidate and amend indictments, 23 Sep 2008; Prosecution’s motion for joinder and for leave to consolidate and amend indictments, with confidential annexes, 16 Jul 2008.

<sup>16</sup> Prosecution notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 19 Nov 2008; Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 3 Dec 2008; Decision on Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 15 Dec 2008; Prosecution amended notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 10 Dec 2008.

<sup>17</sup> Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, confidential, 26 Jan 2009.

<sup>18</sup> Submission of Mićo Stanišić’s Defence regarding Stojan Župljanin’s Response to the Prosecution’s motion of 29 February 2008 for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, filed confidentially on 30 Jan 2009.

<sup>19</sup> Prosecution’s motion for leave to reply and proposed consolidated reply to Stojan Župljanin responses to the Prosecution’s Rule 92 *bis* and 92 *quater* motions, with confidential annex, 2 Feb 2009.

<sup>20</sup> Župljanin’s rejoinder to the Prosecution’s consolidated reply to Župljanin’s responses to the Prosecution’s Rule 92 *bis* and Rule 92 *quater* motions, filed confidentially on 9 Feb 2009.

<sup>21</sup> Mr. Mićo Stanišić’s response to the Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92 *bis* and 92 *ter*, with confidential annexes, 31 Aug 2009.

<sup>22</sup> Decision on Prosecution’s motions for admission of evidence pursuant to Rule 92 *ter* (ST012 and ST019), confidential, 29 Sep 2009 (“September 2009 Decision”).

<sup>23</sup> September 2009 Decision, p. 10.

- dismissed the Stanišić Submission on the basis that counsel had not acted with due diligence in approaching the Trial Chamber for the nullification of filings by the previous counsel;<sup>24</sup>
- dismissed the Župljanin Rejoinder on the basis that the Rules do not envisage rejoinders and that the Trial Chamber had not ordered the Župljanin Defence to make further submissions;<sup>25</sup> and
- indicated that it would not consider the Stanišić Response to the Supplemental Motion for being out of time.<sup>26</sup>

13. On 10 December 2009, the Trial Chamber ordered the Prosecution to make clarifications regarding the Rule 92 *bis* package of ST048.<sup>27</sup> On 15 December 2009, the Prosecution submitted a clarification and sought leave to amend the Rule 92 *bis* package of this witness.<sup>28</sup>

14. The Trial Chamber is seised of the Prosecution's seventeenth motion for protective measures, filed confidentially on 1 November 2010, which concerns six witnesses covered by the present decision: ST032, ST036, ST048, ST088, ST145 and ST153. Notwithstanding the fact that a decision on this matter is pending, and out of an abundance of caution, the Trial Chamber refers to these witnesses by their Rule 65 *ter* witness number.

### III. SUBMISSIONS

#### A. Prosecution

15. The Prosecution submitted that the proposed evidence does not go to proof of the acts and conduct of the Accused as charged in the indictment.<sup>29</sup> It also argued that much of the evidence tendered through the Rule 92 *bis* Motion is of a cumulative nature, which renders it appropriate for

<sup>24</sup> September 2009 Decision, paras 5-6. The Trial Chamber also indicated that it had nevertheless "perused the Stanišić Submissions in order to ensure that the rights of the Accused are not unfairly prejudiced by such lack of diligence" and found that "no prejudice is caused to the Accused by disregarding these submissions".

<sup>25</sup> September 2009 Decision, para. 7.

<sup>26</sup> September 2009 Decision, para. 9.

<sup>27</sup> According to Annexes A and B to the Rule 92 *bis* Motion, the Prosecution sought to tender one statement given by the witness on 10 March 2003 to the Prosecution's investigators. However, no English translation of this statement was provided. The electronic file pertaining to this witness contained two additional statements that were not listed either on Annex A or B to the Rule 92 *bis* Motion. Therefore, on 10 December 2009, the Trial Chamber ordered the Prosecution to make clarifications regarding the Rule 92 *bis* package for witness ST048, Hearing, 10-11 Dec 2009, T. 4611 - 4612 and T. 4692 - 4693.

<sup>28</sup> The Prosecution clarified that it seeks to tender the statement of witness ST048 provided to OTP investigators on 8 December 1999 and the supplementary statement dated 10 March 2003, Prosecution's clarification of Rule 92 *bis* package for ST48, 15 Dec 2009, para. 6.

<sup>29</sup> Rule 92 *bis* Motion, paras 4-10.

admission under Rule 92 *bis*.<sup>30</sup> The Prosecution further submitted that part of the evidence is covered by adjudicated facts and that this evidence is intended not only to corroborate those adjudicated facts but also “to counter any challenges to those facts made by the Defence”.<sup>31</sup> The Prosecution also submitted that it had selected Rule 92 *bis* witnesses to complement the evidence of crime-base witnesses who will testify *viva voce*.<sup>32</sup> The Prosecution further argued that many of the statements and transcripts proposed for admission relate to “relevant historical, political or military background”,<sup>33</sup> the ethnic composition of areas relevant to the indictment before and during 1992,<sup>34</sup> and the impact of crimes upon victims.<sup>35</sup>

16. The Prosecution submitted that it was “not aware of any factors that would make it necessary for [the proposed] witnesses to appear for cross-examination.”<sup>36</sup> In this context, the Prosecution argued that a party seeking to cross-examine a witness “must make a concrete showing of why cross-examination of that witness is appropriate”.<sup>37</sup> Further, the Prosecution submitted that admitting the proposed statements and transcripts through Rule 92 *bis* would advance “the strong public interest in reducing the length of trials”.<sup>38</sup>

17. The Prosecution also moved for the admission of a selection of “relevant and pertinent exhibits that form an inseparable and indispensable part” of the testimony or statement they accompany.<sup>39</sup> The Prosecution asserted that the admission of the selected associated exhibits “is solely to aid the Trial Chamber in fully understanding and evaluating these witnesses’ evidence”.<sup>40</sup>

## **B. Stanišić Defence**

18. The Stanišić Defence submitted, *inter alia*, that the proposed written statements and transcripts go to proof of the acts and conduct of the Accused, as the Prosecution relies on them to

<sup>30</sup> Rule 92 *bis* Motion, para. 12.

<sup>31</sup> Rule 92 *bis* Motion, para. 13. See also *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on judicial notice, 14 Dec 2007 (“First Adjudicated Facts Decision”) and Prosecution request and notice regarding application of adjudicated facts to Stojan Župljanin (“Request”), 23 Feb 2009. The Prosecution will later on, through its pre-trial brief and Supplemental Motion, withdraw 12 Rule 92 *bis* witnesses (ST008, ST009, ST016, ST017, ST021, ST045, ST053, ST055, ST065, ST070, ST072 and ST074) claiming that their evidence is covered by adjudicated facts, of which the Trial Chamber had taken judicial notice in the First Adjudicated Facts Decision. The Prosecution indicated that it reserves its right to call these witnesses in case the Trial Chamber denies in whole or in part the Request or “in the event that the Defence introduces reliable and credible evidence calling into question adjudicated facts to which their evidence relates.” See Prosecution pre-trial brief, 8 Jun 2009, paras 2 and 5, Appendix 8, and Supplemental Motion, para. 5 and confidential annex A.

<sup>32</sup> Rule 92 *bis* Motion, para. 14.

<sup>33</sup> Rule 92 *bis* Motion, para. 15.

<sup>34</sup> Rule 92 *bis* Motion, para. 16.

<sup>35</sup> Rule 92 *bis* Motion, para. 17.

<sup>36</sup> Rule 92 *bis* Motion, para. 20.

<sup>37</sup> Rule 92 *bis* Motion, paras 20-21.

<sup>38</sup> Rule 92 *bis* Motion, para. 23.

<sup>39</sup> Rule 92 *bis* Motion, para. 24.

<sup>40</sup> Supplemental Motion, para. 22.

prove that Mićo Stanišić participated in a joint criminal enterprise (“JCE”) and “so prove that he is responsible through the JCE for the committed crime”.<sup>41</sup>

19. The Stanišić Defence submitted that the proposed written statements and transcripts are not of a cumulative nature “as they go directly to the acts and conduct of the Accused”<sup>42</sup> and further that, “[a]s the tendered evidences are not of a cumulative nature it is irrelevant if some of evidence in question relates to relevant historical, political or military background.”<sup>43</sup> It argued that the Prosecution’s submissions regarding the fact that written statements and transcripts go to prove the ethnic composition of the population and the impact of the crimes upon victims are too vague.<sup>44</sup>

20. The Stanišić Defence stated that the proposed statements and transcripts, as well as the associated exhibits tendered with them, go to proof of critical elements of the Prosecution’s case and that therefore any witness whose evidence is admitted pursuant to the Rule 92 *bis* Motion should also be called for cross-examination.<sup>45</sup>

### C. Župljanin Defence

21. The Župljanin Defence proposed that the Trial Chamber “defer its decision on the prosecution’s motion [...] until this trial has progressed to a sufficient point such that those who represent Mr. Zupljanin can properly assess the significance of the evidence”.<sup>46</sup> It requested the opportunity for all parties to renew their submissions at such a stage before a decision is rendered.<sup>47</sup>

22. The Župljanin Defence submitted that “Rule 92 *bis* is not intended to be used in relation to the acts of an accused’s immediate subordinates [from] whose conduct it would [be] easy to infer that he knew or had reason to know of their crimes”.<sup>48</sup> It contended that, as a result, evidence which may be admissible under Rule 92 *bis* against Mićo Stanišić may not be admissible against Stojan Župljanin as it is “uncontroversial that Mr. Zupljanin occupied a position lower in the hierarchy than Mr. Stanisic”.<sup>49</sup>

<sup>41</sup> Stanišić Response, paras 5-10.

<sup>42</sup> Stanišić Response, para. 11.

<sup>43</sup> Stanišić Response, para 12.

<sup>44</sup> Stanišić Response, paras 13-14.

<sup>45</sup> Stanišić Response, paras 17 and 19.

<sup>46</sup> Župljanin Response, para. 4.

<sup>47</sup> Župljanin Response, para. 5.

<sup>48</sup> Župljanin Response, para. 9 referring to *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on interlocutory appeal concerning Rule 92 *bis*(C) (“*Galić Decision*”), 7 Jun 2002, para. 12.

<sup>49</sup> Župljanin Response, para. 10, referring to, *inter alia*, *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Prosecution motion for admission of evidence pursuant to Rule 92 *quater*, 9 Jul 2007, p. 5 and *Prosecutor v. Karemera et al*, Case No. ICTR-98-44-T, Decision on Prosecution motion for admission of evidence of rape and sexual assault pursuant to Rule 92 *bis* of the Rules and order for reduction of Prosecution witness list, 11 Dec 2006, para. 12.

23. The Župljanin Defence also contended that, because the indictment alleges that Stojan Župljanin participated in the JCE by omission, the Trial Chamber must exercise “great caution [...] in determining whether or not evidence is admissible under Rule 92 *bis*”.<sup>50</sup>

24. The Župljanin Defence requested the opportunity to cross-examine any witness whose evidence is admitted under Rule 92 *bis*.<sup>51</sup> It submitted that the Trial Chamber should consider, *inter alia*, “the proximity of the described acts to the accused”,<sup>52</sup> “whether the cross-examination in prior proceedings adequately dealt with the issues relevant to the defence in the current proceedings”<sup>53</sup> and whether “cross-examination at the prior trial was conducted by a self-represented accused”.<sup>54</sup> Specifically, it submitted that it should be permitted to cross-examine all of the proposed witnesses whose testimony is tendered from the *Krajišnik*, *Brđanin* and *Stakić* trials.<sup>55</sup> With regard to evidence from the *Krajišnik* trial it argued that “the appeal in that case remains *sub judice*” and that the *amicus curiae* in that case had raised an argument that the defence “was ineffective such as to suggest a miscarriage of justice.”<sup>56</sup> With regard to the *Brđanin* and *Stakić* trials, it was argued that the defence in those cases “did not adequately cross-examine on important issues pertaining to the [Republika Srpska Ministry of Interior (“MUP”)], for example the operation of the chain of command at levels far removed from their respective clients”.<sup>57</sup>

25. Finally, the Župljanin Defence submitted that “the admission of exhibits under Rule 92 *bis* does not follow automatically simply because a transcript or statement has been admitted.”<sup>58</sup> The Župljanin Defence argued that while “it is agreed that generally exhibits should be admitted together with transcripts or statements, this principle does not override other principles of admissibility”, and that “an exhibit cannot be admitted under Rule 92 *bis* if it goes to the acts and conduct of the accused”.<sup>59</sup> Furthermore, it submitted that no exhibit should be admissible unless included on the Prosecution’s Rule 65 *ter* exhibit list.<sup>60</sup>

<sup>50</sup> Župljanin Response, para. 12.

<sup>51</sup> Župljanin Response, paras 15, 27.

<sup>52</sup> Župljanin Response, para. 14, referring to *Prosecutor v. Prlić et al.*, Case No. IT-04-64-T, Decision on Prosecution’s motions for admission of transcript of evidence pursuant to Rule 92 *bis* of the Rules, 28 Sep 2006, para. 23.

<sup>53</sup> Župljanin Response, para. 14, referring to *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution’s motions for admission of written evidence pursuant to Rule 92 *bis* of the Rules, 16 Jan 2006, para. 15.

<sup>54</sup> Župljanin Response, para. 14, referring to *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution’s Rule 92 *bis* motion, 4 Jul 2006, para. 18.

<sup>55</sup> Župljanin Response, paras 16-17.

<sup>56</sup> Župljanin Response, para. 16.

<sup>57</sup> Župljanin Response, para. 17.

<sup>58</sup> Župljanin Response, para. 19.

<sup>59</sup> Župljanin Response, para. 19.

<sup>60</sup> Župljanin Response, para. 21, citing *Prosecutor v. Perišić*, Case No. IT-04-81-T, Trial Chamber’s ruling on Defence motion to clarify whether the Prosecution must request leave to amend its Rule 65 *ter* exhibit list, 17 Nov 2008, para. 16.



#### D. Prosecution's Reply and Consolidated Reply

26. The Prosecution stated that Rule 92 *bis* “only excludes evidence of [the Accused’s] personal acts and conduct or those of his immediately proximate subordinates, and not acts and conduct of less proximate subordinates or other members of the joint criminal enterprise”.<sup>61</sup> The Prosecution reiterated its submission that none of the proposed written statements and transcripts goes to proof of the acts and conduct of the Accused in this case.<sup>62</sup> The Prosecution further stated that “Župljanin’s contention that he is entitled to cross-examine all witnesses admissible under Rule 92 *bis* is [...] without merit” as this is not an absolute right.<sup>63</sup> The Prosecution noted that “what is pertinent for purposes of Rule 92*bis* is whether a review of the prior cross-examination [...] shows that the issues relevant to the present case were adequately addressed” and that the “efficacy of prior cross-examination” is only one of a number of factors to be considered.<sup>64</sup> Finally, the Prosecution reiterated that the exhibits accompanying the statements and transcripts form an inseparable and indispensable part thereto and that their admission is “solely to aid the Trial Chamber in fully understanding and evaluating these witnesses’ evidence.”<sup>65</sup>

#### IV. APPLICABLE LAW

27. Pursuant to Rule 92 *bis*, a Trial Chamber may admit into evidence a written statement or a transcript of a witness’s testimony in prior proceedings before the Tribunal *in lieu* of oral testimony if the statement or the transcript goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment. Rule 92 *bis*(A)(i) and (ii) contain non-exhaustive lists of factors in favour of or against admitting evidence in this form.<sup>66</sup>

28. Furthermore, pursuant to Rule 92 *bis*(C) the Trial Chamber must also consider whether to require the witness to appear for cross-examination. If it does so decide, the provisions of Rule 92 *ter* shall apply.<sup>67</sup>

<sup>61</sup> Reply, para. 4 and Consolidated Reply, para. 5, referring to *Galić* Decision, paras 9 and 16.

<sup>62</sup> Reply, para. 5 and Consolidated Reply, para. 5.

<sup>63</sup> Consolidated Reply, para. 6, referring to *Prosecutor v. Blagojević*, Case No. IT-02-60-T, First decision on Prosecution’s motion for admission of witness statements and prior testimony pursuant to Rule 92 *bis*, 12 Jun 2003, para. 14.

<sup>64</sup> Consolidated Reply, para. 6.

<sup>65</sup> Consolidated Reply, para. 7.

<sup>66</sup> *Prosecutor v. J. Stanišić and F. Simatović*, Case No. IT-03-69-T, Decision on Prosecution’s motions for admission of written evidence pursuant to Rule 92 *bis*, 7 Oct 2010, para. 33 (*Stanišić and Simatović* Decision); *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/1 8-PT, Decision on 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), 15 Oct 2009, (*Karadžić* Decision), para. 7; *Prosecutor v. Popović et al*, Case No. IT-05-88-T, Decision on Prosecution’s confidential motion for admission of written evidence in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, 12 Sep 2006, para. 14.

<sup>67</sup> *Karadžić* Decision, para. 10; *Stanišić and Simatović* Decision, para. 35.

29. Additionally, the admission of evidence pursuant to Rule 92 *bis* is subject to the general requirements of Rule 89(C) and (D)—the evidence must be relevant and have probative value that is not substantially outweighed by the need to ensure a fair trial.<sup>68</sup>

30. When the evidence sought to be admitted pursuant to Rule 92 *bis* consists of a written statement, the formal requirements set out in Rule 92 *bis*(B) must be met.

31. The jurisprudence holds that the phrase “acts and conduct of the accused” should be given “its ordinary meaning: deeds and behaviour of the accused”.<sup>69</sup> The interlocutory decision of the Appeals Chamber in the *Galić* case further expands the parameters of Rule 92 *bis*(A) to exclude evidence which goes to proof of any act or conduct of the accused upon which the Prosecution relies to establish the various forms of individual criminal responsibility.<sup>70</sup> The “conduct” of the accused also includes his relevant state of mind, such that evidence which goes to proof of any act or conduct of the accused upon which the Prosecution relies to establish his or her state of mind, is also not admissible under Rule 92 *bis*.<sup>71</sup> Furthermore, the “conduct” of an accused may also include his omission to act.<sup>72</sup>

32. When the accused is charged with individual responsibility for the acts and conduct of others, such as through participation in a JCE or under command responsibility, the *Galić* Decision states that a distinction has to be made between “a) the acts and conduct of those 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 for the acts and conduct of those others.”<sup>73</sup> Evidence going to proof of the latter renders material inadmissible under Rule 92 *bis*.<sup>74</sup>

33. More specifically, where the Prosecution alleges that the accused participated in a JCE, and is therefore liable for the acts of others in that JCE, Rule 92 *bis*(A) also excludes any evidence which goes to proof of any act or conduct of the accused upon which the Prosecution relies to

<sup>68</sup> *Galić* Decision, para. 12.

<sup>69</sup> *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s request to have written statements admitted under Rule 92 *bis*, 21 Mar 2002, para. 22. See also *Prosecutor v. Boškoski and Tarčuloski*, Case No. IT-04-82-PT, Decision on Prosecution’s First Revised Motion pursuant to Rule 92 *bis* and on Prosecution’s motion pursuant to Rule 92 *ter*, confidential, 30 Mar 2007, para. 36.

<sup>70</sup> *Galić* Decision, para. 10.

<sup>71</sup> *Galić* Decision, para. 11.

<sup>72</sup> *Galić* Decision, para. 11.

<sup>73</sup> *Galić* Decision, paras 9, 14.

<sup>74</sup> *Galić* Decision, para. 9.

establish “that he had participated in that joint criminal enterprise, or [...] that he shared with the person who actually did commit the crimes charged the requisite intent for those crimes.”<sup>75</sup>

34. Written evidence relating to the acts and conduct of others, including subordinates, for which the accused is charged with responsibility is admissible pursuant to Rule 92 *bis*(A).<sup>76</sup> However, the fact that it relates to the acts and conduct of some person for whose acts and conduct the accused is charged with responsibility remains relevant to the Trial Chamber’s exercise of discretionary power under Rule 92 *bis*(C)—whether the witness should appear for cross-examination.<sup>77</sup> In making this determination, it is relevant for a Trial Chamber to consider, whether, *inter alia*, the evidence goes to proof of the acts and conduct of a person so proximate to the accused that the evidence becomes pivotal to the Prosecution’s case.<sup>78</sup> Other factors to be considered are whether the matter goes to proof of “a critical element of the Prosecution’s case”,<sup>79</sup> or whether it concerns a live and important issue between the parties.<sup>80</sup> Nevertheless, the principal criterion for determining whether a witness should be required to appear for cross-examination is the overriding obligation of a Chamber to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal (“Statute”).<sup>81</sup>

35. Documents accompanying the written statements or transcripts which “form an inseparable and indispensable part” of the witness’s testimony can also be admitted pursuant to Rule 92 *bis*,<sup>82</sup> “provided that they do not go to the acts and conduct of the accused”.<sup>83</sup> Not every document referred to in a witness’s statement or transcript from a prior proceeding automatically forms an “inseparable and indispensable part” of the witness’s testimony.<sup>84</sup> Rather, a document falls into this

<sup>75</sup> *Galić* Decision, para. 10.

<sup>76</sup> *Galić* Decision, paras. 9-10.

<sup>77</sup> *Galić* Decision, para. 13.

<sup>78</sup> *Galić* Decision, paras 13, 15-16. See also *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1, Decision on Prosecution’s motion for admission of transcripts and written statements pursuant to Rule 92*bis*, confidential, 25 Oct 2005, para. 7; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-PT, Decision on Prosecution’s motion for provisional admission of witness statements under Rule 92*bis*, confidential, 13 Oct 2004, para. 6; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Decision on the admission of Rule 92*bis* statements, confidential, 1 May 2002, para. 14.

<sup>79</sup> *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-T, Decision on Prosecution’s application to admit transcripts under Rule 92 *bis*, 23 May 2001, (*Sikirica* Decision”) para. 4.

<sup>80</sup> *Karadžić* Decision, para. 10; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution’s motions for admission of written evidence pursuant to Rule 92 *bis* of the Rules, 16 Jan 2006, para. 15; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s request to have written statements admitted under Rule 92*bis*, 21 Mar 2002, paras 24-25.

<sup>81</sup> *Sikirica* Decision, para. 4.

<sup>82</sup> *Karadžić* Decision, para. 11; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *ter*, 22 Feb 2007, p. 3.

<sup>83</sup> *Prosecutor v. Mrkšić et al.*, Case No: IT-95-13/1, Decision on Prosecution’s motion for admission of an exhibit as part of transcripts pursuant to Rule 92*bis*, 19 May 2006, p. 2.

<sup>84</sup> *Prosecutor v. Vlastimir Đorđević* Case No. IT-05-87/1-T, Decision on Prosecution’s motion for the admission of transcripts of evidence *in lieu of viva voce* testimony pursuant to Rule 92 *bis*, 16 Mar 2009, para. 38; *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 Jul 2008, para. 15. See also, Decision on Prosecution’s motion for admission of evidence of 33 witnesses pursuant to Rule 92 *ter*, 2 Oct 2009, para. 15, in this case.

category only if the witness discusses the document in his or her written statement or transcript and if that written statement or transcript would become incomprehensible or have lesser probative value without the admission of the document.<sup>85</sup>

## V. DISCUSSION

### 1. Preliminary issues

36. The Oral Decision, *inter alia*, overruled the Župljanin Defence request for deferral of the Trial Chamber's decision and the opportunity to renew submissions at a later stage. At the time of the Oral Decision the Trial Chamber considered that the Defence had benefited from sufficient time and opportunity to assess the significance of the proposed evidence and that it was a convenient point in time to rule on the matter.

37. The Trial Chamber noted that, for most of the evidence, the Prosecution had highlighted the specific portions of the transcripts and statements that it considered "relevant and probative evidence in this case" and, specifically, portions of the transcripts and statements covering facts of which the Trial Chamber took judicial notice in the case against Mićo Stanišić.<sup>86</sup> While these highlights were of assistance in the evaluation of the evidence the Trial Chamber considered and admitted the transcripts and statements in their entirety.

### 2. General Assessment

38. Addressing first the material accompanying the transcripts and statements, the Trial Chamber noted that some items submitted to the Chamber were not listed in the annexes provided. The Trial Chamber considered only those items listed in annexes A and B to the Rule 92 *bis* Motion and annexes E and F to the Supplemental Motion. Those items were admitted into evidence by the Oral Decision, the Trial Chamber being satisfied that they are relevant and probative pursuant to Rule 89(C), that they do not go to proof of the acts and conduct of the Accused, and that they form an inseparable and indispensable part of the statement or transcript they accompany.

39. The Trial Chamber also noted that some of those items were not on the Prosecution's Rule 65 *ter* exhibit list and that the Prosecution had not sought to amend it. However, the material had been disclosed to the Defence who, at the time of the Oral Decision, had been on notice of the

<sup>85</sup> *Ibid.*

<sup>86</sup> Rule 92 *bis* Motion, para. 26, referring to *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice, 14 December 2007. The Trial Chamber notes that those highlighted portions might not correspond with facts of which the Trial Chamber took judicial notice in the joined case through its Decision granting in part Prosecution's motions for judicial notice of adjudicated facts pursuant to Rule 94(B), 1 April 2010.

Prosecution's intention to tender such material for over a year.<sup>87</sup> The Trial Chamber was therefore satisfied that the Defence had had adequate time to prepare its case in a manner consistent with the rights of the Accused under the Statute and, therefore, *proprio motu* added to the Prosecution's Rule 65 *ter* exhibit list those items considered to be inseparable and indispensable parts of the statement or transcript they accompany.

40. The Trial Chamber further notes that in the intervening period between the Oral Decision and the issue of these written reasons, four of the associated documents so tendered have been admitted into evidence as discrete exhibits in this case.<sup>88</sup> For ease of administrative reference and in order to avoid duplication, the Trial Chamber will direct the Registry that these four documents need not be assigned exhibit numbers within the Rule 92 *bis* packages and shall retain the exhibit numbers already assigned.

41. Turning now to the admissibility requirements pursuant to Rule 92 *bis*(A), in the following section of this decision the Trial Chamber provides its assessment as to whether the proposed evidence goes to proof of the acts and conduct of the Accused as charged in the indictment.<sup>89</sup> In its assessment, the Trial Chamber bore in mind that the Prosecution charges the Accused with crimes against humanity and violations of the laws or customs of war on the basis of individual criminal responsibility under Article 7 (1) of the Statute, including participation in a JCE, and on the basis of superior responsibility pursuant Article 7 (3) of the Statute. For this reason, the Trial Chamber was particularly careful when assessing portions of the evidence where explicit references were made to acts and conduct of alleged members of the JCE or alleged subordinates of the Accused.

42. As a factor in favour of the admission of the proposed evidence pursuant to Rule 92 *bis*, the Trial Chamber noted that the proposed evidence is to a great extent cumulative, as it substantially overlaps with the anticipated evidence, both of other Prosecution witnesses and through the admission of adjudicated facts.

<sup>87</sup> All Rule 92 *bis* material, with the exception of the Rule 92 *bis* package of ST105, was submitted on 29 February 2008 along with the Rule 92 *bis* Motion. The Rule 92 *bis* package of ST105 was submitted with the Supplemental Motion on 28 July 2009, thus, as of the time of the Oral Decision, the Defence had been on notice of this material for over five weeks.

<sup>88</sup> Rule 65 *ter* number 168 in this case was admitted into evidence as P578 on 9 December 2009; Rule 65 *ter* number 1319 in this case was admitted into evidence as P179.17 on 29 October 2009; Rule 65 *ter* number 1643 in this case was admitted into evidence on 16 September 2009 as exhibit P24 and Rule 65 *ter* number 2767 in this case was admitted into evidence on 16 December 2009 as exhibit 1D134.

<sup>89</sup> Corrigendum to Prosecution's submission of second amended consolidated indictment, public with partially confidential annex, 23 Nov 2009 ("indictment").

43. Another factor in favour of admission pursuant to Rule 92 *bis* is that the evidence of 21 of the proposed 24 witnesses constitutes crime-base evidence.<sup>90</sup> While conducting the assessment of the proposed evidence, the Trial Chamber noted that only the testimony of Elvedin Nasić pertains to crimes alleged to have occurred in Prijedor, a municipality of concern to Stojan Župljanin who is closer to the alleged physical perpetrators than Mićo Stanišić.<sup>91</sup> The other crime-base evidence concerns municipalities only relevant to Mićo Stanišić. The remaining three witnesses, Herbert Okun, ST105 and Charles Kirudja are general witnesses, whose prior testimony is relevant to the charges against both Accused. The Trial Chamber is therefore satisfied that this further supports the admission of the evidence pursuant to Rule 92 *bis*.

44. With regard to the Defence request that they be permitted to cross-examine all witnesses, the Trial Chamber considered this as an objection to the admission of the proposed evidence pursuant to the Rule. Indeed, if this request had been granted, the provisions of Rule 92 *ter* would have automatically applied. The Trial Chamber has taken into consideration the fact that the right to cross-examine witnesses is not an absolute right. This stems from Rule 92 *bis* itself, and from the Tribunal's jurisprudence.<sup>92</sup> Furthermore, neither Defence provided any concrete example of how the proposed evidence goes to proof of the acts and conduct of the Accused or to critical elements of the Prosecution's case. Moreover, neither Defence made specific submissions addressing the various factors that could make it appropriate for the witness to attend for cross-examination.

45. The Župljanin Defence did argue that it should be permitted to cross-examine those witnesses whose testimony is tendered from the *Krajišnik*, *Brđanin* and *Stakić* trials, based on an assertion that these witnesses were not properly tested under cross-examination.<sup>93</sup>

- With regard to the submissions pertaining to evidence from the *Krajišnik* case,<sup>94</sup> the Trial Chamber has taken into consideration the fact that the *Krajišnik* case was, at the time of the Oral Decision, *res iudicata* and that the Appeals Chamber had noted that while "certain aspects of the conduct of the trial were not free from defects", it was not satisfied "that

<sup>90</sup> "The Trial Chamber may also consider that Rule 92 *bis* was primarily intended to be used to establish crime-base evidence, rather than evidence related to acts and conduct of an accused's immediate subordinates", *Galić* Decision, para. 16.

<sup>91</sup> The crime-base evidence tendered pursuant to Rule 92 *bis* concerns mainly the municipalities of Bileća, Bijeljina, Bosanski Šamac, Brčko, Gacko, Pale, Prijedor, Vlasenica, Vogošća and Zvornik. Among these municipalities Stojan Župljanin is only charged for crimes committed in Prijedor. See Reduced Witnesses List and indictment para. 12.

<sup>92</sup> *Prosecutor v. D. Kordić and M. Čerkez*, IT-95-14/2-AR73.6, Decision on appeal regarding the admission into evidence of seven affidavits and one formal statement, 18 Sep 2000, paras 24, 36-37; *Prosecutor v. Vidoje Blagojević et al.*, IT-02-60-T, First decision on Prosecution's motion for admission of witness statements and prior testimony pursuant to Rule 92 *bis*, 12 June 2003, para. 14 referring to *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on the Prosecution's request for admission of Rule 92 *bis* statements, 26 July 2002, ("*Galić* Trial Decision"), para. 18, and the *Milošević* Decision and Separate opinion of Judge Patrick Robinson, attached thereto.

<sup>93</sup> Župljanin Response, paras 16-17.

<sup>94</sup> This submission concerns the transcripts of testimony of witnesses ST001, ST035, ST088, ST104, ST105, ST106 and ST154.

*Amicus Curiae* has shown that these defects amount to a miscarriage of justice which would undermine the fairness of the trial received by Krajišnik.”<sup>95</sup>

- With regard to the submissions pertaining to the evidence from the *Brdanin* and *Stakić* trials, the Trial Chamber first noted that no transcript remaining for review stemmed from the *Stakić* trial and that only the evidence of witnesses Elvedin Nasic and ST105 arose from the *Brdanin* case. Second, it is the Trial Chamber’s view that the examination-in-chief of witnesses Elvedin Nasic and ST105 in the *Brdanin* case did not focus on “important issues pertaining to the MUP” or “the operation of the chain of command” and that, therefore, it is not surprising that the cross-examination did not focus on these aspects. However, the Trial Chamber reviewed the relevant evidence and found that it adequately addressed other issues relevant to the current proceedings.

The Trial Chamber was satisfied that no prejudice arises from the admission of the evidence from these trials under Rule 92 *bis*.

46. The Trial Chamber then conducted a more specific assessment of the evidence tendered on a witness by witness basis.

### 3. Individual Assessment

#### (a) ST001<sup>96</sup>

47. The Prosecution tendered two transcripts of the witness’s testimony in the *Krajišnik* case from 5 and 6 February 2004, and one associated document that is not on the Prosecution’s Rule 65 *ter* exhibit list. The witness testified, *inter alia*, about detention conditions and mistreatment in the Luka camp, Brčko, in May 1992. The witness also spoke of killings in the camp. The associated document the Prosecution sought to tender is a photograph depicting a warehouse identified by the witness as the Luka camp.<sup>97</sup> This photograph is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies.

48. The indictment contains the charges of persecutions, extermination and murder, torture, cruel treatment and inhumane acts alleged to have been committed at various locations, including the Luka camp.<sup>98</sup> The evidence of this witness is thus probative and relevant to the indictment.

<sup>95</sup> *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement, 17 Mar 2009, para. 135.

<sup>96</sup> ST001 was granted protective measures of pseudonym and image distortion. See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Prosecution’s motions for protective measures for victims and witnesses, confidential annex I, 6 Jun 2005.

<sup>97</sup> Admitted as exhibit P28 in the *Krajišnik* case.

<sup>98</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 9.1, C 10.2 and D 10.2.

None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST001 was admitted pursuant to Rule 92 *bis*(A).

(b) ST002<sup>99</sup>

49. The Prosecution tendered the transcript of the testimony of this witness in the *Jelisić* case, given on 30 November and 1 December 1998. No associated documents were tendered through this witness. The witness testified, *inter alia*, about his detention in the Luka camp, Brčko, between 11 May and early July 1992. The testimony contains information about mistreatment and killings in the Luka camp. The witness also briefly testified about his detention in the Batković camp near Bijeljina.

50. The indictment contains the charges of persecutions, extermination and murder, torture, cruel treatment and inhumane acts, alleged to have been committed at various locations, including the Luka camp and the Batković facility.<sup>100</sup> The evidence of this witness is thus probative and relevant to the indictment. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST002 was admitted pursuant to Rule 92 *bis*(A).

(c) ST003<sup>101</sup>

51. The Prosecution tendered the transcript of the testimony of this witness given in the *Slobodan Milošević* case on 21 October 2003, which contains information, *inter alia*, about the escalation of inter-ethnic tensions in Gacko; events leading to the outbreak of the conflict in the area; political parties; and the presence of paramilitary formations in Gacko, the White Eagles.

52. The Prosecution also sought the admission of three associated exhibits that were admitted into evidence during the course of the witness's testimony in the *Slobodan Milošević* case:

<sup>99</sup> ST002 was granted protective measures of pseudonym and image distortion. See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Prosecution's motions for protective measures for victims and witnesses, confidential annex I, 6 Jun 2005.

<sup>100</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 9.1, C 10.2 and 19.1 and D 10.2.

<sup>101</sup> ST003 was granted protective measures of pseudonym and image distortion. See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Prosecution's motions for protective measures for victims and witnesses, confidential annex I, 6 Jun 2005.



- A witness statement given to Prosecution investigators on 27 January 1999,<sup>102</sup> which contains additional information regarding the witness's arrest on 1 June 1992 and subsequent detention in the Gacko SJB building; the arrest of Bosnian Muslims in Gacko and their detention and mistreatment in the Power Station Hotel; an attack on the Muslim populated area of "Fazlagića Kula"; and the departure of Bosnian Muslims from Gacko municipality. This statement is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies.
- A witness statement given to Prosecution investigators on 15 October 2003,<sup>103</sup> which contains one correction, one clarification of events contained in the statement of 27 January 1999 and further detail in relation to the commander of the White Eagles in Gacko. This statement is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies.
- A document with Rule 65 *ter* number 168, which consists of an order from Radovan Karadžić to the Ministry of Interior to investigate paramilitary activity in Gacko and Nevesinje municipalities. This document is also relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies. The Trial Chamber notes that this document has subsequently been admitted into evidence in this case.<sup>104</sup>

53. The indictment contains allegations concerning unlawful detention in the Gacko SJB building and Power Station Hotel; acts of mistreatment, including beatings and killings occurring in the Power Station Hotel in June 1992; attacks on Fazlagić Kula between April and August 1992; and deportation and forcible transfer from towns and villages in the municipality of Gacko in support of the charges of persecutions, extermination and murder, torture, cruel treatment and inhumane acts and deportation and inhumane acts.<sup>105</sup> The evidence of this witness is thus probative and relevant to the indictment. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST003 was admitted pursuant to Rule 92 *bis*(A).

<sup>102</sup> Admitted as P566.02 in the *Slobodan Milošević* case.

<sup>103</sup> Admitted as P566.03 in the *Slobodan Milošević* case.

<sup>104</sup> Rule 65 *ter* number 168 in this case was admitted as P578 on 9 December 2009.

<sup>105</sup> Indictment, counts 1, 2-4, 5-8 and 9-10, schedules C 12.1 and 12.2, D 12.1 and 12.2, and F 11.

(d) Dragan Lukač

54. The Prosecution tendered the transcript of Dragan Lukač's previous testimony in the *Tadić* case on 13 and 14 May 1996 and the transcript of his previous testimony in the *Simić et al.* case from 20 September to 4 October 2001, including five documents admitted during that testimony.

- In the *Tadić* case, Dragan Lukač testified, *inter alia*, about the activities of the JNA in 1991 and early 1992 in Croatia and the JNA deployment in several municipalities of Bosnia and Herzegovina; the set up of military checkpoints in Bosanski Šamac; the ethnic composition of Bosanski Šamac municipality; political events that occurred in Bosnia and Herzegovina from 1990 to early 1992; and events taking place in Bosanski Šamac in the first half of April 1992, including the formation of the Serbian municipality of Bosanski Šamac and the arrival of paramilitaries from Serbia. Dragan Lukač also testified about the escalation of inter-ethnic tensions before the takeover of Bosanski Šamac; his arrest and detention in the village of Gorna Crkvina; his transfer to and detention in a storage room of the TO compound in Bosanski Šamac; his transfer to and detention at the JNA barracks in Brčko and in Bijeljina; his transfer to and detention in Batajnica and Zemun, both of which are located in Serbia; and his transfer and detention in the SUP building in Bosanski Šamac; detention conditions and mistreatment in all of these locations and killings in some of them.
- Dragan Lukač's evidence in the *Simić et al.* case covers in more detail the events discussed by the witness in his testimony in *Tadić*. It also contains information regarding the TO system and the State Security Services in the former Yugoslavia before the period charged in the indictment and Dragan Lukač's knowledge of and interaction with the accused in the *Simić* case, as well as information about exchange of prisoners.
- The Prosecution sought to tender five documents admitted through this witness in the *Simić* case: a map of Bosanski Šamac municipality with the witness's markings of checkpoints set up in April 1992,<sup>106</sup> a report from the 17<sup>th</sup> JNA corps command to the JNA's 2<sup>nd</sup> Military District ("2 MD")<sup>107</sup> and three "communications" between the 17<sup>th</sup> JNA corps command and the 2 MD, dated 17 and 18 April 1992 and pertaining to events occurring in Bosanski Šamac on these two days.<sup>108</sup> All these documents were discussed by the witness and are important to understand his testimony. Only one of these documents is on the Prosecution's Rule 65

<sup>106</sup> Admitted as P9a in the *Simić et al.* case.

<sup>107</sup> Admitted as P19 in the *Simić et al.* case.

<sup>108</sup> Admitted as P21, P23 and P24 in the *Simić et al.* case.

*ter* list.<sup>109</sup> These documents are relevant, probative, and form an inseparable and indispensable part of the transcript they accompany.

55. The indictment contains allegations of acts of unlawful detention, establishment and perpetuation of inhumane conditions in the SJB building and prison in Bosanski Šamac, in the warehouse building in Crkvina, and in the TO headquarters as well as acts of torture, cruel treatment or inhumane acts alleged to have occurred in these same three detention facilities in Bosanski Šamac.<sup>110</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. The Trial Chamber noted that although the prior evidence of the witness in the *Tadić* case and the *Simić et al.* case substantially overlaps, the transcripts of both cases also complement each other. The Trial Chamber would, therefore, benefit from having the evidence of the witness in both cases on the record. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Dragan Lukač was admitted pursuant to Rule 92 *bis*(A).

(e) ST032<sup>111</sup>

56. The Prosecution tendered into evidence one witness statement given by ST032 to Prosecution investigators on 8 and 10 June 1996. No associated documents were tendered through this witness. In his statement, ST032 discusses his arrest by Serb military police; his transfer to and detention in the TO headquarters in Bosanski Šamac from 28 April to 3 May 1992; his subsequent transfer to the warehouse building in Crkvina on 3 May 1992 and his detention in that warehouse from 3 May to 10 May 1992; his transfer back to the TO headquarters on 10 May 1992; his detention in the TO headquarters from 10 May to 19 October 1992; his transfer to Pelagićevo on 18 or 19 October 1992; his detention there through 19 June 1993; and his final transfer to and detention in Batković from 19 June 1993 to 21 July 1993, when he was exchanged at Šibošnica. He refers to having witnessed the killing of 18 men in the Crkvina warehouse building on 7 May 1992. The witness also refers to detention conditions and mistreatment inflicted on him and other detainees in these locations. He names specific individuals, including soldiers and policemen, whom he says were present and most active in their abuse of the detainees. In the Trial Chamber's view, none of these individuals appear to be immediately proximate to the Accused.

57. The indictment contains allegations of acts of unlawful detention, establishment and perpetuation of inhumane conditions within the Crkvina warehouse building and the TO

<sup>109</sup> P19 in the *Simić et al.* case is on the Prosecution's Rule 65 *ter* list with number 1302.

<sup>110</sup> Indictment, counts 1 and 5-8, schedules C 9.1, 9.2 and 9.5 and D 9.1, 9.2 and 9.3.

<sup>111</sup> See *supra* para. 14.

headquarters. The indictment also refers to acts of torture, cruel treatment and inhumane acts that allegedly occurred in the same detention facilities, as well as the alleged murder of 18 men in the Crkvina warehouse building.<sup>112</sup> Therefore, the evidence of this witness is probative and relevant to the indictment. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST032 was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>113</sup>

(f) Jasmin Fazlović

58. The Prosecution tendered the transcript of his prior testimony in the *Krajišnik* case on 19 and 20 April 2004 and one associated document that was admitted into evidence during the testimony of the witness in that trial.<sup>114</sup> The proposed evidence contains information about events alleged to have occurred in the municipality of Brčko during the time period relevant to the indictment, including mistreatment and the killing of one person at the Brčko fire station; the witness's detention at the SUP Building in Brčko on 4 May 1992; the mistreatment he sustained and observed there; and the destruction of mosques in Brčko.

59. The associated document consists of a statement given by the witness to Prosecution investigators on 14 and 15 March 1995. The statement is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies.

60. The indictment contains allegations of mistreatment in the Brčko SJB Building during May of 1992 and destruction of mosques in Brčko.<sup>115</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. While portions of the witness's statement and prior testimony, in particular information pertaining to events that occurred at the Brčko fire station, refer to locations not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Jasmin Fazlović was admitted pursuant to Rule 92 *bis*(A).

<sup>112</sup> Indictment, counts 1, 2-4, 5-8 and 9-10, schedules C 9.2 and 9.5, D 9.2 and 9.3 and B, 10.1.

<sup>113</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

<sup>114</sup> Admitted as P71 in the *Krajišnik* case.

<sup>115</sup> Indictment, counts 1, 5-8, schedules D 10.1 and E.

(g) ST036<sup>116</sup>

61. The Prosecution tendered a statement given by the witness on 21 February 1995 to Prosecution investigators. The statement contains information concerning, *inter alia*, mistreatment and killings at the Laser company in Brčko from 4 to 8 May 1992 and at the Luka camp on 8 May 1992. The Trial Chamber noted that the electronic file containing the relevant statement includes another statement given by the witness on 19 November 1992 to the District Court of Tuzla, two sketches and two handwritten notes.<sup>117</sup> The Prosecution did not list them on annexes A or B to the Rule 92 *bis* Motion and therefore the Trial Chamber did not take these documents into consideration.

62. The indictment contains the charges of persecutions, extermination and murder, torture, cruel treatment and inhumane acts, alleged to be committed in the Luka camp and the Laser company.<sup>118</sup> The witness statement of ST036 is thus probative and relevant to the indictment. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST036 was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>119</sup>

(h) Said Muminović

63. The Prosecution tendered a statement given by the witness on 3 and 4 April 1995 to Prosecution investigators. The statement contains information about mistreatment and killings at the "Partizan" sports hall in Brčko in May 1992. The Trial Chamber noted that the electronic file containing the relevant statement includes two sketches, 4 pictures, a map and a handwritten document not translated into English.<sup>120</sup> As the Prosecution did not list them on annexes A or B to the Rule 92 *bis* Motion, the Trial Chamber did not take these documents into consideration.

64. The indictment contains the charges of persecutions, extermination and murder, torture, cruel treatment and inhumane acts, alleged to be committed in the Partisan sports hall in Brčko.<sup>121</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present

<sup>116</sup> See *supra* para. 14.

<sup>117</sup> P. 00261181 - P. 00261189.

<sup>118</sup> Indictment, counts 1, 2-4, schedules B 9.1 and 9.3, C 10.2 and 10.3 and D 10.2 and 10.3.

<sup>119</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

<sup>120</sup> P. 00284740 - P. 00284748.

requiring the witness to appear for cross-examination. For these reasons the evidence of Said Muminović was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>122</sup>

(i) ST048<sup>123</sup>

65. The Prosecution tendered a witness statement given by the witness to Prosecution's investigators on 8 December 1999 and a supplementary statement of 10 March 2003 containing some minor corrections to the previous statement. No associated documents were tendered through this witness.<sup>124</sup> This witness's evidence contains information about, *inter alia*, the background of the conflict in Gacko; his arrest and subsequent detention in the Gacko SUP building from 9 June to 5 July 1992; about detention conditions there, torture and mistreatment inflicted to him and others, including the rape of a female detainee; and killings that occurred during his detention in that building. The witness also refers to his subsequent transfer to other detention facilities in Montenegro and Serbia.

66. The indictment contains allegations of acts of mistreatment, including beatings and at least one rape, occurring in the Gacko SJB building in June and July 1992 in support of the charges of persecutions and torture, cruel treatment and inhumane acts.<sup>125</sup> The evidence of this witness is, therefore, probative and relevant. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the witness's statements complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST048 was admitted pursuant to Rule 92 *bis*(A).

(j) Osman Musić<sup>126</sup>

67. The Prosecution tendered one statement given by Osman Musić to Prosecution investigators on 25 February 2008. No associated documents were tendered through this witness. In his statement, the witness describes acts of intimidation from Serbs towards the Muslim population of Gacko; his arrest by Serb paramilitaries, the White Eagles, and detention at the police station; transfer to and detention at the old JNA barracks in Avtovac; transfer to and detention at the Power

<sup>121</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 9.2, C 10.4 and D 10.4.

<sup>122</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

<sup>123</sup> See *supra* para. 14.

<sup>124</sup> See *supra* para. 13.

<sup>125</sup> Indictment, counts 1, 5-8, schedules C 12.1 and D 12.1.

<sup>126</sup> English translation of Osman Musić's witness statement was missing from the Rule 92 *bis* Motion but can be found in Prosecution's submission pursuant to Trial Chamber's 4 September 2009 order regarding English versions of Rule 92 *bis* witness statements filed 10 September 2009.

Station Hotel basement in Gacko and the Military School in Bileća. The witness described the detention conditions as well as mistreatments and killings at these locations.

68. The statement is probative and relevant to the charges of persecutions, murder and extermination, as well as torture, cruel treatment and inhumane acts concerning the SJB building and the Power Station Hotel in Gacko.<sup>127</sup> While portions of the witness's statement, in particular information pertaining to events that occurred in Bileća Military School, refer to a location not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the witness's statement complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Osman Musić was admitted pursuant to Rule 92 *bis*(A).

(k) Azem Omerović

69. The Prosecution tendered one statement given by the witness to Prosecution investigators on 20 April 2002. No associated documents were tendered through this witness. In his statement the witness described, *inter alia*, the shelling of Donja Vinča by Serb forces; his arrest on 3 June 1992; his detention at the Pale police station and the mistreatment he suffered there. The statement also contains information about the witness's transfer to a "gym" in Pale, where he was detained for approximately 50 days, detention conditions there, mistreatment and the ensuing death of three detainees in this location. The witness also described in his statement his subsequent transfer to and detention in Kula prison until he was exchanged on 28 August 1992.

70. The statement is probative and relevant to the charges of persecutions, murder and extermination, as well as torture, cruel treatment and inhumane acts concerning the Gymnasium and the SJB Building in Pale as set forth in the indictment.<sup>128</sup> While portions of the witness's statement, in particular information pertaining to events that occurred in Kula Prison, refer to a location not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. While the witness describes the visit to the Kula prison of Radovan Karadžić, one of the members of the alleged JCE, in the Trial Chamber's view, no information is elicited in connection to this visit that would go to the acts and conduct of the

<sup>127</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 15.1, C 12.1 and 12.2 and D 12.1 and 12.2.

Accused or that could be pivotal to the Prosecution's case. Further, the witness's statement complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Azem Omerović was admitted pursuant to Rule 92 *bis* (A).

(l) Mirsad Smajš

71. The Prosecution tendered one statement given by the witness to Prosecution investigators on 14 January 1998. No associated documents were tendered through this witness. In his statement the witness describes, *inter alia*, his arrest on 7 May 1992; the mistreatment the witness suffered at the Golf café and MUP school in Grbavića; and his brief detention at Kula prison before he was transferred on 10 May to a gymnasium in Pale where he was detained until 18 May 1992. The witness's statement also describes the detention conditions and mistreatment in the gymnasium.

72. The indictment contains allegations of acts of mistreatment which occurred in the Gymnasium in Pale between May and August 1992.<sup>129</sup> The witness's statement is thus probative and relevant to the charges set forth in the indictment. While portions of the witness's statement, in particular information pertaining to events that occurred at the Golf café, MUP school in Grbavića and the witness's brief detention at Kula prison, refer to locations not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the witness's statement complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Mirsad Smajš was admitted pursuant to Rule 92 *bis*(A).

(m) Rešid Hasanović

73. The Prosecution tendered the transcript of this witness's previous testimony in the *Krajišnik* case and one associated document. The witness's testimony describes the outbreak of war in Suha; the arrival of paramilitaries; his detention, mistreatment and killings at the Vuk Karadžić school and the stadium in Bratunac; his transfer to and detention in a sports hall in Pale on or around 13 May 1992 until his exchange on 16 May 1992.

<sup>128</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 11.1, C 14.1 and 14.2, D 14.1 and 14.2.

<sup>129</sup> Indictment, counts 1 and 5-8, schedules C 14.2 and D 14.2.



74. The associated document the Prosecution sought to tender<sup>130</sup> is a list of 400 Muslim males who had been brought from Bratunac to Pale, signed by Slobodan Marković, member of the Central Commission for Exchange of Prisoners of War on behalf of the Serbian Ministry of the Interior. This document is relevant, probative and forms and inseparable an indispensable part of the transcript it accompanies. The Trial Chamber notes that this document has subsequently been admitted into evidence in this case.<sup>131</sup>

75. The witness's testimony is probative and relevant to the charges of persecutions, torture, cruel treatment and inhumane acts in relation to unlawful detention in the Gymnasium in Pale.<sup>132</sup> Although large portions of his testimony refer to locations not mentioned in the schedules of the indictment, they are relevant to the existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. While the witness provides hearsay evidence about a SDS leader going to Pale to meet Karadžić, one of the members of the alleged JCE, to discuss and organise the take-over of Bratunac, in the Trial Chamber's view, it does not implicate either Accused and it cannot be inferred from it that either Accused is individually responsible for the acts and conduct of these individuals. There were no circumstances present requiring the witness to appear for cross-examination. For this reasons the evidence of Rešid Hasanović was admitted pursuant to Rule 92 *bis*(A).

(n) Elvedin Nasić

76. The Prosecution tendered the transcript of testimony of Elvedin Nasić in the *Brdanin* case on 12 December 2002 which contains information about events that occurred in Prijedor. No associated documents were tendered through this witness. The witness discusses, *inter alia*, the attack on Hambarine, in the municipality of Prijedor, on approximately 21 May 1992; his subsequent hiding in the woods for over one month; killings that occurred during his flight; his detention and the mistreatment he sustained at the community centre in Miška Glava; his subsequent transfer to the Ljubija football stadium, detention conditions there; mistreatment and killings at the Ljubija football stadium; the execution attempt that the witness survived in Kipe, near the Ljubija football stadium; and killings in Biščani in the municipality of Prijedor.

77. The indictment contains allegations of killings and torture, cruel treatment and inhumane acts at the Ljubija football stadium and surrounding areas as well as at other locations within the

<sup>130</sup> Rule 65 *ter* number 1319.

<sup>131</sup> Rule 65 *ter* number 1319 in this case was admitted as P179.17 on 29 October 2009.

<sup>132</sup> Indictment, counts 1 and 5-8, schedules C 14.2 and D 14.2.

Prijedor municipality such as Bišćani.<sup>133</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. Although portions of the witness's testimony refer to locations not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of Elvedin Nasić was admitted pursuant to Rule 92 *bis*(A).

(o) Ferid Čutura

78. The Prosecution tendered two statements given by this witness to Prosecution investigators on 24 February 1997 and 17 April 2002. No associated documents were tendered through this witness. In his statement of 24 February 1997 the witness discussed, *inter alia*, his arrest in Vogošća; his detention and mistreatment at the Police Station, at the prison in Rajlovac and at a detention camp known as "Bunker" in Vogošća in May 1992. He also described the detention conditions in the "Bunker". The statement also contains hearsay evidence about the involvement of a Serb soldier in the killing of 25 persons that were detained in the "house of Planja" and the attack on the village of Svrake on 3 May 1992. The witness's statement of 17 April 2002 contains one correction and one clarification with regard to his statement of 24 February 1997.

79. The statements are probative and relevant to the charges of torture, cruel treatment or inhumane acts at the Vogošća "Bunker" and Planja's house in Svrake, as well as wanton destruction of non-Serb parts of the town of Vogošća and Svrake.<sup>134</sup> Although portions of the witness's statements refer to locations not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. While the witness succinctly refers, in his statement of 17 April 2002, to Momčilo Krajišnik, one of the members of the alleged JCE, as being aware of the "involvement of his body guard in the mass killings in the area", in the Trial Chamber's view this evidence does not implicate either Accused and it cannot be inferred from it that either Accused is individually responsible for the acts and conduct of these individuals. Further, the witness's statements complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Ferid Čutura was admitted pursuant to Rule 92 *bis*(A).

<sup>133</sup> Indictment, counts 1, 2-4 and 5-8, schedules A 3.3 and 3.4, C 5.6, D 5.6 and F.

<sup>134</sup> Indictment, counts 1 and 5-8, schedules C 16.1, C 16.4, D 16.1, D 16.2 and F 15.

(p) Ahmet Hido – ST087

80. The Prosecution tendered one statement given by this witness to Prosecution investigators from 28 February to 3 March 1996. No associated documents were tendered through this witness. In the statement, the witness described the attack on Svrake between 1 and 3 May 1992; the witness's detention at the "Bunker" in Vogošća from approximately 4 May 1992 until the end of July 1992; and the mistreatment the witness and others experienced while at the "Bunker", including evidence about detainees having been ordered to rape each other. The witness also refers to the detention conditions at the "Bunker" and a number of deaths that occurred while detainees participated in forced labour or were used as human shields.

81. The witness's statement is probative and relevant to allegations set forth in the indictment regarding attacks on Svrake between April and September 1992 and acts of mistreatment that occurred at the Vogošća "Bunker" during May 1992.<sup>135</sup> None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the witness's statement complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Ahmet Hido was admitted pursuant to Rule 92 *bis* (A).

(q) ST088<sup>136</sup>

82. The Prosecution tendered the transcript of the witness's testimony of 4 July 2005 in the *Krajišnik* case and two associated documents consisting of one statement given by the witness to Prosecution investigators on 30 June 1996 and one supplemental information sheet dated 3 July 2005, both admitted into evidence during the testimony of the witness in that trial. The transcript contains information about an attack on Divić, the departure of villagers from Divić on 26 May 1992, the witness's imprisonment at Novi Izvor building, his imprisonment at the Čelopek Dom Kulture, in the municipality of Zvornik, and about acts of mistreatment at the Čelopek Dom Kulture. ST088's witness statement of 30 June 1996 contains information about the same events and additionally about looting in Divić and about ST088's detention in a camp at Batković, Bijeljina, and acts of mistreatment which the witness observed there. The supplemental information sheet of 3 July 2005 contains two clarifications and a correction. The statement and the supplemental information sheet form an inseparable and indispensable part of the transcript they accompany.

<sup>135</sup> Indictment, counts 1 and 5-8, schedules C 16.4, D 16.2 and F 15.

<sup>136</sup> See *supra* para. 14.

83. The indictment contains allegations of acts of mistreatment, including beatings and killings, at the Čelopek Dom Kulture in Zvornik municipality and at Batković in Bijeljina municipality in support of charges of persecutions, extermination and murder and torture, cruel treatment and inhumane acts. There are also allegations about attacks on towns and villages, including non-Serb parts of the town of Zvornik and Divić, the deportation and forcible transfer of non-Serbs from municipalities, including Zvornik, in support of the charges of persecutions, deportation and inhumane acts.<sup>137</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. Although portions of the witness's statements refer to locations not mentioned in the schedules of the indictment, they are relevant to the alleged existence of a widespread and systematic attack against the non-Serb population. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. While the witness provides evidence about a meeting of company managers with Radovan Karadžić, member of the alleged JCE, in Zvornik in July 1992, in the Trial Chamber's view no information is elicited in connection to this meeting that would go to the acts and conduct of the Accused or that could be pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of ST088 was admitted pursuant to Rule 92 *bis*(A).

(r) Herbert Okun

84. The Prosecution tendered four transcripts of Herbert Okun's testimony from 22 to 25 June 2005 in the *Krajišnik* case and 11 documents admitted into evidence in the course of his testimony in that case.<sup>138</sup> The proposed evidence concerns the witness's experience as the Special Advisor and Deputy to the Personal Envoy of the United Nations Secretary-General, working primarily on Croatia and Bosnia and Herzegovina in 1991-1994. The witness spoke about numerous meetings with the Bosnian Serb leadership, among others, Radovan Karadžić, Momčilo Krajišnik and Nikola Koljević, regarding the division of the territory of Bosnia and Herzegovina and allegations of ethnic cleansing.

<sup>137</sup> Indictment, counts 1, 2-4, 5-8 and 9-10, schedules C 18.2 and 19.1, D 17.1 and F17.

<sup>138</sup> The proposed associated documents consist of the following items: (1) Diary of Vance Mission to Yugoslavia admitted as exhibit P210 in *Krajišnik* case; (2) Diary of International Conference on the Former Yugoslavia admitted as exhibit P212 in the *Krajišnik* case; (3-6) four maps of Bosnia admitted as exhibits P211, P213, P214 and D7 in the *Krajišnik* case; (7) Decision on the Strategic Goals of the Serbian People in Bosnia and Herzegovina, 12 May 1992, admitted as exhibit P47 in the *Krajišnik* case; (8-9) Transcripts of the tape recording of the 34th and 37th session of the National Assembly of Serb People in Bosnia and Herzegovina admitted as exhibit P65 in the *Krajišnik* case, (10) Lisbon agreement signed in Sarajevo on 18 March 1992 admitted as exhibit D5 in the *Krajišnik* case; (11) Lisbon agreement signed in Sarajevo on 28 February 1992, admitted as exhibit D6 in the *Krajišnik* case. Maps admitted as exhibits P214 and D7 in the *Krajišnik* case were provided by the Prosecution in Prosecution's supplemental motion providing 92*bis* declarations and material filed 30 September 2010.

85. The proposed associated documents were discussed by the witness, are relevant, probative and form an inseparable and indispensable part of the transcript they accompany. The Trial Chamber notes that two of the proposed associated documents have subsequently been admitted into evidence in this case.<sup>139</sup>

86. The indictment contains the allegation of existence of a JCE, involving, *inter alia*, both Accused, Radovan Karadžić, Momčilo Krajišnik and Nikola Koljević, continuing until the signing of the Dayton Accords in 1995.<sup>140</sup> The evidence of this witness is, therefore, probative and relevant to the indictment. Although the proposed evidence refers to the political views of members of the alleged JCE it does not implicate either Accused and it cannot be inferred from it that either Accused is individually responsible for the acts and conduct of these individuals. Neither does the proposed evidence appear to be pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Herbert Okun was admitted pursuant to Rule 92 *bis*(A).

(s) ST105<sup>141</sup>

87. The Prosecution tendered into evidence the transcript of the testimony given by the witness in the *Brdanin* and the *Krajišnik* cases, as well as 33 associated documents.<sup>142</sup>

88. The proposed evidence concerns this witness's experience in the former Yugoslavia between 1991 and 1993. The proposed evidence concerns, *inter alia*, attacks on villages and the forced displacement of Muslims and Croats in several areas, including Zvornik, Bosanski Novi, Bijeljina, Banja Luka, Prijedor, Ključ and Kotor Varoš.

89. The indictment charges Mićo Stanišić and Stojan Župljanin with persecutions, deportation, extermination and murder, torture, cruel treatment and inhumane acts, alleged to have been committed in detention facilities and during attacks on and takeovers of towns in several of the municipalities with which the witness's evidence is concerned. The proposed evidence is thus probative and relevant to the charges against both Mićo Stanišić and Stojan Župljanin alleged in the indictment. The Trial Chamber also notes that the witness's evidence substantially concerns the displacement of Muslims from Bosanski Novi in 1992. Although the Accused are not charged with

<sup>139</sup> Rule 65 *ter* number 1643, Republika Srpska Official Gazette publishing Decision on the Strategic Goals of the Serbian People in Bosnia and Herzegovina issued on 12 May 1992 was admitted into evidence on 16 September 2009 as exhibit P24. Rule 65 *ter* number 2767, Lisbon Agreement signed in Sarajevo on 18 March 1992, was admitted into evidence on 16 December 2009 as exhibit 1D134.

<sup>140</sup> Indictment, paras 7-8.

<sup>141</sup> This witness was granted protective measures of, *inter alia*, pseudonym and closed session. See Decision on Prosecution's motion for protective measures in respect of a member of a humanitarian organisation, 16 Oct 2008.

<sup>142</sup> Although the Prosecution lists 34 documents on annexes E and F to the Supplemental Motion, the Trial Chamber notes that exhibit P316 in the *Brdanin* case appears listed twice.

crimes committed in Bosanski Novi this evidence is relevant to the alleged existence of a widespread and systematic attack against the non-Serb population.

90. The Prosecution sought to tender 33 associated documents:

- Exhibit P2673 in the *Brđanin* case quotes correspondence, allegedly from Stojan Župljanin as chief of police in Banja Luka, stating that “in the Region of Republika Srpska and on the territory controlled by our forces, undisturbed stay and movement is allowed for all authorized officials”.<sup>143</sup> While the document directly refers to Stojan Župljanin, it cannot be inferred from it that the Accused is individually responsible for any crimes charged in the indictment. While discussing the document, the witness declared that he does not recall having met with Župljanin. The Trial Chamber finds that the document does not go to the acts and conduct of the Accused nor does it seem pivotal to the Prosecution’s case. Furthermore, without this document, the portion of the transcript where it is discussed becomes less clear and less probative. The document is, therefore, relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies.
- Exhibit P2679 in the *Brđanin* case was withdrawn by the Prosecution in that case as it had been mistakenly put to the witness during his testimony on 28 August 2003.<sup>144</sup> The Trial Chamber considered the inclusion of this document in the Rule 92 *bis* package of this witness as an oversight on the part of the Prosecution and disregarded its request to admit it into evidence as an associated document.
- With regard to the remaining 31 documents, the Trial Chamber noted that only Rule 65 *ter* numbers 1735, 2423 and 1779 are on the Prosecution’s Rule 65 *ter* exhibit list. All of them are relevant and probative. They were discussed by the witness during his prior testimony and form an inseparable and indispensable part of it.<sup>145</sup>

91. The proposed evidence does not go to proof of the acts and conduct of either Accused. The indictment states that both Accused bear individual responsibility for the crimes alleged through their participation in a joint criminal enterprise. The witness testified regarding the acts and conduct of several individuals, who are alleged to have participated in the JCE, including Momčilo Krajišnik, Radovan Karadžić, Biljana Plavšić, Nikola Koljević, and Ratko Mladić. However, this evidence does not implicate either Accused and it cannot be inferred from the evidence that either

<sup>143</sup> P2673 in *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, hearings of 28 and 29 August 2003, T.20666 and T.20743.

<sup>144</sup> *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, hearing of 29 August 2003, T. 20689.

<sup>145</sup> Rule 65 *ter* numbers 1735, 1779 and 2423 and P1669, P2658-2681 in *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T and P70, P298, P318, P319 and P770 in *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39.

Accused is individually responsible for the acts and conduct of these individuals or others. The proposed evidence does not appear to be pivotal to the Prosecution's case. Although the prior evidence of the witness in the *Brdanin* and the *Krajišnik* cases, overlap substantially, they also complement each other. The Trial Chamber would therefore benefit from having the evidence of the witness from both cases on the record. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons the evidence of ST105, with the exception of exhibit P2679 in the *Brdanin* case, was admitted pursuant to Rule 92 *bis*(A). These documents were admitted under seal in compliance with the protective measures granted to the witness.

(t) Charles Kirudja

92. The Prosecution tendered the transcript of Charles Kirudja's testimony given in the *Krajišnik* case between 26 May to 2 June 2004 and 32 associated documents, including a witness statement given to Prosecution investigators dated 29 September 1999, which were admitted into evidence during the testimony of the witness in that case. The proposed evidence of the witness concerns his experience as the Chief Civil Affairs Officer in Sector North of the United Nations Protected Area (UNPA) and the Civil Affairs Coordinator for that Sector within the United Nations Protection Force (UNPROFOR). The proposed evidence concerns events in Sanski Most, Banja Luka and Prijedor, and refers to the detention facilities of Keraterm, Trnopolje, Omarska and Manjača.

93. The Prosecution sought the admission of 32 associated documents, consisting mainly of a witness statement, maps, memoranda and communication exchanges from UNPROFOR and humanitarian organizations concerning issues discussed by the witness during his testimony. These documents are probative and relevant to the charges in the indictment. Four of them are not on the Prosecution's Rule 65 *ter* exhibit list.<sup>146</sup> All of them were discussed by the witness during his prior testimony, are relevant and probative, and form an inseparable and indispensable part of it.<sup>147</sup>

94. The indictment contains the charges of deportation and forcible transfer, persecutions, extermination and murder, torture, cruel treatment and inhumane acts, alleged to be committed from and at various locations, including the detention facilities and the municipalities referred to above. The evidence of this witness is, therefore, probative and relevant to the charges against both Mićo Stanišić and Stojan Župljanin alleged in the indictment. The Trial Chamber notes that a significant part of the witness's evidence and proposed exhibits relates to the displacement of Muslims from Bosanski Novi in May-August 1992. Bosanski Novi is not among the municipalities in which crimes are alleged to have been committed according to the indictment. However, this part of the

<sup>146</sup> P121, P122, P123 and P124 in the *Krajišnik*, case.

evidence is relevant to both the existence of an armed conflict and a widespread or systematic attack directed against the non-Serb population.<sup>148</sup> None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Charles Kirudja was admitted pursuant to Rule 92 *bis*(A).

(u) ST145<sup>149</sup>

95. The Prosecution tendered a statement given by ST145 to Prosecution investigators on 17 September 1998. No associated documents were tendered through this witness. In his statement the witness discussed the ethnic composition and the political situation in Bileća, military mobilisation procedures after the war began and the transition of control of the local Territorial Defence from the "Republic Headquarters of the Territorial Defence" to the Užice Corps. It also addressed the presence of the "White Eagles" paramilitary group; ST145's arrest by them in Bileća on 10 June 1992; his detention at the SUP Building in Bileća from 10 June 1992 until 17 December 1992; acts of mistreatment that occurred at the SUP Building, including the death of one detainee; and detention conditions at the SUP Building.

96. The indictment contains charges of persecutions, cruel treatment and inhumane acts, extermination and murder concerning the SUP Building in Bileća.<sup>150</sup> The evidence of this witness is, therefore, probative and relevant. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the witness's statement complied with the requirements of Rule 92 *bis*(B). There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of ST145 was admitted pursuant to Rule 92 *bis*(A).

(v) Junuz Murguz

97. The Prosecution tendered one statement given by Junuz Murguz to Prosecution investigators on 2 April 1998. No associated documents were tendered through this witness. In his statement the witness described the ethnic composition of his village, Prijevor, and the municipality of Bileća; military mobilization procedures; his arrest on 10 June 1992; his detention at the SUP Building in Bileća from approximately 10 June 1992 to 17 June 1992; his detention at the Đački Dom from

<sup>147</sup> Rule 65 *ter* numbers 1757 to 1783 and P121 to P124 in *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39.

<sup>148</sup> Indictment, paras 42-43.

<sup>149</sup> See *supra* para. 14.

<sup>150</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 8.1, C 8.1 and D 8.1.



approximately 17 June 1992 to 10 August 1992; acts of mistreatment that occurred at these detention facilities; and detention conditions at the Đački Dom.

98. The indictment alleges that acts of mistreatment occurred in the SUP Building and at the Đački Dom during the months of June through December 1992 in support of the Prosecution's charges of persecutions, and torture, cruel treatment, and inhumane acts.<sup>151</sup> The Trial Chamber considered, therefore, that the statement of Junuz Murguz is relevant and probative. None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Junuz Murguz was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>152</sup>

(w) ST153<sup>153</sup>

99. The Prosecution tendered one statement given by this witness to Prosecutor investigators on 1 October 1994, which contains information relevant to events alleged to have occurred in the municipality of Vlasenica. No associated documents were tendered through this witness. The witness's statement contains information regarding his arrest in Vlasenica on 13 June 1992; his detention and mistreatment at the Sušica Camp until approximately 3 July 1992; killings he observed while at the Sušica Camp; and his detention and mistreatment at the Batković facility in Bijeljina from approximately 3 July 1992 until 21 July 1993.

100. The indictment contains the charges of persecutions, cruel treatment and inhumane acts, extermination and murder concerning Sušica Camp. The evidence of this witness is, therefore, probative and relevant.<sup>154</sup> None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of ST153 was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>155</sup>

<sup>151</sup> Indictment, counts 1 and 5-8, schedules C 8.1 and 8.2, D 8.1 and 8.2.

<sup>152</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

<sup>153</sup> See *supra* para. 14.

<sup>154</sup> Indictment, counts 1, 2-4 and 5-8, schedules B 13.1, C 15.3 and 19.1 and D 15.3.

<sup>155</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

(x) Suad Džafić

101. The Prosecution tendered the statement of Suad Džafić, given to Prosecution investigators on 20 June 2000, and an addendum to it, containing corrections, as well as the transcript of this witness's testimony in the *Krajišnik* case, together with one document admitted into evidence in the course of the witness's testimony in that case. The statement and transcript contain information about the witness's detention in what he called a "MUP prison" in Vlasenica, in May 1992, and mistreatment observed by the witness. There is also an account of the killing of men near Nova Kasaba on 21 May 1992.

102. The document which the Prosecution seeks to have admitted consists of a list of men whom the witness stated were killed at Nova Kasaba. The document, which is on the Prosecution's Rule 65 *ter* exhibit list, is probative and relevant.<sup>156</sup> It was drawn up by the witness and it was discussed during the course of his testimony in the *Krajišnik* case. The Trial Chamber considers it an inseparable and indispensable part of the transcript it accompanies.

103. The indictment contains the charges of persecutions, murder and extermination, torture, cruel treatment and inhumane acts alleged to have been committed in the SJB building in Vlasenica at least between May 1992 and July 1992 and in Nova Kasaba at least during May 1992. The statement and the transcript of the witness's testimony are thus relevant and probative.<sup>157</sup> None of the witness's proposed evidence goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. There were no circumstances present requiring the witness to appear for cross-examination. For these reasons, the evidence of Suad Džafić was admitted pursuant to Rule 92 *bis*(A). The Prosecution has subsequently provided the Trial Chamber with a declaration in compliance with the requirements of Rule 92 *bis*(B).<sup>158</sup>

## VI. DISPOSITION

For the foregoing reasons, and pursuant to Rules 65 *ter*, 89, 92 *bis* and 126 *bis* of the Rules, the Trial Chamber:

**GRANTS** leave to the Prosecution to amend the Rule 92 *bis* package of witness ST048;

**AFFIRMS** the Trial Chamber's Oral Decision:

<sup>156</sup> Rule 65 *ter* number 2792.

<sup>157</sup> Indictment, counts 1, 2-4 and 5-8, schedules D.15.1 and 15.4.

<sup>158</sup> Prosecution's supplemental motion providing 92*bis* declarations and material, 30 Sep 2010.

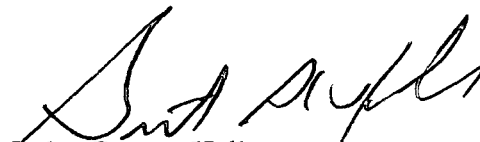
- **GRANTING** the Rule 92 *bis* Motion, the Amended Notice and the Supplemental Motion **IN PART**;
- **ACCEPTING** onto the Prosecution's Rule 65 *ter* exhibit list the written statements, transcripts and associated exhibits of ST001, ST002, ST003, Dragan Lukač, ST032, Jasmin Fazlović, ST036, Said Muminović, ST048, Osman Musić, Azem Omerović, Mirsad Smajš, Rešid Hasanović, Elvedin Nasić, Ferid Čutura, Ahmet Hido, ST088, Herbert Okun, ST105, Charles Kirudja, ST145, Junuz Murguz, ST153 and Suad Džafić, not on the Prosecution's Rule 65 *ter* exhibit list;
- **ADMITTING INTO EVIDENCE** the written statements, transcripts and associated exhibits of ST001, ST002, ST003, Dragan Lukač, ST032, Jasmin Fazlović, ST036, Said Muminović, ST048, Osman Musić, Azem Omerović, Mirsad Smajš, Rešid Hasanović, Elvedin Nasić, Ferid Čutura, Ahmet Hido, ST088, Herbert Okun, ST105, Charles Kirudja, ST145, Junuz Murguz, ST153 and Suad Džafić;

**ORDERS** the Prosecution to provide for all written statements, official transcripts and associated exhibits admitted not currently on the Prosecution Rule 65 *ter* exhibit list, the corresponding Rule 65 *ter* numbers in the present case;

**ORDERS** the Registrar, after the Trial Chamber has ruled on the Prosecution's seventeenth motion for protective measures, to:

- ensure that the evidence admitted is entered into the trial record in accordance with all protective measures in place; and
- assign, in accordance with this Decision, exhibit numbers to the statements, official transcripts and associated exhibits admitted.

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

  
Judge Burton Hall  
Presiding

Dated this second day of November 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]