



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: 5 January 2011

Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Decision of:** 5 January 2011

**PROSECUTOR**

**v.**

**MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN**

***PUBLIC***

**WRITTEN REASONS FOR THE ORAL DECISION  
GRANTING IN PART PROSECUTION'S MOTION FOR  
ADMISSION OF EVIDENCE  
OF ST068, ST224, ST242, ST246 AND ST248 PURSUANT  
TO RULE 92 *BIS***

**The Office of the Prosecutor**

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## I. INTRODUCTION

1. On 12 November 2010, 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 decision (“Oral Decision”)<sup>1</sup> on, *inter alia*, the following motions:

- “Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92*bis* for further five out of fifteen new witnesses”. filed publicly with confidential annexes on 22 September 2010 (“Second Motion”), whereby the Prosecution moved pursuant to Rule 92 *bis* for the admission of the evidence of, *inter alia*, Yusuf Arifagić (ST068), Azra Blazević (ST242), Nermin Karagić (ST246), and ST248;<sup>2</sup> and
- “Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92*bis* for remainder of the new witnesses”, filed publicly with confidential annexes on 27 September 2010 (“Third Motion”), whereby the Prosecution moved pursuant to Rule 92 *bis* for the admission of the evidence of, *inter alia*, Amir Dzonlić (ST224).<sup>3</sup>

2. In respect of Yusuf Arifagić, Amir Dzonlić, Azra Blazević, Nermin Karagić and ST248, the Trial Chamber admitted in part their evidence pursuant to Rule 92 *bis*(A) without requiring the witnesses to appear for cross-examination. This decision provides the written reasoning for the Oral Decision with regard to these witnesses.

<sup>1</sup> Hearing, 12 Nov 2010, T. 17326-17327.

<sup>2</sup> *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Order on Prosecution’s motion for particular protective measures, 29 Jan 2002 and this Trial Chamber’s oral decision of 30 November 2010 at T. 17914.

<sup>3</sup> On 24 September 2010, the Prosecution filed a “Motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92*bis* for remainder of the new witnesses with confidential annexes A and B” (“24 September Motion”). On 27 September 2010, the Prosecution withdrew this motion for the reason that it “erroneously refers to witnesses ST-24 and ST-249 instead of ST-223 and ST-224” and advised that “a corrected version will be filed immediately”. On the same day, the Prosecution filed the Motion, i.e. the corrected version of the 24 September Motion.

## II. PROCEDURAL BACKGROUND

3. On 1 April 2010, the Trial Chamber declined to take judicial notice of a number of proposed adjudicated facts or parts thereof.<sup>4</sup> On 14 July 2010, the Trial Chamber granted in part a Prosecution motion of 27 May 2010 to add witnesses to provide evidence on the denied adjudicated facts. The Trial Chamber ordered that the evidence of each selected witness be limited to the substance of the corresponding denied adjudicated fact or facts as set out in Confidential Annex A to the 27 May motion.<sup>5</sup> On 19 August 2010, the Prosecution indicated that it would request that the evidence of 15 of these witnesses be admitted pursuant to Rule 92 *bis*.<sup>6</sup> Subsequently, the Prosecution filed its motion of 30 August 2010 ("First Motion"), the Second Motion and the Third Motion.<sup>7</sup>

4. On 6 October 2010 the Defence jointly responded, objecting to the Second Motion ("Response to the Second Motion").<sup>8</sup> On 11 October 2010 the Defence jointly responded, objecting to the Third Motion ("Response to the Third Motion").<sup>9</sup>

5. On 14 October 2010, the Prosecution requested leave to reply and filed a reply to the Response to the Third Motion ("Reply").<sup>10</sup> The Trial Chamber recalls that it granted the Prosecution leave to reply and addressed the Reply in part in its written reasons of 1 December 2010 ("ST223 Written Reasons").<sup>11</sup>

6. On 8 November 2010, the Prosecution and the Defence jointly submitted a notice to the Trial Chamber ("Second Notice"),<sup>12</sup> reflecting several agreements and stipulations made by the parties subsequent to the filing of the Second and Third Motion. In the Second Notice, the Defence

<sup>4</sup> Decision granting in part Prosecution's motions on judicial notice of adjudicated facts pursuant to Rule 94(B), 1 Apr 2010, ("Adjudicated Facts Decision").

<sup>5</sup> Decision granting in part Prosecution's motion to amend its Rule 65 *ter* witness list as a result of the Trial Chamber's 1 April 2010 decision concerning judicial notice of adjudicated facts, 14 Jul 2010 ("14 July Decision"), referring to Annex A to Prosecution's motion to amend its Rule 65 *ter* witness list as a result of the Trial Chamber's 1 April 2010 decision granting in part Prosecution's motions for judicial notice of adjudicated facts pursuant to Rule 94(B), with confidential annex, filed on 27 May 2010.

<sup>6</sup> Prosecution's notice of timings for Rule 92 *bis* witnesses with confidential annexes A and B, filed on 19 August 2010.

<sup>7</sup> Prosecution's motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis* for five out of fifteen new witnesses, filed publicly with confidential annexes on 30 August 2010.

<sup>8</sup> Joint Defence response to Prosecution's motion for admission of transcript and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis* for further five out of fifteen new witnesses, filed confidentially on 6 October 2010.

<sup>9</sup> Joint Defence response to Prosecution's motion for admission of transcript and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis* for the remainder of the new witnesses, filed confidentially on 11 October 2010.

<sup>10</sup> Prosecution's motion for leave to reply and reply to joint response to Prosecution's motion for admission of transcript and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis* for remainder of the new witnesses, confidential, 14 Oct 2010, para. 1.

<sup>11</sup> Written reasons for the oral decision granting in part Prosecution's motion for admission of evidence of ST223 pursuant to Rule 92 *bis*, 1 Dec 2010, paras 9, 17 and 21.

<sup>12</sup> Second notice on stipulations of adjudicated facts, 8 November 2010.

withdrew their request to cross-examine Yusuf Arifagić and Azra Blazević and agreed to the admission of her evidence under Rule 92 *bis*.<sup>13</sup>

### III. SUBMISSIONS

#### 1. Second and Third Motion

7. The Prosecution moved for the admission pursuant to Rule 92 *bis* of evidence of Yusuf Arifagić, Amir Dzonlić, Azra Blazević, Nermin Karagić and ST248,<sup>14</sup> and requested that the witnesses “not be required to appear for cross examination”.<sup>15</sup> The Prosecution also sought the admission of certain “[r]elevant and pertinent exhibits” that “form an inseparable and indispensable part of the [witnesses’] testimony.”<sup>16</sup> The Prosecution sought to tender the transcripts in their entirety but highlighted “in blue that testimony which is relevant to previously adjudicated facts, and in yellow, the contextual testimony relevant to those facts.”<sup>17</sup>

8. With regard to general submissions on applicable law, the Prosecution “incorporate[d] by reference” paragraphs five through fourteen of the First Motion.<sup>18</sup>

#### 2. Responses to Second and Third Motion

9. The Defence sought to cross-examine Yusuf Arifagić, Amir Dzonlić, Azra Blazević, Nermin Karagić and ST248, arguing that “there is a need to test the reliability and credibility” of these witness.<sup>19</sup> Moreover, the Defence submitted that the denied adjudicated facts which the proposed witness is intended to cover “are highly contested, live and important issues in the trial”.<sup>20</sup> According to the Defence’s submissions, any inconsistencies in the witness’s account “will need to be properly explored”<sup>21</sup> because their cross-examination in the *Tadić*, *Brđanin* and *Stakić* cases<sup>22</sup> “did not adequately address these matters”.<sup>23</sup> For these reasons, the Defence argued that it would be

<sup>13</sup> Second Notice, p. 4.

<sup>14</sup> Second Motion and Third Motion, para. 1.

<sup>15</sup> Second Motion and Third Motion, para. 8. c.

<sup>16</sup> Second Motion para. 7 and Third Motion para. 7.

<sup>17</sup> Second Motion para. 7 and Third Motion para. 7.

<sup>18</sup> Second Motion, para. 5 and Third Motion para. 5.

<sup>19</sup> Response to Second Motion, paras 9-10 and Response to Third Motion, para. 11.

<sup>20</sup> Response to Second Motion, para. 10 and Response to Third Motion, para. 11.

<sup>21</sup> Response to Second Motion, para. 10 and Response to Third Motion, para. 11.

<sup>22</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, (“*Tadić* case”), *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T (“*Brđanin* case”), *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T (“*Stakić* case”).

<sup>23</sup> Response to Second Motion, para. 10 and Response to Third Motion, para. 11.

“manifestly unfair to admit the evidence of [these witnesses] pursuant to rule 92bis without allowing further cross-examination by the Defence.”<sup>24</sup>

10. The Defence further submitted that “only those portions of the associated documents in the 92bis package which either relate to the denied adjudicated facts (blue highlighting) or those portions which provide context for the denied adjudicated facts (yellow highlighting) should be admitted into evidence.”<sup>25</sup>

11. The Defence objected to the “the Prosecution’s attempt to expand the adjudicated facts” in relation to Amir Dzonlić and Azra Blazević.<sup>26</sup> The Defence submitted that the Prosecution seeks to rely upon the testimony of:

- Amir Dzonlić, “not solely in relation to denied adjudicated fact 1058 (as stipulated in its 27 May 2010 motion) but also with respect to denied adjudicated facts 193 and 818”,<sup>27</sup> and
- Azra Blazević, “not in relation to denied adjudicated facts 844-846 (as stipulated in its 27 May 2010 motion) but rather with respect to denied adjudicated facts 255, 257, 260-261, 290, 906, 1030, 1075, 1076 and 1099.”<sup>28</sup>

The Defence argued that “this violation of the Trial Chamber’s order should not be countenanced and the Prosecution’s request in relation to [these witnesses] should be disallowed.”<sup>29</sup>

12. The Defence submitted that Amir Dzonlić “also should not be permitted as rule 92bis witness in relation to denied adjudicated fact 818” as “his testimony in the *Brdjanin* proceedings does not relate at all to the subject matter of this adjudicated fact”.<sup>30</sup>

13. The Trial Chamber recalls that, with regard to Yusuf Arifagić and Azra Blazević, the Response to the Second Motion is superseded by the Second Notice, where the Defence withdrew its request to cross-examine these witnesses and agreed to the admission of their evidence under Rule 92 bis.<sup>31</sup>

<sup>24</sup> Response to Second Motion, para. 10 and Response to Third Motion, para. 11.

<sup>25</sup> Response to Second Motion, para. 11 and Response to Third Motion, para. 12.

<sup>26</sup> Response to Second Motion, para. 6, and Response to Third Motion, para. 7.

<sup>27</sup> Response to Third Motion, para. 8.

<sup>28</sup> Response to Second Motion, para. 6.

<sup>29</sup> Response to Second Motion, para. 6 and Response to Third Motion, para. 8.

<sup>30</sup> Response to Third Motion, para. 10.

<sup>31</sup> Second Notice, p. 4.

### 1. Reply

14. The Prosecution submitted that “while the Accused failed to demonstrate any undue prejudice that would result from admitting the evidence of [Amir Dzonlić] on the additional denied adjudicated facts, the prejudice to the Prosecution’s case resulting from disallowing this evidence would be substantial”.<sup>32</sup> The Prosecution noted the Defence’s submission that “adjudicated facts 193, 818 and 1058 are highly contested, live and important issues in the trial” and submitted that “[i]f this is the case, then preventing the corroborating testimony of [Amir Dzonlić] on these three facts will adversely affect the Prosecution’s ability to adduce sufficient evidence to prove the charges in the Indictment beyond a reasonable doubt.”<sup>33</sup> The Prosecution further argued that “the three denied adjudicated facts at issue [...] are closely inter-related” and that therefore, “it would serve no practical purpose to limit the evidence of the two proposed Rule 92*bis* witnesses to the particular fact originally assigned to them”.<sup>34</sup>

## IV. APPLICABLE LAW

15. The Trial Chamber refers to the applicable law set out in its decision of 2 November 2010.<sup>35</sup> It recalls that in calling witnesses to testify on the substance of denied adjudicated facts, “the evidence of each selected witness shall be limited to the substance of the corresponding denied adjudicated fact or facts.”<sup>36</sup>

## V. DISCUSSION

16. As a preliminary matter the Trial Chamber notes that the Prosecution tendered a number of associated documents, which are not on the Prosecution’s Rule 65 *ter* exhibit list. However, the material had been disclosed to the Defence who, at the time of the Oral Decision, had been on notice of the Prosecution’s intention to tender such material for over six weeks. The Trial Chamber was therefore satisfied that the Defence had had adequate time to prepare with regard to those items considered to be inseparable and indispensable parts of the transcript they accompany.

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<sup>32</sup> Reply, para. 4.

<sup>33</sup> Reply, para. 4.

<sup>34</sup> Reply, para. 5.

<sup>35</sup> Written reasons for oral decision of 4 September 2009 admitting evidence of 24 witnesses pursuant to Rule 92 *bis*, 2 November 2010, paras 27-35.

# 1. Yusuf Arifagić (ST068)

17. The Prosecution tendered the transcript of Yusuf Arifagić's testimony in the *Stakić* case,<sup>37</sup> and one associated document.<sup>38</sup> The Prosecution tendered this evidence in order to cover the contents of denied or redacted adjudicated facts 247, 260-261, 906, 1005, 1031, 1072 and 1099, in accordance with the 14 July Decision.<sup>39</sup> These facts stated:

Fact 247: Those persons who were captured or detained by Bosnian Serb forces, whether during the armed take-over of Kozarac, or while those persons were rounded-up for transport to one of the detention camps in the Prijedor municipality, whatever their involvement in hostilities prior to that time, were not taking an active part in the hostilities.<sup>40</sup>

Fact 260: The property of Muslims and Croats was seized.<sup>41</sup>

Fact 261: The main non-Serb settlements were surrounded, bombarded and invaded and during these attacks, care was taken not to damage the property of Serbs.<sup>42</sup>

Fact 906: ~~Trnopolje became a transfer facility for the expulsion of the non-Serb population from the Bosnian Krajina.~~ Many people from Prijedor were taken to Trnopolje after their villages had been attacked by the Bosnian Serb forces and others came to Trnopolje on their own initiative, from where they were driven out of the area in convoys of buses.<sup>43</sup>

Fact 1005: The looting of Bosnian Muslim and Bosnian Croat villages in the area of Prijedor [in mid-1992] was organised. In fact, villagers forced to leave the area had to sign over their property to either to the ARK or to the SerBiH.<sup>44</sup>

Fact 1031: On or about 1 October 1992 people were removed from [Trnopolje] camp upon signing an agreement to relinquish all of their material goods. ~~Thus the Trnopolje camp was the culmination of the campaign of ethnic cleansing since those Muslims and Croats who were not killed at the Omarska or Keraterm camps were, from Trnopolje, deported from Bosnia and Herzegovina.~~<sup>45</sup>

<sup>36</sup> Decision granting in part prosecution's motion to amend its Rule 65ter witness list as a result of the Trial Chamber's 1 April 2010 decision concerning judicial notice of adjudicated facts, 14 July 2010, para. 25.

<sup>37</sup> *Stakić* case, 28-29 Aug 2002. See Confidential Annex A to the Second Motion.

<sup>38</sup> Exhibit S14 in the *Stakić* case, proposed Rule 65 ter number 3630 in current proceedings.

<sup>39</sup> *Supra* para. 3.

<sup>40</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution's second motion for judicial notice of adjudicated facts, with revised and consolidated annex, 10 May 2007, revised and consolidated annex, p. 28. Fact 247 was rejected because it contains characterisations of an essentially legal nature, Adjudicated Facts Decision, para. 50 d.

<sup>41</sup> *Id.*, p. 29. Fact 260 was rejected because is not distinct, concrete and identifiable, it unclear or misleading in the context in which it was placed in the Prosecution's motion and it contains characterisations of an essentially legal nature, Adjudicated Facts Decision, para. 50 b, c, and d.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Id.*, p. 81. A portion of fact 906 was redacted because it contains a characterisation of an essentially legal nature, Adjudicated Facts Decision, fn. 118.

<sup>44</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution's third motion for judicial notice of adjudicated facts, with annex, 25 Jan 2008, annex, p. 6. Fact 1005 was rejected because it is "unclear or misleading in the context in which they are placed in the Prosecution Motions", Adjudicated Facts Decision, para. 50 c.

<sup>45</sup> *Id.*, p. 10. A portion of fact 1031 was redacted because "taking judicial notice of them would not serve the interests of justice", Adjudicated Facts Decision, para. 50.

Fact 1072: Soldiers and Ministry of Interior ("MUP") special units took part in organized looting of villages [in Prijedor municipality], from which Muslims, Croats, and other non-Serbs, had been driven out.<sup>46</sup>

Fact 1099: At first Serb soldiers informed the detainees in Trnopolje that they were being held for their own protection against Muslim extremists. The camp later became a point where Serb soldiers would gather civilians, including men, women, and children, for deportation to other parts of Bosnia- Herzegovina and elsewhere.<sup>47</sup>

18. In the *Stakić* case, Yusuf Arifagić testified about the ethnic composition of Kozarac and surrounding villages,<sup>48</sup> the background of the conflict and security situation in the area.<sup>49</sup> He also testified about the takeover of Prijedor<sup>50</sup> and the shelling of Kozarac.<sup>51</sup> Yusuf Arifagić further testified that he saw Serbs systematically looting homes and destroying what they could not take.<sup>52</sup> The witness also testified about civilians being taken to the Keraterm, Omarska and Trnopolje camps and about abuses and killings that occurred there.<sup>53</sup> The witness described how he was taken along with others to the Keraterm camp in buses<sup>54</sup> and his transfer to Trnopolje, from which detainees were released only upon signing forms relinquishing all their property to the local authorities of Prijedor.<sup>55</sup> These portions of the transcript are relevant to the indictment and correlate to denied adjudicated facts 247, 260-261, 906, 1005, 1031, 1072 and 1099.

19. None of the relevant portions of Yusuf Arifagić's testimony goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the Trial Chamber noted that this witness is a victim and survivor of violence who has already testified before this Tribunal. The Trial Chamber found no circumstances requiring this witness to appear for cross-examination. In making this determination the Trial Chamber also considered that the Defence had withdrawn their initial request to cross-examine this witness and had agreed to the admission of his evidence under Rule 92 *bis*.<sup>56</sup> For these reasons, the Trial Chamber admitted into evidence pursuant to Rule 92 *bis*(A) the relevant portions of Yusuf Arifagić's prior testimony.

<sup>46</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution's fifth motion for judicial notice of adjudicated facts, with annex, 24 Aug 2009, annex, p. 3. Fact 1072 was rejected because "taking judicial notice of them would not serve the interests of justice", Adjudicated Facts Decision, para. 50.

<sup>47</sup> *Id.*, p. 5. Fact 1099 was rejected because it is fundamentally inconsistent with a factual finding on the same subject in another proposed fact. The Trial Chamber stated that for example, "in proposed fact 1079 the *Krajišnik* Trial Chamber refers to the Trnopolje camp as a 'long term detention centre' as compared to proposed fact 1099 where the same Chamber describes the camp as a place where detainees were held 'for deportation to other parts of of Bosnia-Herzegovina and elsewhere'", Adjudicated Facts Decision, para. 49 and fn. 139.

<sup>48</sup> *Stakić* case, T. 7055-7056.

<sup>49</sup> *Id.*, T. 7056-7057-63.

<sup>50</sup> *Id.*, T. 7065-7068, T. 7070-7071 and T. 7078.

<sup>51</sup> *Id.*, T. 7071, T. 7073-7075.

<sup>52</sup> *Id.*, T. 7075, T. 7080-7081.

<sup>53</sup> *Id.*, T. 7064-7065, T. 7075, T. 7078-7082, T. 7094.

<sup>54</sup> *Id.*, T. 7105.

<sup>55</sup> *Id.*, T. 7106, T. 7133.

<sup>56</sup> Second Notice, p. 4.



20. The associated document tendered by the Prosecution is a map of the municipality of Prijedor, which is discussed by the witness during his testimony in the *Stakić* case.<sup>57</sup> It is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies. For this reason, this document was admitted into evidence.

## 2. Amir Dzonlić (ST224)

21. The Prosecution tendered the transcript of Amir Dzonlić's testimony in the *Brdanin* case<sup>58</sup> and ten associated documents.<sup>59</sup>

22. The Trial Chamber recalls that it granted the addition of Amir Dzonlić to the Prosecution's witness list solely to cover the contents of denied adjudicated fact 1058.<sup>60</sup> This fact stated:

Fact 1058: On 11 May 1992, the ARK crisis staff issued an order confiscating the property of able-bodied men aged between 18 and 55 who had left the area and had not immediately returned. This specifically applied to non-Serbs who had fled the territory of the ARK. Muslims and Croats in managerial posts were fired by the ARK crisis staff irrespective of their responses to the mobilization order. Employers in Banja Luka were told to evict non-Serbs from employer-owned apartments in order to make space for families of fallen Serb soldiers. Those who attempted to protect non-Serbs in Banja Luka were reprimanded or even replaced.<sup>61</sup>

23. While the Prosecution indicated in Confidential Annex A to the Third Motion that the evidence of this witness is also relevant to denied adjudicated facts 193 and 818,<sup>62</sup> it only directly addressed this issue in the Reply, once it had been brought up by the Defence in their Response to the Third Motion. While the Trial Chamber does not accept that the Prosecution acted in bad faith by not raising this matter explicitly in the Third Motion, it considers that it would have been incumbent upon the Prosecution to make a formal request for reconsideration of the 14 July Decision to allow Amir Dzonlić also to cover facts 193 and 818. The Trial Chamber sees no reason *proprio motu* to reconsider the 14 July Decision in this respect, because there has been no change in circumstances that would justify expanding the evidence of Amir Dzonlić to cover additional facts.

24. In the *Brdanin* case, Amir Dzonlić, a lawyer who practiced property law and criminal law in Banja Luka during the indictment period,<sup>63</sup> testified to non-Serbs losing rights to their homes and being dismissed from their regular work due to their ethnicity.<sup>64</sup> These portions of the transcript are relevant to the indictment and correlate to denied adjudicated fact 1058. The Trial Chamber

<sup>57</sup> Exhibit S14 in the *Stakić* case, proposed Rule 65 *ter* number 3630 in current proceedings.

<sup>58</sup> Case No. IT-99-36-T (*Brdanin* case), 26 February-6 March 2002. See Confidential Annex A to the Third Motion.

<sup>59</sup> Exhibit P2.2, 255, 202, 227, 258, 295, 470, 471, 472 and 473 in the *Brdanin* case, Rule 65 *ter* number 159, 133, 147, 10216, and proposed Rule 65 *ter* number 3667, 3668, 3669 and 3670 in current proceedings.

<sup>60</sup> 14 July Decision, para. 25. Fact 193 was rejected because is "unclear or misleading in the context in which [it is] placed in the Prosecution Motions", Adjudicated Facts Decision, para. 50 c.

<sup>61</sup> Prosecution's fifth motion for judicial notice of adjudicated facts, with annex, 24 August 2009, annex, pp. 1-2.

<sup>62</sup> Confidential Annex A to the Third Motion.

<sup>63</sup> *Brdanin* case, T. 2296.

<sup>64</sup> *Brdanin* case, T. 2401, T. 2311-12, 2330, 2331-32, 2334-36.

excluded evidence, tendered by the Prosecution as relevant to denied adjudicated fact 1058, on non-Serbs being ordered to surrender firearms to local police authorities because denied adjudicated fact 1058 is devoid of any reference to such an order.

25. None of the relevant portions of Amir Dzonlić's testimony goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. The Trial Chamber found no circumstances requiring this witness to appear for cross-examination. For these reasons, the Trial Chamber admitted into evidence pursuant to Rule 92 *bis*(A) the relevant portions of Amir Dzonlić's prior testimony.

26. Among the associated documents tendered by Prosecution, the Trial Chamber considers that only two of them – a decision by the Banja Luka Crisis Staff on Serb-only employment policies<sup>65</sup> and an issue of the ARK Official Gazette<sup>66</sup> – are inseparable and indispensable from the relevant portion of the transcript they accompany.<sup>67</sup> However, these documents are already in evidence and should not be admitted again as part of this witness's Rule 92 *bis* package in order to avoid duplication.<sup>68</sup> The remaining exhibits are not inseparable or inextricable to the relevant portions of the transcript or are discussed by the witness in sections which go beyond the scope of the adjudicated fact the witness is purported to cover. For these reasons, the Trial Chamber did not admit them into evidence.

### 3. Azra Blazević (ST242)

27. The Prosecution tendered the transcript of Azra Blazević's testimony in the *Tadić* case,<sup>69</sup> and five associated documents.<sup>70</sup> The Trial Chamber recalls that it granted the addition of Azra Blazević to the Prosecution's witness list solely to cover the contents of denied adjudicated facts 844, 845 and 846.<sup>71</sup> These facts stated:

Fact 844: A number of Bosnian Muslim employees of the Kozarac police station were killed.<sup>72</sup>

<sup>65</sup> Exhibit P255 in the *Brdanin* case, Rule 65 *ter* number 159 in current proceedings.

<sup>66</sup> Exhibit P227 in the *Brdanin* case, Rule 65 *ter* number 147 in current proceedings.

<sup>67</sup> *Brdanin* case, T. 2329-30; 2415-21.

<sup>68</sup> Rule 65 *ter* number 159 was admitted into evidence in current proceedings on 19 January 2010 as P462; Rule 65 *ter* number 147 was admitted into evidence in current proceedings on 8 December 2000 as P441.

<sup>69</sup> *Tadić* case, 12-13 Jun 1996. See Confidential Annex A to the Second Motion.

<sup>70</sup> Second Motion, Annex A, Map of Kozarac, Exhibit P196, 0039-8847; Map of central Kozarac, Exhibit D12; Video of Kozarac, Exhibit P195, V000-0807; Video of school, store, medical centre and tents in the fields of Tronopolje, Exhibit P203, V000-0911; and Photograph of outpatient surgery in Tronopolje, Exhibit P204, 0039-9771.

<sup>71</sup> 14 July Decision, para. 25.

<sup>72</sup> *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution's second motion for judicial notice of adjudicated facts, with revised and consolidated annex, 10 May 2007, revised and consolidated annex, p. 77. Fact 844 was rejected because is "unclear or misleading in the context in which [it is] placed in the Prosecution Motions", Adjudicated Facts Decision, para. 50 c.

Fact 845: Patients at the medical centre in Kozarac died as a result of shelling wounds and other injuries when the centre was shelled.<sup>73</sup>

Fact 846: When a doctor tried to negotiate the evacuation of two injured children, one of whom had her legs completely shattered, he was told over the radio "Die, balijas, we're going to kill you anyway".<sup>74</sup>

28. The Prosecution indicated in the Confidential Annex A to the Second Motion that portions of the evidence tendered relate to facts 255, 257, 260-261, 906, 1030, 1075-1077 and 1099. For the same reasons set out above with regard to the evidence of Amir Dzonlić,<sup>75</sup> the Trial Chamber did not allow the Prosecution to expand the evidence of this witness to cover additional facts.

29. In the *Tadić* case, Azra Blazević testified, *inter alia*, about the ethnic composition and location of Kozarac.<sup>76</sup> The witness also testified about the security situation in Kozarac, prior, during and after the attack on the town.<sup>77</sup> She described, for example, that prior to the attack, non-Serbs were prevented from leaving the town,<sup>78</sup> their telephone lines were disconnected,<sup>79</sup> and that after the attack, the Serbs took over leadership of the town and issued ultimatums to local government and police officials to sign loyalty statements and for the local population to turn over their weapons.<sup>80</sup> Azra Blazević also testified about restrictions on movement around Prijedor after the take-over, which was imposed through various check-points that were set up and manned by local Serbs.<sup>81</sup> The witness further testified that she treated people – mostly Muslims, with shelling wounds – at the medical centre in Kozarac and in a place called the "motel".<sup>82</sup> The witness and others were eventually taken to Tronopolje,<sup>83</sup> where they were asked to stay and work at the medical clinic on the camp.<sup>84</sup> These portions of the transcript are relevant to the indictment and correlate to denied adjudicated fact 845. The Trial Chamber notes that none of the evidence of Azra Blazević goes to the contents of denied adjudicated facts 844 and 846.

30. None of the relevant portions of Azra Blazević's testimony goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Furthermore, the Trial Chamber noted that this witness is a victim and survivor of violence who has already testified before this Tribunal. The Trial Chamber found no circumstances requiring this

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Supra* para. 23.

<sup>76</sup> *Tadić* case, T. 2415-2418, T. 2421-2422.

<sup>77</sup> *Tadić* case, T. 2425-2426, T. 2434-2437, T. 2439-2440.

<sup>78</sup> *Tadić* case, T. 2434-2435.

<sup>79</sup> *Tadić* case, T. 2435-2437.

<sup>80</sup> *Tadić* case, T. 2429.

<sup>81</sup> *Tadić* case, T. 2430, T. 2432-2434.

<sup>82</sup> *Tadić* case, T. 2439, T. 2444-2448, T. 2464.

<sup>83</sup> *Tadić* case, T. 2474-2475.

<sup>84</sup> *Tadić* case, T. 2475-2478, 2480, 2538-2539; Video showing the medical centre in the Tronopolje camp, Exhibit P203, V000-0911.

witness to appear for cross-examination. In making this determination the Trial Chamber also considered that in the Second Notice, the Defence withdrew its request to cross-examine this witness and agreed to the admission of his evidence under Rule 92 *bis*.<sup>85</sup> For these reasons, the Trial Chamber admitted into evidence pursuant to Rule 92 *bis*(A) the relevant portions of Azra Blazević's prior testimony.

31. Two of the associated documents tendered by the Prosecution – a video of Kozarac<sup>86</sup> and a map of Kozarac<sup>87</sup> – were discussed by the witness in the relevant parts of his testimony in the *Stakić* case. They are relevant, probative and form an inseparable and indispensable part of the relevant portions of the transcript they accompany. For this reason, these documents were admitted into evidence. The remainder of the documents were not admitted into evidence because the witness does not discuss them in the relevant portions of the transcript or the Trial Chamber did not consider them to be inseparable and indispensable parts of this witness's evidence.

#### 4. Nermin Karagić (ST246)

32. The Prosecution tendered the transcript of this witness's testimony in the *Stakić* case, and one associated document.<sup>88</sup> The Prosecution tendered this evidence in order to cover the contents of denied adjudicated facts 291 and 1030, in accordance with the 14 July Decision. Fact 1030 has already been spelled out above. Facts 291 stated:

Fact 291: Homes were destroyed and personal belongings looted in the attack on Rizvanović, a predominantly Muslim village.<sup>89</sup>

33. In the *Stakić* case, Nermin Karagić testified, *inter alia*, about the ethnic composition and location of Rizvanović, in the municipality of Prijedor.<sup>90</sup> The witness also testified about the attack on Rizvanović and the fact that during the attack "there were cases of looting".<sup>91</sup> He testified about the presence of "reserve policemen" in Rakovcani and Rizvanović, who detained the witness and took at gun point a barrel of fuel from the witness's house.<sup>92</sup> The witness described his transfer to Cafe Bosna where he was beaten and given food, which the witness said came from "houses which

<sup>85</sup> Second Notice, p. 4.

<sup>86</sup> Exhibit P195 in the *Tadić* case, proposed Rule 65 *ter* number 3632 in current proceedings.

<sup>87</sup> Exhibit P196 in the *Tadić* case, proposed Rule 65 *ter* number 3631 in current proceedings.

<sup>88</sup> *Stakić* case, 26-27 June 2002 and exhibit S170 in the *Stakić* case, proposed Rule 65 *ter* number 3636 in current proceedings.

<sup>89</sup> *Prosecutor v. Mićo Stanišić*, IT-04-79-PT, Prosecution's second motion for judicial notice of adjudicated facts, with revised and consolidated annex, 10 May 2007, revised and consolidated annex, p. 30. Fact 291 was rejected because it "is not distinct, concrete and identifiable", Adjudicated Facts Decision, para. 50. b.

<sup>90</sup> *Stakić* case, T. 5209-5210 and T. 5275-5276.

<sup>91</sup> *Stakić* case, T. 5206-5209 and T. 5291-5293.

<sup>92</sup> *Stakić* case, T. 5257 - 5260.

had been looted”.<sup>93</sup> Nermin Karagić also described how he joined a convoy, which “picked up the people from Trnopolje on the way”.<sup>94</sup> These portions of the transcript are relevant to the indictment and correlate to denied adjudicated facts 291 and 1030.

34. The Trial Chamber noted that the Prosecution did not highlight certain portions, which the Trial Chamber deemed necessary to understand contextual information relevant to the facts, *i.e.* portions of the testimony that help clarifying the date of the attack on Rizvanović and the location of the village.<sup>95</sup> In the interest of clarity, the Trial Chamber *proprio motu* also considered these portions for admission into evidence.

35. The Trial Chamber further noted that portions of the tendered transcripts highlighted in yellow expand beyond what is strictly necessary to understand the context of facts 291 and 1030. For instance, portions where the witness discussed events in Bosanska Dubica,<sup>96</sup> his flight towards Bihać along with 300 other people and their encounter with JNA and reserve police officers,<sup>97</sup> their detention and transfer to the Miska Glava dom,<sup>98</sup> further to Ljubija stadium<sup>99</sup> and Kipe,<sup>100</sup> and about detention conditions, mistreatment and killings that occurred in all these locations. For this reason, the Trial Chamber did not admit these highlighted portions into evidence.

36. None of the relevant portions of Nermin Karagić’s testimony goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution’s case. Further, the Trial Chamber noted that this witness is a victim and survivor of violence who has already testified before this Tribunal. The Trial Chamber found no circumstances requiring Nermin Karagić to appear for cross-examination. For these reasons, the Trial Chamber admitted pursuant to Rule 92 *bis*(A) the relevant portions of Nermin Karagić’s prior testimony.

37. The associated document tendered by the Prosecution is a map of the Brdo region.<sup>101</sup> The document is discussed by the witness during his testimony in the *Stakić* case. It is relevant, probative and forms an inseparable and indispensable part of the transcript it accompanies. For this reason this document was admitted into evidence.

<sup>93</sup> *Stakić* case, T. 5262.

<sup>94</sup> *Stakić* case, T. 5270, T. 5273-5274.

<sup>95</sup> *Stakić* case, T. 5204-5205.

<sup>96</sup> *Stakić* case, T. 5210-5211.

<sup>97</sup> *Stakić* case, T. 5211 line 9 to T. 5214.

<sup>98</sup> *Stakić* case, T. 5215-5218.

<sup>99</sup> *Stakić* case, T. 5225-5227, 5228, 5236 - 5237.

<sup>100</sup> *Stakić* case, T. 5244-5251.

<sup>101</sup> Exhibit S170 in the *Stakić* case, proposed Rule 65 *ter* number 3636 in current proceedings.

5. ST248

38. The Prosecution tendered the transcript of the witness's testimony in the *Stakić* case on 8 July 2002, together with one associated document.<sup>102</sup> The Prosecution tendered this evidence in order to cover the contents of denied adjudicated facts 255, 906, 1005, 1030, 1031, 1072 and 1099, in accordance with the 14 July Decision. Facts 906, 1005, 1031, 1072 and 1099 have already been spelled out above. Facts 255 and 1030 stated:

Fact 255: Additional restrictions suffered by non-Serbs included the blocking of telephone lines and the partial shut-down of electricity for non-Serbs.<sup>103</sup>

Fact 1030: In the Municipality of Prijedor, Bosnian Muslims and Bosnian Croats were gathered in Trnopolje camp for their further transfer to other locations. Security was provided by the Commander of the SJB, the Bosnian Serb police and military for a number of convoys that transported people from Trnopolje camp to Travnik prior to 21 August 1992. Following the attack on Čarakovo, people from the village were taken to Trnopolje, and then to Travnik by Bosnian Serb forces.<sup>104</sup>

39. In the *Stakić* case, ST248 testified, *inter alia*, about the ethnic composition of Čarakovo and the attack on this village and other villages in the municipality of Prijedor by Serb forces.<sup>105</sup> ST248 also testified that after the take over, electricity was cut off.<sup>106</sup> The witness said that Serb soldiers were present in the village and looting of property took place.<sup>107</sup> ST248 also discusses his surrender along with a group of children, women and elderly Muslim<sup>108</sup> and the transfer of the group to Trnopolje and further to Travnik.<sup>109</sup> These portions of the transcript are relevant to the indictment and correlate to the relevant denied or redacted adjudicated facts.

40. The Trial Chamber noted that some of the portions highlighted in yellow expand beyond what is strictly necessary to understand the context of the relevant facts, *e.g.* portions where the witness discussed beatings and killings of Muslim in Čaracoko and neighbouring villages of Zecovi and Bare.<sup>110</sup> For this reason, the Trial Chamber did not admit these highlighted portions into evidence.

<sup>102</sup> Exhibit S188 in the *Stakić* case, proposed Rule 65 *ter* number 3637 in current proceedings.

<sup>103</sup> *Prosecutor v. Mico Stanišić*, IT-04-79-PT, Prosecution's second motion for judicial notice of adjudicated facts, with revised and consolidated annex, 10 May 2007, revised and consolidated annex, p. 28. Fact 255 was rejected because it is "not distinct, concrete and identifiable" and "unclear or misleading in the context in which they are placed in the Prosecution Motions", Adjudicated Facts Decision, para. 50 b and c.

<sup>104</sup> *Prosecutor v. Mico Stanišić*, IT-04-79-PT, Prosecution's third motion for judicial notice of adjudicated facts, with annex, 25 Jan 2008, annex, p. 10. Fact 1030 was rejected because "taking judicial notice of them would not serve the interests of justice", Adjudicated Facts Decision, para. 50.

<sup>105</sup> *Stakić* case, T.5715 - 5720, 5725 - 5729

<sup>106</sup> *Stakić* case, T.5723.

<sup>107</sup> *Stakić* case, T.5725, T. 5729, 5739 - 5740.

<sup>108</sup> *Stakić* case, T. 5743 - 5747.

<sup>109</sup> *Stakić* case, T. 5747 - 5750.

<sup>110</sup> *Stakić* case, T.5730 line 19 - T. 5738, 5740 line 14 - 5743 line 14.

41. None of the relevant portions of ST248's testimony goes to proof of the acts and conduct of the Accused or contains information that appears pivotal to the Prosecution's case. Further, the Trial Chamber noted that this witness is a victim and survivor of violence who has already testified before this Tribunal. The Trial Chamber found no circumstances requiring ST248 to appear for cross-examination. For these reasons, the Trial Chamber admitted into evidence pursuant to Rule 92 *bis*(A) the relevant portions of the ST248's prior testimony.

42. The associated document tendered by the Prosecution, proposed Rule 65 *ter* number 3637, is the pseudonym sheet of the witness, which is inseparable and indispensable from his testimony and was therefore admitted into evidence.

## VI. DISPOSITION

43. For the foregoing reasons, and pursuant to Rules 89 and 92 *bis*, the Trial Chamber:

**AFFIRMS** the Oral Decision;

**SPECIFIES** that it admitted into evidence the following portions of testimony and associated exhibits:

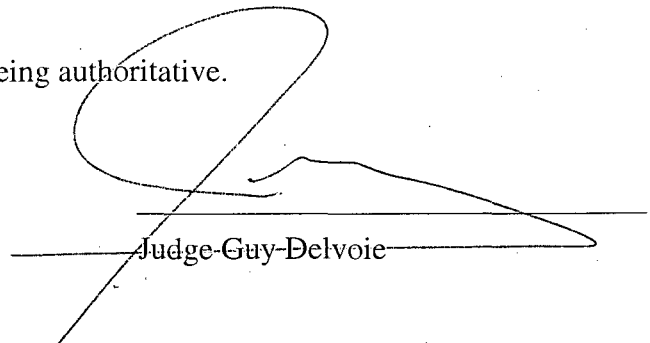
- **Yusuf Arifagić:** the portions of his testimony in the *Brdanin* case, as highlighted by the Prosecution, and Rule 65 *ter* number 3630;
- **Amir Dzonlić:** the following portions of his testimony in the *Brdanin* case, as highlighted by the Prosecution, on pages T. 2292 to T. 2298, T. 2304 from line 10 to T. 2317 up to line 15, T. 2321 from line 3 to T. 2336, T. 2395 to T. 2401 up to line 24, T. 2415 to T. 2418 up to line 2, T. 2448 from line 9 to T. 2453, T. 2455 from line 19 to T. 2458 up to line 2, T. 2462 from line 16 to T. 2463 up to line 23, T. 2465, and T. 2469 to T. 2471;
- **Azra Blazević:** the following portions of her testimony in the *Tadić* case, as highlighted by the Prosecution, on pages T. 2414, T. 2421 from line 9 to T. 2431, T. 2433 to T. 2457, T. 2464 to T. 2465, T. 2474 from line 13 to T. 2476, T. 2543 to T. 2555;
- **Nermin Karagić:** the following portions of his testimony in the *Stakić* case from T. 5204 line 16 up to T. 5205 line 3 and portions highlighted by the Prosecution on

T. 5206 to 5210; T. 5257 to T. 5260; T. 5262; T. 5270; T. 5273 to T. 5276 and T. 5291 to T. 5293; and Rule 65 *ter* number 3636;

- **ST248:** the following portions of his testimony in the *Brđanin* case, as highlighted by the Prosecution, on pages T.5715 to T. 5720, T. 5723, T. 5725 to 5729, T. 5739 to T. 5740, T. 5743 to 5750, and Rule 65 *ter* number 3637; and

**ORDERS** the Registrar to assign exhibit numbers to the transcripts and associated exhibits admitted into evidence for Yusuf Arifagić, Amir Dzonlić, Azra Blazević, Nermin Karagić and ST0248.

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



Judge-Guy-Delvoie

Dated this fifth day of January 2011

At The Hague

The Netherlands

[Seal of the Tribunal]