



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 9 January 2012

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 9 January 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION TO ADMIT DOCUMENTS RELEVANT TO
WITNESSES KDZ490 AND KDZ492 FROM THE BAR TABLE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Motion to Admit Documents Relevant to Witnesses KDZ490 and KDZ492 from the Bar Table”, filed by the Accused on 8 November 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused requests that ten excerpts from the transcripts of prior testimony of witnesses KDZ490 and KDZ492 (“Witnesses”) in other cases before the Tribunal (“Excerpts”), be admitted into evidence from the bar table pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Accused adds that the admission of the Excerpts from the bar table constitutes an exceptional measure which is appropriate in the present case due to the inadequacy of the time allocated by the Chamber to conduct the cross-examination of the Witnesses, and the Accused’s consequent inability to address the information referred to in the Excerpts.² The Accused further states that, in the event the Chamber denies his request, he will seek to call the Witnesses during his defence case and to tender the Excerpts pursuant to Rule 92 *ter*, which would be a less efficient way to proceed.³

2. On 22 November 2011, the Office of the Prosecutor (“Prosecution”) filed its “Prosecution Response to ‘Motion to Admit Documents Relevant to Witnesses KDZ490 and KDZ492 from the Bar Table’” (“Response”), stating that the Motion should be denied, and arguing that transcripts from prior testimony may not be tendered into evidence from the bar table pursuant to Rule 89(C).⁴ The Prosecution also states that the Accused’s request is based on the assertion that the Chamber did not allow him adequate time to cross-examine the Witnesses; however, in both instances, the Chamber has already rejected the Accused’s argument by holding that the allotted time was sufficient.⁵ Finally, the Prosecution submits that during the Accused’s cross-examination of the Witnesses, he had the opportunity to raise the general matters discussed in the Excerpts, and in fact he actually did so in most instances, but chose not to specifically refer to the content of the Excerpts.⁶

¹ Motion, para. 1; confidential Annex A. The Excerpts bear Rule 65 *ter* numbers 1D04511, 23470, and 23471. In the confidential Annex A to the Motion, the Accused provides a brief description of each proposed excerpt, as well as of its relevance and probative value, and of how it fits into his case.

² Motion, para. 3.

³ Motion, para. 4.

⁴ Response, paras. 1–2, 5.

⁵ Response, para. 3.

⁶ Response, para. 4.

II. Applicable law

3. Rule 89 of the Rules provides, in relevant part that:

- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.

4. The Chamber recalls, as it has already stated in earlier decisions, that the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁷ Evidence may be admitted from the bar table if it is considered to fulfil the requirements of Rule 89 that it be relevant, of probative value, and bear sufficient indicia of authenticity.⁸ Once these requirements are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D).⁹

5. The Chamber also recalls its “Order on Procedure for Conduct of Trial”, issued on 8 October 2009 (“Order on Procedure”), which states with regard to any request for the admission of evidence from the bar table that:

The requesting party shall: (i) provide a short description of the document of which it seeks admission; (ii) clearly specify the relevance and probative value of each document; (iii) explain how it fits into the party’s case, and (iv) provide the indicators of the document’s authenticity.¹⁰

III. Discussion

6. The Chamber recalls that, while evidence does not need to be introduced through a witness in every circumstance, and there may be instances where it may be admitted from the bar table if certain conditions are met, the most appropriate method for the admission of a document or other item of evidence is through a witness who can speak to it and answer questions in relation thereto.¹¹ Admission from the bar table is a mechanism to be used on an exceptional basis since it does not necessarily allow for proper contextualisation of the evidence

⁷ See Decision on the Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5 (citations omitted); Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records, 22 July 2010, para. 4; Decision on Prosecution’s Motion for Admission of an Exhibit from the Bar Table Following Major Thomas’s Testimony, 28 October 2010 (“Bar Table Decision on Witness Thomas”), para. 7; Decision on Prosecution’s Motion for the Admission of 68 Sarajevo Romanija Corps Documents from the Bar Table, 16 June 2011, para. 5.

⁸ Rule 89(C), (E).

⁹ First Bar Table Decision, para. 5.

¹⁰ Order on Procedure, Appendix A, Part VII, para. R.

¹¹ First Bar Table Decision, para. 9.

in question. Moreover, although there are no explicit restrictions placed on the admission from the bar table of documents that meet the requirements of Rule 89(C) of the Rules, the Chamber considers that transcripts of prior testimony constitute a particular category of documentary evidence, and that their admission is specifically governed by Rules 92 *bis* to 92 *quinqüies* of the Rules.¹² As a result, transcripts of prior testimony before this Tribunal should be tendered pursuant to one of these Rules and cannot therefore be admitted under the *lex generalis* rule for the admission of evidence, namely Rule 89(C). Rules 92 *bis*, *ter*, *quater*, and *quinqüies* would otherwise be rendered ineffectual. Thus, the Chamber will not go into a discussion of the content of the Excerpts themselves. It suffices to say, that in the Chamber's view, given the nature of the Excerpts, their admission is not an appropriate use of the bar table.

7. In relation to the Accused's claim that the admission of the Excerpts from the bar table would be exceptionally justified in the present case given the inadequate time granted by the Chamber to the Accused to conduct his cross-examination of the Witnesses,¹³ the Chamber is satisfied that the time allotted was adequate and, accordingly, sufficient to allow a comprehensive cross-examination of the Witnesses.¹⁴ The Accused's decision to spend a considerable amount of time on topics which may not be of significant importance for his case¹⁵ cannot be considered as an exceptional circumstance which justifies the admission of the Excerpts pursuant to Rule 89(C) of the Rules. In the Chamber's opinion, the Accused has not demonstrated good cause for his request.

8. Furthermore, the Chamber recalls its finding in earlier decisions that, while there may be a perception that the admission of evidence from the bar table saves some in-court time, it can in fact lengthen the proceedings due to the sheer volume of evidence thereby admitted.¹⁶ This is particularly so if the parties continue as a matter of course to tie bar table motions to particular witnesses and to regularly use them as a safety net when time runs out or as an additional means of admitting even more documents.¹⁷

¹² Rule 92 *bis* covers the admission of written statements and transcripts in lieu of oral testimony; Rule 92 *ter* pertains to the admission of written statements and transcripts when, *inter alia*, the witness is present in court and available for cross-examination; Rule 92 *quater* pertains to the admission of written statements or transcripts of unavailable persons; and Rule 92 *quinqüies* relates to the admission of statements and transcripts of persons subject to interference.

¹³ Motion, para. 3.

¹⁴ The Chamber granted the Accused 3.5 hours for his cross-examination of KDZ490, and 4.5 hours for his cross-examination of KDZ492.

¹⁵ See T. 20225 (20 October 2011) (closed session) in relation to the testimony of KDZ490. See also T. 20148 (19 October 2011) (closed session) in relation to the testimony of KDZ492.

¹⁶ See Bar Table Decision on Witness Thomas, para. 11.

¹⁷ See Decision on the Prosecution's Bar Table Motion relating to Witness Dorothea Hanson, 27 June 2011, para. 16.

IV. Disposition

9. Accordingly, the Chamber, pursuant to Rule 89(C) of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]