



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-04-84bis-T
Date: 13 February 2012
Original: English

IN TRIAL CHAMBER II

Before: Judge Bakone Justice Moloto, Presiding
Judge Burton Hall
Judge Guy Delvoie

Registrar: Mr. John Hocking

Decision: 13 February 2012

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON NOTICE OF COMPLIANCE
WITH RULE 92BIS DECISION**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Accused:

Mr. Ben Emmerson QC and Mr. Rodney Dixon for Ramush Haradinaj
Mr. Gregor Guy-Smith and Ms. Colleen M. Rohan for Idriz Balaj
Mr. Richard Harvey and Mr. Paul Troop for Lahi Brahimaj

THIS TRIAL CHAMBER (“Chamber”) of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“the International Tribunal”) is seised of “Notice of Compliance with Rule 92*bis* Decision”, filed publicly with public annexes A-D by the Office of the Prosecutor (“Prosecution”) on 21 December 2011 (“Notice”).

I. PROCEDURAL HISTORY

1. On 22 July 2011 this Chamber issued the “Decision on Prosecution’s Motion for Admission of Transcripts of Evidence in Lieu of Viva Voce Testimony pursuant to 92*bis*” (“Rule 92*bis* Decision”), in which it, *inter alia*, admitted the proposed transcripts of Branimir Aleksandrić and Dušan Dunjić pursuant to Rule 92*bis* of the Rules of Procedure and Evidence (“Rules”), subject to the redaction by the Prosecution of references in the testimony to materials not then proposed for admission.¹ The Chamber ordered also that the proposed testimony of Staniša Radošević be admitted into evidence pursuant to Rule 92*bis*, conditioned upon the redaction of references in the testimony to an image of a KLA emblem, to maps shown to and marked by the witness and a photograph, or, alternatively, if agreed with the Defence, the tendering of such missing documents.²

2. The Chamber did not admit in the Rule 92*bis* Decision two sets of a two-volume notebook/diary the Prosecution sought to tender through Marijana Anđelković, as it was unable in the circumstances to make a determination as to the relevance and probative value of the proposed documents.³ The Chamber instructed the Prosecution that it may seek to tender specific pages of these documents after identifying the difference between the two sets of documents, indicating to which pages of the transcript of Marijana Anđelković’s testimony the pages it tenders refer, and providing the official English translations of the documents.⁴

3. On 21 December 2011 the Prosecution filed the present Notice, notifying the Chamber that it has complied with the Chamber’s Rule 92*bis* Decision in relation to witnesses Branimir Aleksandrić, Dušan Dunjić and Marijana Anđelković.⁵ The Prosecution thereby seeks to have admitted the redacted versions of the transcripts of the testimonies of Branimir Aleksandrić and Dušan Dunjić and two sets of excerpts of Marijana Anđelković’s two-volume notebook/diary.⁶

¹ Rule 92*bis* Decision, para. 36, Disposition (2)a-b.

² Rule 92*bis* Decision, para. 56, Disposition (2)a-b.

³ Rule 92*bis* Decision, para. 44.

⁴ Rule 92*bis* Decision, para. 44.

⁵ Notice, para. 1.

⁶ Notice, paras 1-3.

4. As a related matter, the Prosecution informs the Chamber that an incorrect version of one of the translations of Marijana Anđelković's notebook/diary, Rule 65ter document 00322, was uploaded into eCourt by error.⁷ The Prosecution seeks leave to replace in eCourt the English translation of Rule 65ter document 00322 with document ID U003-0254-ER-2.⁸

II. SUBMISSIONS

5. The Prosecution submits that it has uploaded to eCourt, and seeks leave to replace in eCourt, the requested redacted versions of the transcripts of the testimonies of Branimir Aleksandrić and Dušan Dunjić in case IT-04-84-T.⁹ The Prosecution submits that it understands that the redactions requested are limited to material not intended to form part of the record of the retrial; the Prosecution has therefore not redacted references to materials discussed in the testimonies of Aleksandrić and Dunjić which have been admitted into evidence in this case through other witnesses.¹⁰ The Prosecution has submitted in Annex A to the Notice a list of these materials, indicating the exhibit or Rule 65ter numbers used in the original *Haradinaj* trial and the corresponding retrial exhibit or Rule 65ter numbers.¹¹ The Prosecution thereby seeks leave to replace in eCourt: Rule 65ter document 04054 with document ID TR00-4054-RED;¹² Rule 65ter document 04056 with document ID TR00-4056-RED;¹³ and Rule 65ter document 04057 with document ID TR00-4057-RED.¹⁴

6. The Prosecution submits further that it has complied with the Rule 92bis Decision in relation to Marijana Anđelković.¹⁵ The Prosecution thereby requests that the excerpts of her notebooks/diaries, Rule 65ter documents 00321 and 00322, identified in Annex B to the Notice, and Rule 65ter documents 00003 and 00004, identified in Annex D to the Notice, be admitted into evidence as public exhibits.¹⁶

7. The Prosecution offers the following explanation for the discrepancy between Rule 65ter documents 000321 and 000322, and Rule 65ter documents 00003 and 00004.¹⁷ During the course of her testimony in the original *Haradinaj* trial on 6 March 2007, Marijana Anđelković commented

⁷ Notice, paras 4, 20.

⁸ Notice, paras 4, 20.

⁹ Notice, paras 2, 7.

¹⁰ Notice, para. 5.

¹¹ Notice, para. 6.

¹² Notice, para. 7; Transcript of testimony in case IT-04-84-T of Branimir Aleksandrić.

¹³ Notice, para. 7; Public/Redacted transcript of testimony in case IT-04-84-T of Dušan Dunjić.

¹⁴ Notice, para. 7; Transcript of testimony in case IT-04-84-T of Dušan Dunjić.

¹⁵ Notice, para. 1.

¹⁶ Notice, para. 3.

¹⁷ These documents correspond to former exhibits in the original *Haradinaj* trial P321, P322, P3 and P4, respectively.

on documents marked for identification in that trial as P1 and P2.¹⁸ In the Prosecution's submission, due to problems with referencing the original document pages with those of the associated selective translations, on 7 March 2007 the Prosecution at the original *Haradinaj* trial presented a new pair of documents, marked for identification as P3 and P4, which were used in cross-examination.¹⁹ On 8 March 2007, the Trial Chamber in the original *Haradinaj* trial deferred its decision on the admission of Anđelković's diary until the Prosecution properly verified and re-organised the two volumes of the document.²⁰ On 22 May 2007, re-ordered versions of the two-volume notebook/diary agreed upon by the Parties were admitted in the original *Haradinaj* trial as exhibits P321 and P322.²¹ The documents marked in this retrial as Rule 65ter documents 00003 and 00004 were also admitted in the original *Haradinaj* trial on 22 May 2007 as exhibits P3 and P4.²² At the original *Haradinaj* trial the documents marked for identification as P1 and P2 were vacated as having been replaced by exhibits P3 and P4.²³

8. The Prosecution submits that it has identified in Annex B to the Notice the relevant excerpts in Rule 65ter documents 00321 and 00322 that it intends to rely upon, namely, the excerpts that were put to the witness by the parties during her two days of testimony and other excerpts the Prosecution considers relevant.²⁴

9. The Prosecution submits further that it has identified in Annex C to the Notice the excerpts of the Rule 65ter documents 00001 and 00002 that were put to the witness during her first day of testimony at the original *Haradinaj* trial.²⁵ The corresponding pages in Rule 65ter documents 000321 and 000322 are also identified in Annex C to the Notice.²⁶ The Prosecution notes that the difference between the English translations of the relevant excerpts of Rule 65ter documents 00001 and 00002 and of 65ter documents 00321 and 00322 is that there are no ERN numbers specified in Rule 65ter documents 00001 and 00002; the text is otherwise substantially the same.²⁷

10. The Prosecution also submits that it has obtained official Conference and Language Services Section ("CLSS") translations of the relevant excerpts of Rule 65ter documents 00321 and 00322, but notes that the translations differ significantly from those the witness commented on during her

¹⁸ See Case IT-04-84-T, T.463-553 (6 March 2007); these documents are identified as Rule 65ter documents 00001 and 00002 in the *Haradinaj* retrial.

¹⁹ Notice, para. 11, referring to Case IT-04-84-T, T.570-572; 628; 637 (7 March 2007). These documents are identified as Rule 65ter documents 00003 and 00004 in the *Haradinaj* retrial.

²⁰ Notice, para. 12, referring to Case IT-04-84-T, T.684 (8 March 2007).

²¹ Notice, para. 12, referring to Case IT-04-84-T, T.4527-4531 (22 May 2007).

²² Notice, para. 12, referring to Case IT-04-84-T, T.4531 (22 May 2007).

²³ Notice, para. 13, referring to Case IT-04-84-T, T.10489-10490 (8 November 2007).

²⁴ Notice, para. 16.

²⁵ Notice, para. 17.

²⁶ Notice, para. 17.

²⁷ Notice, para. 17.

testimony.²⁸ The Prosecution submits that it has made available on eCourt the CLSS translations as Rule 65ter documents 00321.1 and 00322.1, should the Chamber consider it necessary to have official CLSS translations admitted into evidence, but does not otherwise tender them for admission.²⁹

11. The Prosecution submits that it has identified in Annex D to the Notice, the excerpts of Rule 65ter documents 00003 and 00004 that were put to the witness in cross-examination on her second day of testimony.³⁰

12. The Prosecution submits that an incorrect version of the translation of Rule 65ter document 00322 was uploaded into eCourt by error and seeks leave to replace in eCourt the English translation of Rule 65ter document 00322 with document ID U003-0254-ER-2.³¹

13. The Prosecution submits that it has made available on eCourt former exhibits P1 and P2 as Rule 65ter documents 00001 and 00002 for the purposes of a complete record, should the Chamber deem it necessary to have these documents admitted into evidence, but does not otherwise tender them for admission.³²

14. None of the Accused responded to the Prosecution's Notice.

III. DISCUSSION

15. Rule 89(C) of the Rules of Procedure and Evidence provides that a "Chamber may admit any relevant evidence which it deems to have probative value."³³

16. The Chamber is satisfied that, with the proposed redactions of the transcripts of the testimony and the written statements of Branimir Aleksandrić and Dušan Dunjić, references to photographs, autopsy reports, video materials and transcripts from other proceedings before the Tribunal (which are not proposed for admission at this stage) having been removed, the tendered documents conform to the Chamber's request to remove references to such materials.

17. The Chamber has reviewed the excerpts of the notebook/diary of Marijana Anđelković and is satisfied that the proposed documents are relevant and probative to issues in this trial. The Prosecution has sought to tender multiple versions of the same or similar text. The Chamber

²⁸ Notice, para. 18.

²⁹ Notice, para. 18.

³⁰ Notice, para. 19.

³¹ Notice, para. 20.

³² Notice, para. 15.

³³ Rule 89 (C) of the Rules of Procedure and Evidence.

understands that the Prosecution has tendered Rule 65ter documents 00321 and 00322 as the versions of the two-volume notebook/diary upon which the Prosecution intends to rely,³⁴ and has further tendered Rule 65ter documents 00003 and 00004 to reflect the document relied upon by the witness during the second day of testimony. As directed by the Chamber, the Prosecution has made available the official CLSS translations of the excerpts it considers relevant of Rule 65ter documents 00321 and 00322 on eCourt as Rule 65ter documents 00321.1 and 00322.1. While the new English translations differ from the translations attached to Rule 65ter documents 00321 and 00322, the latter set of translations was not presented to, or relied upon by, the witness during her testimony. Seeing no additional benefit from the use of the translations of Rule 65ter documents 00321 and 00322 over those of Rule 65ter documents 00321.1 and 00322.1, respectively, and having expressed a preference for the use of official English translations, the Chamber considers the Rule 65ter documents 00321.1 and 00322.1 to be the appropriate translation for use by the Chamber in reviewing the transcript.

18. With respect to Rule 65ter documents 00003 and 00004, the procedural history makes clear that the relevant excerpts of these documents are necessary to enable the Chamber to follow the transcript and understand the evidence of Marijana Andelković.

19. For the same reasons as to Rule 65ter documents 00003 and 00004, the Chamber will admit the relevant excerpts of Rule 65ter documents 00001 and 00002.

IV. DISPOSITION

For the foregoing reasons and pursuant to Rules 54 and 89(C) of the Rules, the Chamber hereby:

(1) **GRANTS** leave to the Prosecution to replace in eCourt:

- a. Rule 65ter document 04054 with document ID TR00-4054-RED;
- b. Rule 65ter document 04056 with document ID TR00-4056-RED;
- c. Rule 65ter document 04057 with document ID TR00-4057-RED;

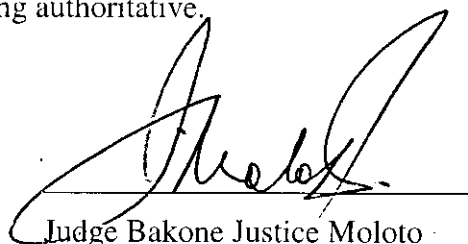
(2) **ORDERS** that document ID TR00-4057-RED be admitted under seal;

(3) **ORDERS** that the excerpts of Rule 65ter documents 00001 and 00002 identified in Annex C to the Notice, and the excerpts of Rule 65ter documents 00003 and 00004 identified in Annex D to the Notice be admitted into evidence;

³⁴ Notice, para. 14.

- (4) **DENIES** the Prosecution's request that Rule 65*ter* documents 00321 and 00322 be admitted into evidence;
- (5) **ORDERS** that Rule 65*ter* documents 00321.1 and 00322.1 be admitted into evidence;
- (6) **REQUESTS** the Registrar to assign exhibit numbers to the documents admitted pursuant to this Decision and pursuant to the Chamber's Rule 92*bis* Decision pertaining to the witnesses with respect to whom the Prosecution has submitted a notice of compliance.

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



Judge Bakone Justice Moloto

Presiding Judge

Dated this thirteenth day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]