UNITED NATIONS

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: 6 March 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: **6 March 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

PUBLIC REDACTED VERSION OF "DECISION ON PROSECUTION'S SUBMISSION AND REQUESTS IN RELATION TO OUTSTANDING EXHIBIT ISSUES" ISSUED ON 10 DECEMBER 2010

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 "Prosecution Submission and Requests Concerning the Trial Chamber's Order in Relation to Outstanding Exhibit Issues with *Confidential* Appendices A, B, C, and D", filed by the Prosecution on 19 November 2010, ("Submission"), the "Notice of Completion of Rule 92 *bis* Certification Procedure", filed by the Accused on 29 November 2010, ("Notice"), and the "Prosecution Supplemental Submission Concerning the Trial Chamber's Order in Relation to Outstanding Exhibit Issues", filed on 3 December 2010, ("Supplemental Submission"), and hereby issues this decision in relation to the requests contained therein.

1. On 18 October 2010, the Trial Chamber issued its "Order in Relation to Outstanding Exhibit Issues" ("Order"), instructing the Office of the Prosecutor ("Prosecution") to complete the attestation procedure required under Rule 92 *bis*(B) of the Tribunal's Rules of Procedure and Evidence ("Rules") for witnesses whose statements had earlier been provisionally admitted into evidence by the Chamber.[1] The Chamber also ordered the Prosecution to file public redacted versions of a number of transcripts and statements of Rule 92 *bis* and Rule 92 *quater* witnesses which were originally admitted under seal.[2] Finally, the Chamber ordered the Prosecution to upload into e-court portions of the transcript of Milan Babić's testimony, which were admitted into evidence pursuant to Rule 92 *quater* of the Rules.[3]

2. In the same Order, the Chamber also instructed the Accused to complete the Rule 92 *bis*(B) attestation procedure for the supplemental witness statements tendered by him in relation to Vicentius Egbers, Šefik Bešlić, and KDZ097.[4] The Chamber notes that both parties were given until 3 December 2010 to take the necessary steps to comply with the Order.

3. On 19 November 2010, the Prosecution filed its Submission requesting the Chamber to:

(a) admit into evidence the statements of Michael Cornish, Joseph Gelissen, Hugh Nightingale, Safeta Hamzić, Desimir Đukanović, Jusuf Avdispahić, and Sakib Husrefović, on the basis that the attestation procedure in relation to those witnesses has been completed;

[1] Order, para. 6.
[2] Order, para. 4. The relevant statements and transcripts are the following: P66, P68, P107, P109, P111, P113, P525, P651, P684, P706, P707, P713, and P714.
[3] Order, para. 6.
[4] Order, para. 6. The exhibits in question are: D1, D3, and D4.

(b) grant additional time for completing the Rule 92 *bis*(B) attestation procedure for Slobodan Stojković until January 2011 and KDZ289 until March 2011;

(c) admit into evidence the supplemental statement of Vicentius Egbers (Rule 65 *ter* number 90205) pursuant to Rule 92 *bis*;

(d) admit into evidence the public redacted versions of exhibits P66, P68, P525, P683, P710; and

(e) provide clarification in respect of exhibits P107, P109, P111, P113, P706, P707, P713, P714, and P715.[5]

4. On 29 November 2010, the Accused filed a "Notice of Completion of Rule 92 *bis* Certification Procedure" notifying the Chamber that the Rule 92 *bis*(B) attestation for Vicentius Egbers (D1) and Šefik Bešlić (D3) had been completed.[6] In addition, the Accused submits that he will not seek the admission of the supplemental statement for witness KDZ097 (D4).[7] The Accused makes no comments in his Notice about the request for admission of the supplemental statement of Vicentius Egbers tendered by the Prosecution and the Chamber is satisfied that the Accused has no objection to this supplemental statement.

5. On 1 December 2010, the Prosecution filed a "Prosecution Request for Additional Time for Filing Rule 92 *bis* Declaration of Witness Griffith Evans" ("Request"), submitting that the Rule 92 *bis*(B) attestation procedure for Griffith Evans had been completed by the authorised national authorities.[8] However, the Prosecution requests additional time, until January 2011, because the documentation has not yet arrived at the Tribunal.[9]

6. On 3 December 2010, the Prosecution filed a "Prosecution Supplemental Submission Concerning the Trial Chamber's Order in Relation to Outstanding Exhibit Issues" notifying the Chamber that: (a) the attestation procedure pursuant to Rule 92 *bis*(B) for the witness statements of [REDACTED] (P409, P410, and P411) has been completed, (b) the request for the full admission of the witness statements for Slobodan Stojković (P412 and P413) under Rule 92 *bis* is withdrawn due to the witness' refusal to co-operate with the Prosecution, and (c) the transcripts of Milan Babić's prior testimony (P741 and P743) have been uploaded into e-court.[10]

[5] Submission, para. 28.
[6] Notice, paras. 2-3.
[7] Notice, para. 4.
[8] Request, para. 2.
[9] Request, para. 5.
[10] Supplemental Submission, para. 1.

The Prosecution, therefore, requests the admission of the witness statements of [REDACTED] into evidence.

7. Turning first to the certification procedure for witness statements admitted pursuant to Rule 92 *bis*(B), the Chamber has outlined the requirements for Rule 92 *bis*(B) attestation in its 9 July 2010 "Decision on Prosecution's Motion to Formally Admit the Certified Rule 92 *bis* Statements of Sarajevo Witnesses" and will not do so here again.[11] Bearing those in mind, the Chamber has closely examined the provisionally admitted statements of Hugh Nightingale (P50), Michael Cornish (P52), Joseph Gelissen (P56), Sakib Husrefović (P58), Jusuf Avdispahić (P70), Safeta Hamzić (P71), Desimir Đukanović (P407, and P408), [REDACTED] (P409, P410, and P411), Vicentius Egbers (D1), and Šefik Bešlić (D3) to determine if they adhere to the formal requirements of Rule 92 *bis*(B). For each of those statements, a Presiding Officer appointed by the Registrar of the Tribunal witnessed the attestation of the written statements. Each witness declared that the contents of his or her witness statement are true and accurate, to the best of his or her knowledge and belief, and was informed in a language which he or she understood that he or she may be subject to proceedings for giving false testimony. Each witness is identified by name, date of birth, and place of residence, and each attestation provides the date and place of declaration. Therefore, the Chamber is satisfied that the certification procedure for each of the above statements fulfils the formal requirements of Rule 92 *bis*(B) for their full admission into evidence. Additionally, the exhibits associated with the statements of Jusuf Avdispahić and Sakib Husrefović that were also provisionally admitted pending the Rule 92 *bis*(B) attestation of these statements shall also be admitted in full.[12]

8. As stated above, the Prosecution requests additional time to obtain the necessary Rule 92 *bis*(B) attestation from witness KDZ289 and provides reasons in confidential Appendices A through C to the Submission.[13] The Prosecution requests that the Chamber extend the date for completion of the attestation procedure until March 2011 for KDZ289.[14] The Chamber is satisfied with the reasons given in these Appendices and will grant the Prosecution's request for additional time. The Prosecution also requests additional time to obtain the Rule 92 *bis*(B) attestation from witness Griffith Evans even though the attestation had been completed, because the Prosecution is waiting for it to arrive at the Tribunal.[15] The Chamber is satisfied with the reasons provided by the Prosecution and will grant the request for additional time until 31 January 2011.

[11] Decision, paras. 4-5.
[12] These exhibits are P81, P82, P83, and P105.
[13] Submission, paras. 17-18.

9. As also stated above, the Prosecution seeks the admission of a supplemental statement from Vicentius Egbers (Rule 65 *ter* 90205) pursuant to Rule 92 *bis*, which contains one correction by the witness to his prior testimony, agreed upon by the parties. It also contains the Rule 92 *bis*(B) attestation.[16] The Chamber outlined the law applicable to the admission of evidence under Rule 92 *bis* in its 15 October 2009 "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)" and will not do so here again.[17] The Chamber has previously determined that the prior testimony of Vicentius Egbers satisfies the requirements for admission under Rule 92 *bis*.[18] The supplemental statement tendered by the Prosecution in its Submission contains one correction to this prior testimony.[19] The Chamber also notes that the Accused has no objection to the changes contained in the supplemental statement. Furthermore, while the change to his prior testimony is of a substantive nature rather than being an editorial correction, it does not alter the witness' evidence in such a way that would affect the admissibility of that evidence pursuant to Rule 92 *bis*. As far as the attestation of this statement is concerned, the Chamber is satisfied that the Prosecution has complied with the requirements of Rule 92 *bis*(B) as well. The attestation was witnessed by a Presiding Officer appointed by the Registrar of the Tribunal, and the witness, who is identified by name, date of birth, and place of residence, declared that the contents of his witness statement are true and accurate, to the best of his knowledge and belief. He was also informed, in a language which he understood, that he may be subject to proceedings for giving false testimony. Finally, the attestation provides the date and place of declaration. Thus, the Chamber is satisfied that the supplemental statement satisfies the requirements of Rule 92 *bis*, will admit it into evidence, and requests the Registry to assign it an exhibit number.

10. The Prosecution has now uploaded into e-court the public redacted versions of the transcripts admitted as exhibits P66 and P68, and witness statements admitted as P683 and P710, as ordered by the Chamber. These documents have been given exhibit numbers P424, P425,

---

[14] Submission, para. 17.

[15] Request, paras. 2-3.

[16] Submission, paras. 12-15.

[17] Decision, paras. 4-11.

[18] Decision on Fifth Motion, para. 37(xvi).

[19] Vicentius Egbers makes one substantive change with respect to his prior testimony on 20 October 2006. On cross-examination, page 2863, line 22-25, he was asked whether in May 1995, he saw armed Muslim men "flaunting the fact that they had new weapons". His response was, "That's correct." The supplemental statement corrects his response to "That is *not* correct" (change noted in italics) and states that he did see armed Muslim Men "flaunting the fact that they had new weapons" but this was in July 1995 after the fall of the enclave, and not in May 1995 as referred to in the question. He states that the reason for this mistake in his answer was that he was still thinking of July 1995 because he had just previously discussed seeing Muslim men dressed as civilians but with weapons during the fall of the enclave in July 1995 in the immediately preceding question.

P684, and P711, respectively.[20] The Prosecution also submits that the public redacted version of exhibit P525 has been uploaded into e-court as Rule 65 *ter* number 13329A and requests the Chamber to admit this into evidence.[21] The Chamber is satisfied that these public redacted versions should be admitted into evidence and requests the Registry to assign an exhibit number to Rule 65 *ter* 13329A.

11. The Chamber also ordered the Prosecution to upload public redacted versions of P107, P109, P111, P113, P706, P707, P713 and P714 into e-court. The Prosecution seeks clarification on these exhibits stating it is unable to comply with the order.[22] In relation to exhibits related to witness KDZ044, namely P107, P109, P111, and P113, upon further review, the Chamber finds that the public redacted versions of the same need not be produced because a public summary of witness KDZ044's evidence has been filed with the Chamber.[23]

12. The Chamber acknowledges that the nature of exhibits P706, P707, P713, and P714 is such that the production of public redacted versions is not possible. These exhibits are transcripts of testimony given in their entirety in closed session and, as the Prosecution states, would require a variation in protective measures if public redacted versions are to be filed. The Chamber corrects its previous orders in this respect[24] and acknowledges that the Prosecution need not provide a public redacted version of these exhibits.

IV. Disposition

13. Accordingly, the Trial Chamber, pursuant to Rules 89 and 92 *bis* of the Rules, hereby:

(a) **ADMITS** into evidence the following exhibits that satisfy the Rule 92 *bis*(B) requirements: P50, P52, P56, P58, P71, P70, P81, P82, P83, P105, P406, P407, P408, P409, P410, P411, D1, D3;

(b) **ADMITS** into evidence Rule 65 *ter* number 90205 pursuant to Rule 92 *bis* and **REQUESTS** the Registry to assign it an exhibit number;

[20] Submission, paras. 20, 22.
[21] Submission, para. 21.
[22] Submission, para. 24.
[23] Decision on Prosecution Motion and Submission Concerning Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *quater*, 25 March 2010, paras. 11-12.
[24] Decision on Prosecution's Second Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses ARK Municipalities), 18 March 2010, para. 63(A)(g); Order in Relation to Outstanding Exhibit Issues, 18 October 2010, para. 6(a)(ii).

(c) **ADMITS** into evidence P424, P425, P684, and P711 as the public redacted versions of exhibits previously admitted under seal as P66, P68, P683, and P710, respectively;

(d) **ADMITS** into evidence Rule 65 *ter* number 13329A as the public redacted version of P525 and **REQUESTS** the Registry to assign it an exhibit number;

(e) **MODIFIES** the Order of 18 October 2010, no longer requiring the Prosecution to upload the public redacted versions of P107, P109, P111, P113, P706, P707, P713, P714, and

(f) **GRANTS** the Prosecution an extension of time to complete the Rule 92 *bis*(B) attestation procedure for Griffith Evans which shall be completed by 31 January 2011, and for KDZ289, which shall be completed by 31 March 2011.

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

Judge O-Gon Kwon
Presiding

Dated this sixth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]