



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 WITH CONFIDENTIAL ANNEX A

**PUBLIC REDACTED VERSION OF “DECISION ON PROSECUTION MOTION AND
CLARIFICATION REGARDING DECISION ON PROSECUTION FIFTH RULE 92 *BIS*
MOTION (SREBRENICA)” ISSUED ON 18 MARCH 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’s Motion and Clarification Pursuant to Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica)”, filed on 18 February 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 29 May 2009, the Prosecution filed the “Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” (“Fifth Rule 92 *bis* Motion”), in which it requested, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the admission of the transcripts of prior testimony and/or witness statements of what was ultimately 66 witnesses, and numerous associated exhibits in relation to that written evidence.¹

2. On 21 December 2009, the Chamber issued the “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)” (“Decision on Fifth Rule 92 *bis* Motion”), in which it granted the Fifth Rule 92 *bis* Motion in part, admitting into evidence prior testimony and/or witness statements of 53 witnesses, as well as various associated exhibits. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber also requested confirmation from the Prosecution regarding the intended status of three associated exhibits, and denied without prejudice a number of associated exhibits, largely on the basis that the Chamber was unable to review them.

3. In the Motion, the Prosecution confirms the status of the three associated exhibits. It also notifies the Chamber that it has addressed the problems in respect of the other associated exhibits, and reapplies for their admission into evidence.

4. The Accused did not file a response to the Motion.

II. Applicable Law

5. On 15 October 2009, the Trial Chamber issued the “Decision on the 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)” (“Decision on Third

¹ See also Prosecution’s Submission on Withdrawal of Nine Witnesses Contained in the Prosecution’s Fifth Rule 92 *bis* Motion and One Witness Contained in the Prosecution’s Seventh Rule 92 *bis* Motion, 24 July 2009, in which the Prosecution withdrew nine witnesses from its original motion.

Rule 92 *bis* Motion”), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Rule 92 *bis* Motion.² However, the Chamber notes that, according to the Tribunal’s case-law, associated exhibits that form an inseparable and indispensable part of a witness’s evidence may be admitted.³

III. Discussion

6. The Prosecution reapplies for the admission of the transcript of witness Cvijetin Ristanović’s prior testimony from the *Blagojević & Jokić* case, and 28 associated exhibits. The Chamber will first consider the admissibility of Cvijetin Ristanović’s prior testimony and the associated exhibits tendered in relation to that testimony, and will then consider the admissibility of the remaining associated exhibits tendered in relation to the written evidence of a number of other witnesses whose evidence was admitted in the Decision on Fifth Rule 92 *bis* Motion.

B. Written evidence and associated exhibits of Cvijetin Ristanović

7. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber noted that the Prosecution had tendered Cvijetin Ristanović’s testimony from the *Popović et al.* case as the witness’s written evidence, but his testimony from the *Blagojević & Jokić* case as an associated exhibit.⁴ The transcript of his prior testimony was not uploaded in e-court so the Chamber was unable to review the *Blagojević & Jokić* testimony. Moreover, most of the other associated exhibits tendered with Cvijetin Ristanović were not discussed in his *Popović et al.* testimony. The Chamber denied without prejudice the admission of the *Blagojević & Jokić* testimony and the associated exhibits not discussed by the witness in his *Popović et al.* testimony, that is, associated exhibits with Rule 65 *ter* numbers 02158, 02159, 02160, 03809, 03287, 03177, 03180, 03285, and 03286, and requested the Prosecution to clarify if the witness’s *Blagojević & Jokić* testimony should be evaluated as written evidence or as an associated exhibit.⁵

8. In the Motion, the Prosecution clarifies that Cvijetin Ristanović’s *Blagojević & Jokić* testimony, Rule 65 *ter* number 03285, should be assessed as his written evidence, and it informs the Chamber that it has uploaded the related associated exhibits into e-court.⁶ The Chamber will

² Decision on Third Rule 92 *bis* Motion, paras. 4–11.

³ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

⁴ Decision on Fifth Rule 92 *bis* Motion, para. 51.

⁵ Decision on Fifth Rule 92 *bis* Motion, para. 51.

⁶ Motion, para. 10. The Chamber notes that the Prosecution refers in the Motion to only seven of the nine associated exhibits denied without prejudice in the Decision on Fifth Rule 92 *bis* Motion. It will not analyse the two that have not been referred to in the Motion, namely, associated exhibits with Rule 65 *ter* numbers 02159 and 03285.

now determine the admissibility of the witness's testimony and associated exhibits pursuant to Rule 92 *bis* of the Rules.

9. Cvijetin Ristanović was a member of the Zvornik Brigade's engineering unit between mid-1992 and early 1996. On 14–17 July 1995, Cvijetin Ristanović was ordered to dig a number of mass graves in a meadow near Orahovac and at Branjevo Farm. While at the meadow, he heard trucks arriving, shouts, and bursts of gunfire, following which he saw corpses wearing civilian clothes and blindfolds. He also witnessed the executions of men.

10. The Chamber considers that Cvijetin Ristanović's *Blagojević & Jokić* testimony is relevant to the present case as it relates to the charges against the Accused of genocide (Count 2), persecutions (Count 3), and extermination and murder (Counts 4, 5, and 6). The Chamber is also satisfied of the probative value of this testimony.

11. With respect to the admissibility of Cvijetin Ristanović's *Blagojević & Jokić* testimony pursuant to Rule 92 *bis*(A), the Chamber is satisfied that it is crime-base evidence or concerns the impact of crimes upon the victims. Furthermore, it does not pertain to the acts and conduct of the Accused as charged in the Third Amended Indictment ("Indictment"). In particular, the evidence does not pertain to the acts and conduct of the Accused, or any acts or conduct which goes to establish that the Accused participated in a joint criminal enterprise ("JCE"), as charged in the Indictment, or shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes.

12. With regard to the cumulative nature of Cvijetin Ristanović's testimony, the Chamber notes that it is partially cumulative of, for example, the evidence of KDZ039, Damjan Lazarević, Mevludin Orić, and Dražen Erdemović, who were also the subject of the Fifth Rule 92 *bis* Motion, as it pertains to the digging of mass graves and the executions of men at Orahovac and at Branjevo Farm.

13. The Chamber has also considered whether there are factors that militate against the admission of this testimony. In this regard, the Chamber notes, in particular, that Cvijetin Ristanović referred to Dragan Jokić, Chief of Engineering in the Zvornik Brigade, as the person who initially gave him the order to go to Orahovac. Dragan Jokić is not specifically named in the Indictment, but may be considered to be one of the members of the JCE as described in paragraphs 12 and 22 of the Indictment. However, the Chamber is satisfied that none of Cvijetin Ristanović's *Blagojević & Jokić* testimony suggests that the Accused shared the intent of Dragan Jokić for committing the acts as described by witness. Moreover, the evidence does not indicate that the Accused participated in the alleged JCEs. There are no other factors that that

weigh against the admission of the transcript of prior testimony into evidence pursuant to Rule 92 *bis*.

14. In assessing if it would be appropriate to call Cvijetin Ristanović for cross-examination, the Chamber has considered in particular whether the evidence: (i) is cumulative; (ii) is crime-base; (iii) touches upon a “live and important issue between the parties”; and (iv) describes the acts and conduct of a person for whose acts and conduct the Accused is charged with responsibility, and how proximate the acts and conduct of this person are to the Accused. In taking account of these factors, the Chamber is convinced that Cvijetin Ristanović does not need to appear for cross-examination. The Chamber reiterates its finding above that Cvijetin Ristanović’s *Blagojević & Jokić* testimony is crime-base evidence. Furthermore, the Chamber considers that his evidence does not touch upon a live and important issue between the parties, or describe the acts and conduct of a person for whose acts and conduct the Accused is charged with responsibility. Finally, the Chamber notes that the witness was cross-examined during his testimony in the *Blagojević & Jokić* case. Therefore, the Chamber will admit Cvijetin Ristanović’s *Blagojević & Jokić* testimony (Rule 65 *ter* number 03285) pursuant to Rule 92 *bis*.

15. The Chamber now turns to assess the admissibility of the associated exhibits the Prosecution has tendered in relation to Cvijetin Ristanović’s *Blagojević & Jokić* testimony.

16. The document with Rule 65 *ter* number is 03177 is a picture of an excavator, which was shown to the witness during his testimony, who confirmed that the machine depicted was similar to the one he took to Orahovac. The document with Rule 65 *ter* number 03180 is a picture of a loader, which was shown to the witness, who confirmed that it was similar to the loader that he saw at Branjevo Farm. The document with Rule 65 *ter* number 03286 is a memorandum from the Head of the Tribunal’s Interpretation Unit, to which is attached a page depicting nine heavy vehicles. On being shown the page with the vehicles during his testimony, Cvijetin Ristanović confirmed which one was the “Rovokopac” or “Skip”. Rule 65 *ter* number 03287 contains two sketches that were done by the witness. During his testimony, he explained what the sketches depicted, in particular, the routes that he had taken to the meadow and Branjevo Farm, where he dug the graves, and where he had seen bodies. Finally, the document with Rule 65 *ter* number 03809 is an attendance roster for the engineering company of the Zvornik Brigade for July 1995. It was shown to Cvijetin Ristanović, who confirmed that his name was listed and that it indicated his deployment to Nišići in early July 1995.

17. The Chamber is satisfied that the associated exhibits with Rule 65 *ter* numbers 03177, 03180, 03287, and 03809 form an inseparable and indispensable part of Cvijetin Ristanović’s

testimony and it will, therefore, admit them. The Chamber notes, with respect to Rule 65 *ter* number 03286, that although the memorandum was not put to the witness, it assists in explaining the handwritten notes on the second page on which the vehicles are depicted and, therefore, both pages of this associated exhibit will be admitted.

18. In relation to the document with Rule 65 *ter* number 02158, a Zvornik Brigade daily orders log, the Chamber notes that the English version is 72-pages long, and the BCS version is 194-pages long. Cvijetin Ristanović only commented on the entries pertaining to 15 and 16 July 1995, which are pages with ERN numbers 00846762 and 00846763. The Chamber is satisfied that these two pages form an inseparable and indispensable part of the witness's testimony, and it will admit these two pages only. As such, the Prosecution will be required to upload these two pages as a separate document into ecourt.

19. With regard to the associated exhibit with Rule 65 *ter* number 02160, a vehicle log, the Chamber notes that the English version does not appear to accord with the BCS version. Moreover, during his testimony, the Prosecution noted that the exhibit referred to a Mercedes; the English translation in ecourt appears to concern a Passat, and the BCS version also does not appear to refer to a Mercedes. Furthermore, the witness was asked to comment on information on page two of the document, which does not seem to be the page two of either the English or BCS versions. Thus, the Chamber is not satisfied that the document with Rule 65 *ter* number 01260 forms an inseparable and indispensable part of Cvijetin Ristanović's testimony, and it will deny its admission.

B. Other Associated Exhibits

20. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber admitted the associated exhibits with Rule 65 *ter* numbers 02381 and 14110 provisionally under seal. In the Motion, the Prosecution confirms that the associated exhibit with Rule 65 *ter* number 02381 should be admitted under seal, but that the associated exhibit with Rule 65 *ter* number 14110 should be public. The Chamber will thus make the requisite orders regarding the status of these two associated exhibits.

21. With regard to the associated exhibit with Rule 65 *ter* number 02590, while it admitted the associated exhibit in the Decision on Fifth Rule 92 *bis* Motion, the Chamber noted that the English version had two pages and that the BCS version had 43-pages, and it ordered the Prosecution to upload the relevant pages of the BCS version into ecourt. In the Motion, the

Prosecution notifies the Chamber that it has complied with this order.⁷ However, while the Prosecution appears to have identified the relevant pages of that 43-page document in footnote 4 of the Motion, the BCS version in court is still 43 pages long. As such, the Chamber will order the Prosecution to upload the two relevant pages, corresponding to the English version, of the 43-page BCS version.

22. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber denied without prejudice the admission of the associated exhibit with Rule 65 *ter* number 01894 in relation to the evidence of Zlatan Čelanović because it was not discussed by this witness during his previous testimony.⁸ The Prosecution states that, in fact, Zlatan Čelanović discussed Rule 65 *ter* number 15255, which it has uploaded into court, and now applies for its admission. Rule 65 *ter* number 15255 is a document containing interrogation notes. Upon review of Zlatan Čelanović's evidence, the Chamber is satisfied that the witness confirmed that the notes demonstrated that he spoke to the individual named therein, and that the document forms an inseparable and indispensable part of the witness's testimony. The Chamber will, therefore, admit it into evidence.

23. In relation to the document with Rule 65 *ter* number 02156, a 606-page transportation record, the Prosecution was requested to identify the two pages that were put to Mitar Lazarević during his previous testimony, and to upload those pages into court.⁹ In the confidential Appendix A to the Motion, the Prosecution has identified the pages that were put to the witness. The Chamber has reviewed Mitar Lazarević's testimony, and it notes that the pages provided by the Prosecution in the confidential Annex A were incorrect, as were the transcript page references. However, the Chamber has identified the correct pages, and it is satisfied that these pages form an inseparable and indispensable part of Mitar Lazarević's testimony. It will, therefore, admit these pages, as specified in the confidential Annex A to this Decision. Furthermore, the Chamber reiterates its earlier request to the Prosecution to upload these pages separately.

24. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber denied without prejudice the admission of an associated exhibit in relation to witness Dražen Erdemović because it appeared that the Prosecution had provided the incorrect Rule 65 *ter* number.¹⁰ The Prosecution now provides the correct Rule 65 *ter* number for this video still.¹¹ The Chamber has reviewed the relevant part of Dražen Erdemović's previous testimony and it is satisfied that the video still

⁷ Motion, para. 3.

⁸ Decision on Fifth Rule 92 *bis* Motion, para. 65.

⁹ Decision on Fifth Rule 92 *bis* Motion, para. 60.

¹⁰ Decision on Fifth Rule 92 *bis* Motion, para. 60.

¹¹ Motion, para. 6.

with Rule 65 *ter* number 03129 forms an inseparable and indispensable part of that testimony and will, therefore, admit it into evidence.

25. In the Motion, the Prosecution states that, in relation to the stills from a video with Rule 65 *ter* numbers 03148 and 03149, it has now uploaded better quality versions of the stills, and it reapplies for their admission.¹² The Chamber has reviewed the prior testimony of KDZ425 and it is satisfied that both these stills were shown to the witness and that he commented on them. As such, the Chamber considers that these two associated exhibits form an inseparable and indispensable part of the witness's evidence, and it will admit them into evidence.

26. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber denied without prejudice the admission of two documents, Rule 65 *ter* numbers 03340 and 35009, a "packet" of intercepts and a handwritten intercept book, respectively, because they did not have English translations.¹³ In the Motion, the Prosecution states that these documents were introduced during KDZ508's previous testimony in the *Popović et al.* case "as examples of the records kept and the methods used by intercept operators", and that the substantive content of the documents was not put to the witness. They were admitted into evidence in the *Popović et al.* case without translations.¹⁴ The Prosecution requests the admission of these documents "on the same basis and purpose that they were admitted into evidence without translations in the *Popović et al.* case."¹⁵

27. The Chamber has reviewed KDZ508's previous testimony. Although the document with Rule 65 *ter* number 03340 is a 34-page document, during the witness's examination-in-chief and cross-examination only pages 1, 3, and 10–14 were put to him. Similarly, the document with Rule 65 *ter* number 35009 is a 57-page document, but during his cross-examination only the cover page was shown to KDZ508. The Chamber is satisfied that these pages form an inseparable and indispensable part of KDZ508's previous testimony, but that the remaining pages from both documents do not. Therefore, the Chamber will admit pages 1 (ERN numbers 0320–5314 and 0320–5315), 3 (ERN numbers 0320–5316 and 0320–5317), and 10–14 (ERN numbers 0320–5323 to 5327) of document with Rule 65 *ter* number 03340, and the first page of the document with Rule 65 *ter* number 35009.

28. The proposed associated exhibit with Rule 65 *ter* number 04171 is a sketch done by the witness Milenko Tomić during an interview with the Prosecution. The Chamber has reviewed his prior testimony, in which he explains what the various components of the sketch depict. The

¹² Motion, para. 4.

¹³ Decision on Fifth Rule 92 *bis* Motion, para. 65.

¹⁴ Motion, para. 15.

¹⁵ Motion, para. 15.

Chamber is satisfied that the associated exhibit forms an inseparable and indispensable part of the witness's evidence, and, therefore, it will admit it into evidence.

29. The Chamber denied the admission of the document with Rule 65 *ter* number 04172, a list of conscripts, without prejudice because the English version did not correspond to the BCS version.¹⁶ In the Motion, the Prosecution informs the Chamber that it has uploaded the correct BCS version, and requests the admission into evidence of this document.¹⁷ During his previous testimony in the *Popović et al.* case, this list of conscripts was shown to KDZ524, who commented on a number of aspects of it. The Chamber is satisfied that the document forms an inseparable and indispensable part of KDZ524's testimony and, therefore, will admit it into evidence.

30. The Chamber previously denied without prejudice the admission of the associated exhibit with Rule 65 *ter* number 04761 because it had not been uploaded into e-court.¹⁸ In the Motion, the Prosecution submits that it has now uploaded this document and requests its admission into evidence.¹⁹ The Chamber notes that this document is a 263-page Prosecution interview statement of witness Zoran Petrović-Piroćanac. The Chamber has reviewed this witness's previous testimony in the *Popović et al.* case. During his examination-in-chief, the Prosecution referred a number of times to this interview, but, with two exceptions, the text of the interview was not put to the witness by the Prosecution.²⁰ In the cases of the two exceptions, the Prosecution read into the transcript the relevant portions.²¹ During the witness's cross-examination, Defence counsel referred to a number of statements Zoran Petrović-Piroćanac had made during the interview, but summarised the statements or read them into the transcript, and the witness was given an opportunity to comment on them.²² In addition, Defence counsel put to the witness an interpretation of a statement he made during the interview on page 15 of English version (corresponding to page 16 of the BCS version). The Chamber considers that this page of the interview is an inseparable and indispensable part of Zoran Petrović-Piroćanac's previous testimony, but that the remaining parts of the interview are not, and Zoran Petrović-Piroćanac's evidence would not become incomprehensible or of less probative value if this

¹⁶ Decision on Fifth Rule 92 *bis* Motion, para. 65.

¹⁷ Motion, para. 16.

¹⁸ Decision on Fifth Rule 92 *bis* Motion, para. 65.

¹⁹ Motion, para. 17.

²⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Hearing, T. 18755, 18793, 18797, 18801, 18808 (5 December 2007).

²¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Hearing, T. 18772, 18829 (5 December 2007).

²² *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Hearing, T. 18847, 18848, 18852, 18855, 18860, 18864 (6 December 2007).

interview is not admitted. Therefore, it will only admit page 15 of the interview with Rule 65 *ter* number 04761.

31. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber also denied without prejudice the admission of the associated exhibit with Rule 65 *ter* number 14076 because it did not appear to be the exhibit discussed during KDZ285's testimony.²³ In the Motion, the Prosecution submits that it has uploaded the correct version of this associated exhibit.²⁴ The associated exhibit, a vehicle log, was put to KDZ285 during his previous testimony in the *Popović et al.* case, and the witness answered at some length a number of questions about the information contained in it. The Chamber is satisfied that the associated exhibit forms an inseparable and indispensable part of KDZ285's evidence, and it will, therefore, admit it into evidence.

32. In relation to the associated exhibit with Rule 65 *ter* number 03199, a multi-page photobook, the Chamber, in the Decision on Fifth Rule 92 *bis* Motion, denied its admission without prejudice as it could not determine which of the photographs in the book corresponded to various witnesses' evidence, and ordered the Prosecution to identify the photographs discussed by each witness and upload those photographs individually in court.²⁵ In the Motion, the Prosecution noted the pages of the photobook shown to the witnesses KDZ070, KDZ107, Mile Janjić, Damjan Lazarević, and Zlatan Čelanović, and stated that it had uploaded these pages separately into court. The Chamber notes that the Prosecution did not provide any alternative reference numbers to Rule 65 *ter* number 03199, which still corresponds to the entire photobook. Furthermore, the Chamber has reviewed the relevant parts of the witnesses' previous testimony and it encountered a number of difficulties. By way of illustration, it is not clear whether the photograph on page 7 of 03199 is the photograph being shown to the witness at the relevant part of Mile Janjić's previous testimony in the *Popović et al.* case. In relation to the next witness listed in the Motion, KDZ070, the first page reference to his *Popović et al.* testimony appears to be wrong and the photograph being put to the witness at the second page reference does not accord with either pages 20 or 21 of the photo book, as asserted by the Prosecution.²⁶ The Chamber will, therefore, deny the Prosecution request for the admission of these photographs.

²³ Decision on Fifth Rule 92 *bis* Motion, para. 65.

²⁴ Motion, para. 18.

²⁵ Decision on Fifth Rule 92 *bis* Motion, paras. 65–66.

²⁶ As a result of these difficulties and the fact that the separate pages of the photobook had not been uploaded separately in court, the Chamber considers it unnecessary to analyse fully here the relevant parts of testimony of KDZ107, Damjan Lazarević, and Zlatan Čelanović.

33. The Chamber previously denied without prejudice the admission of associated exhibit with Rule 65 *ter* number 31050 because it had not been uploaded into ecourt.²⁷ In the Motion, the Prosecution submits that it has now uploaded this document and requests its admission into evidence.²⁸ However, the associated exhibit with Rule 65 *ter* number 31050 still does not appear to have been uploaded into ecourt. As it is unable to review it, the Chamber will deny the admission of this document.²⁹

34. The final series of associated exhibits for which the Prosecution is reapplying for admission are videos. As the Prosecution had not previously provided the Chamber with copies of the videos, it was unable to view them and, therefore, denied without prejudice the Prosecution's request for their admission.³⁰ The Prosecution has now provided the videos to the Chamber, and the Chamber has reviewed them in conjunction with the relevant witness's written evidence.

35. The video with Rule 65 *ter* number 40093 depicts the Scorpions unit in Bosnia and Herzegovina between April and July 1995. [REDACTED]. The Chamber notes that the Prosecution has also requested its admission in relation to witness Slobodan Stojković, and that various portions are also described by this witness in his written evidence. [REDACTED].

36. The video with Rule 65 *ter* number 40096 was shown to Zoran Petrović-Piroćanac during his testimony in the *Popović et al.* case, after which the witness was then asked to explain the absence of some footage on the film. The Chamber is satisfied that this video forms an inseparable and indispensable part of Zoran Petrović-Piroćanac's testimony and will, therefore, admit it.

37. The video with Rule 65 *ter* number 45236 was tendered in relation to Slobodan Stojković, who describes what is taking place in the video in both his witness statement and his previous testimony before the Belgrade District Court. The Chamber is satisfied that the video forms an inseparable and dispensable part of his evidence and will, therefore, admit it.

38. The video with Rule 65 *ter* number 40010 is four hours long, various short segments of which were shown to the following witnesses during their previous testimony in the *Popović et al.* case: KDZ117, KDZ229, KDZ284, KDZ329, KDZ425, Mevludin Orić, Vicentius Egbers, and Zoran Petrović-Piroćanac. In neither the Fifth Rule 92 *bis* Motion nor the Motion does the

²⁷ Decision on Fifth Rule 92 *bis* Motion, para. 65.

²⁸ Motion, para. 17.

²⁹ The Chamber acknowledges the Prosecution's submission that this document has already been partially admitted into evidence, and assigned exhibit number P00140. See Motion, fn. 27.

³⁰ Decision on Fifth Rule 92 *bis* Motion, para. 65.

Prosecution identify the portions of the video that pertain to each witness. In fact, it appears that the Prosecution is requesting admission of the entire video for each of these witnesses. However, the Chamber considers that only the portions shown to each witness may be considered an inseparable and indispensable part of the witness's testimony, and in light of the fact that it cannot determine which portions exactly correspond to the witnesses' testimony, and the appropriate length of each of the segments, it will, therefore, deny the request.

39. Similarly, the video with Rule 65 *ter* number 40012 is approximately 55 minutes in length. The Prosecution is tendering this video in relation to the testimony of Vicentius Egbers in the *Popović et al.* case, who was asked during his examination-in-chief whether he recognised an individual in the video. However, the point at which the particular individual appears in the video is not specified in the transcript of his testimony. As such, it is not possible to determine which portion of the video may be considered an inseparable and indispensable part of Vicentius Egbers' testimony. In addition, the video was mentioned a few times during his cross-examination, but in a generalised manner. As such, the Chamber will deny the Prosecution's request for the admission of this video.

40. The video with Rule 65 *ter* number 40027 was tendered in relation to Zoran Petrović-Piroćanac, and is four hours and six minutes long.³¹ Portions of this video were shown to the witness during his testimony in the *Popović et al.* case. In some instances, the Prosecution identified the particular segment of the video it was putting to the witness but in other instances referred more generally to a scene in the video. Moreover, in the former case, the references to the portion of the video do not appear to be entirely accurate and, thus, the witness's testimony does not directly correspond to the portion of the video when viewed by the Chamber. For example, at page T. 18791 of his testimony, Zoran Petrović-Piroćanac was shown the portion of the video from 21.00 to 22.57.05 minutes, and was then asked questions about the people depicted who were surrendering from the woods. In the version of this video provided to the Chamber, this sequence shows the interior of a house and two people being interviewed on a balcony. The Chamber considers that only the portions shown to the witness may be considered an inseparable and indispensable part of the Zoran Petrović-Piroćanac's testimony, and it is not in a position to determine which portions of this video may meet this test. Therefore, the Chamber will deny the Prosecution's request for its admission.

41. The Prosecution submits that the video with Rule 65 *ter* number 40206, which is a video of approximately one hour and 50 minutes in length, was shown to Vicentius Egbers during his testimony in the *Popović et al.* case. According to the Prosecution, the corresponding exhibit

number for this video was P02045. The Chamber notes that Vicentius Egbers was shown a portion of the video with number P02045, “starting at 13.20”, although it is not clear when the sequence finished. The witness was asked whether the sequence showed images that he had seen in Srebrenica on 11 July 1995, to which he provided an affirmative answer.

42. However, the Chamber’s review of ostensibly the same video from the same starting point shows a number of army personnel sitting around a table, drinking and talking. Moreover, the description given by the Prosecution to the video in the Fifth Rule 92 *bis* Motion is “Video tape of VRS function at the Jela Restaurant in July 1995”. As such, it does not appear to be the video that was shown to Vicentius Egbers during his testimony in the *Popović et al.* case. Furthermore, the Chamber cannot definitively identify the discrete portion shown to the witness. For all these reasons, the Chamber will deny the Prosecution’s request for its admission.

43. A number of portions of the video with Rule 65 *ter* number 40207,³² which is one hour and two minutes long, were also shown to Zoran Petrović-Piroćanac during his testimony in the *Popović et al.* case. During his examination-in-chief, Zoran Petrović-Piroćanac confirmed that he had recorded the all footage contained on the video and that he had given a copy of it to the Prosecution. He also explained how a documentary, segments of which were also shown to the *Popović et al.* Trial Chamber, had been made from this footage, and he contextualised the portions that were shown to him. As the author of this video, the witness’s testimony was predominantly concerned with its authenticity, as well as describing certain images and events that were captured therein. The Chamber is satisfied that, in this sense, the probative value of Zoran Petrović-Piroćanac’s evidence would become less if the video with Rule 65 *ter* number 40207 was not admitted. However, the Chamber emphasises that the portions shown to him at the time references set out in his testimony do not appear to correspond to the footage at the same time references on the copy of the video provided to the Chamber.³³ Furthermore, the length of each sequence shown to the witness is again not clear. Therefore, authentication by the witness is the sole basis upon which the video with Rule 65 *ter* number 40207 forms an

³¹ The Chamber notes that there is no English translation for this video.

³² The Chamber notes that the title given to this video in court is “[a] high quality copy of the KDZ386 roll material in 8 mm standard video tape”. The Chamber assumes that the reference to KDZ386 is an error and should read KDZ380, the pseudonym initially given to Zoran Petrović-Piroćanac.

³³ The Chamber notes, by way of example, that the Prosecution identified the first portion as at 8.58 minutes, and then asked the witness about the shell casing that was depicted. The Chamber notes that the first time the shell casing is shown on the video provided to the Chamber is at 8.52 to 8.56. The Prosecution identified the second portion as starting at 10.15. However, the footage at this point in the video and for some time after it does not accord with the description of it provided by the witness. The Prosecution then put a third portion of the video, starting at 24.10, to Zoran Petrović-Piroćanac. According to the transcript of his testimony, this portion shows a box of military rations. However, the footage of the box of military rations starts at 24.18.

inseparable and indispensable part of his evidence, and it is only for this reason that the Chamber will admit it.

C. Additional matter

44. In the Decision on Fifth Rule 92 *bis* Motion, the Chamber partially admitted the written evidence of Slobodan Stojković. However, this was not clearly reflected in the Disposition to the Decision. Thus, for the purposes of clarity, the Chamber confirms that it admitted into evidence Slobodan Stojković's previous testimony, provided to the Belgrade District Court on 15 June 2005, and, in the absence of the requisite Rule 92 *bis*(B) attestation, provisionally admitted Slobodan Stojković's witness statement given to the Prosecution on 4 December 2005.³⁴

IV. Disposition

45. Accordingly, the Trial Chamber, pursuant to Rules 54, 89, and 92 *bis* of the Rules, hereby **GRANTS** the Motion **IN PART** and:

a) **ORDERS** the following:

- i. The associated exhibit with Rule 65 *ter* number 02381 is admitted under seal, and the associated exhibit with Rule 65 *ter* number 14110 is admitted as a public document;
- ii. Cvijetin Ristanović's prior testimony in the *Blagojević & Jokić* case (Rule 65 *ter* number 03285) is admitted into evidence without requiring the witness to appear for cross-examination;
- iii. The associated exhibits with Rule 65 *ter* numbers 03129, 03148, 03149, 03177, 03180, 03286, 03287, 03809, 04171, 04172, 14076, 15255, 40093, 40096, 40207, and 45236 are admitted into evidence;
- iv. The pages with ERN numbers 00846762 and 00846763 of the associated exhibit with Rule 65 *ter* number 02158 are admitted into evidence;
- v. The pages of the associated exhibit with Rule 65 *ter* number 02156 as specified in confidential Annex A to this Decision are admitted;

³⁴ Decision, paras. 46, 47.

- vi. The following pages of the associated exhibit with Rule 65 *ter* number 03340 are admitted: page 1 (ERN numbers 0320–5314 and 0320–5315), page 3 (ERN numbers 0320–5316 and 0320–5317), and pages 10–14 (ERN numbers 0320–5323 to 0320–5327);
 - vii. Page 1 of the document with Rule 65 *ter* number 35009 is admitted;
 - viii. Page 15 of the document with Rule 65 *ter* number 04761 is admitted;
 - ix. The Prosecution shall upload the two relevant pages of the associated exhibit with Rule 65 *ter* number 02590, which correspond to the pages of the English version of this exhibit that have been previously admitted, and shall inform the Chamber when it has done so;
- b) **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence; and
- c) **DENIES** the Motion in all other respects.

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]