

IT-09-92-T
D 45690 - D 45685
19 October 2012

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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-09-92-T
Date: 19 October 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 19 October 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION FOURTH MOTION TO
ADMIT EVIDENCE PURSUANT TO RULE 92BIS: HOSTAGE
WITNESSES**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 14 August 2012, the Prosecution filed a Motion pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking to admit into evidence material with regard to Michael Cornish (Witness RM-402), Griffiths Evans (Witness RM-404), Joseph Gelissen (Witness RM-405), Hugh Nightingale (Witness RM-410), Aleksandr Vishnevski (Witness RM-413), and Gunnar Westlund (Witness RM-414) ("Motion").¹ On 29 August 2012, the Defence filed its Response.²

2. With regard to Witnesses Cornish, Evans, Gelissen, and Nightingale, the Prosecution seeks to have admitted Rule 92 *bis* witness packages that are comprised of the respective witness statements and the associated declarations and certifications.³ The Prosecution notes that all four witness packages were admitted into evidence in the *Karadžić* case without the need for cross-examination.⁴ The Rule 92 *bis* witness package of Vishnevski consists of a witness statement given to the Military Prosecutor of Pervomaiski Garrison, Ukraine.⁵ The Prosecution notes that Vishnevski affirmed this statement during his 25 January 2011 sworn testimony in the *Karadžić* case where he verified that his statement was truthful and accurate.⁶ Concerning Westlund, the Prosecution seeks to tender his witness statement and the associated declaration and certification as well as a one-page addendum.⁷ The Prosecution considers all the tendered evidence to be relevant and probative of issues in the instant case.⁸ Further, according to the Prosecution the proposed evidence does not address the acts or conduct of the Accused and is reliable and suitable for admission in written form.⁹

3. In its Response, the Defence states that it reserves the right and seeks to have the right to cross-examine these Witnesses, insofar as they relate directly to evidence of the charge of hostage-taking in the Indictment.¹⁰ According to the Defence, it is in the interests of justice that the Witnesses appear for cross-examination, based on the limited other evidence sought to be presented on this charged incident.¹¹ Further, based on jurisprudence, the Defence argues that the cross-examination of all six Witnesses is required because: (1) the Witnesses provide direct evidence to

¹ Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92*bis*: Hostages, 14 August 2012.

² Defence Response to Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92*bis*, 29 August 2012.

³ Motion, paras 1, 11-14.

⁴ Motion, para. 4.

⁵ Motion, para. 15.

⁶ Motion, paras 9, 15.

⁷ Motion, para. 16.

⁸ Motion, para. 2.

⁹ Motion, paras 2, 7.

¹⁰ Response, para. 3.

the crime of hostage-taking included in the Indictment; (2) prior testimony provided by the Witnesses was in the *Karadžić* case, who is a self-represented accused; and (3) the witness statements provided are partially based on hearsay.¹²

II. APPLICABLE LAW

4. The Chamber refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.¹³

III. DISCUSSION

5. The statements of Witnesses Cornish, Evans, Gelissen, Nightingale, Vishnevski, and Westlund (“Witnesses”) describe the hostage-taking of the Witnesses, who were either UN peacekeepers or UNMOs at the time, in 1995 in various locations, including Pale, Goražde, Grbavica, Zaria, and Kasindo. The Chamber therefore considers the evidence of the Witnesses is relevant to Count 11 of the Indictment (Taking of Hostages).¹⁴ As to the probative value, the Chamber notes that the Defence has raised an objection as to the reliability of the statements of the Witnesses, since it claims that “a good deal” of the proffered evidence is hearsay.¹⁵ The Defence has not indicated the specific portions of the evidence that are apparently based on hearsay. Regardless of this, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal and that the weight to be attributed to it will be assessed in light of all the evidence before it.¹⁶ Overall, the Chamber finds that the evidence has probative value. The Chamber finds that the requirements set out in Rule 89 (C) of the Rules have been met for all the witness statements.

6. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find that the evidence of the Witnesses relates to the acts and conduct of the Accused. Therefore, the evidence is admissible under Rule 92 *bis*. The Chamber will now determine whether, in its discretion, it should require that the Witnesses appear for cross-examination. The Chamber considers that the evidence relates to the crime base part of the case. The six Witnesses identified in the Motion all appear to have been taken hostage by Bosnian Serb Forces. The Chamber notes that a large part of the proffered evidence is of a cumulative nature,

¹¹ Response, para. 4.

¹² Response, para. 5.

¹³ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92*bis*: Sarajevo Witnesses, 19 October 2012.

¹⁴ Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, Count 11 (Taking of Hostages).

¹⁵ Response, para. 5.

since a number of other witnesses are reasonably expected to provide evidence with regard to the taking of hostages. This includes Witness RM-406, Witness RM-407, Witness RM-411, and Witness RM-412 for whose evidence the Prosecution proposes that it be admitted pursuant to Rule 92 *ter* of the Rules.¹⁷ For example, the proffered evidence of Cornish is to a large extent similar to the anticipated testimony of Witness RM-412.¹⁸ Further, the proffered evidence of Evans, Gelissen, and Westlund addresses similar incidents as described in the anticipated testimony of Witness RM-406, Witness RM-407, and Witness RM-411.¹⁹ Furthermore, apart from the reliability issue discussed in paragraph five the Defence has invoked no other factors against admission, and the Chamber does not find that there are any factors against admitting the proffered evidence pursuant to Rule 92 *bis* of the Rules.

7. All witness statements were submitted with the corresponding declarations and certifications, with the exception of the witness statement of Vishnevski.²⁰ However, Vishnevski attested to his statement during his testimony in the *Karadžić* case and the statement was admitted pursuant to Rule 92 *ter* of the Rules. The Chamber finds that such an in-court attestation is sufficient to meet the requirement of Rule 92 *bis* (B) of the Rules. Therefore, the Chamber finds that the evidence of Cornish, Evans, Gelissen, Nightingale, Westlund, and Vishnevski can be admitted pursuant to Rule 92 *bis* of the Rules.

IV. DISPOSITION

8. For the foregoing reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber

GRANTS the Motion

With respect to

1) *Witness Michael Cornish (RM-402)*

ADMITS into evidence

¹⁶ See *Prosecutor v. Aleksovski*, Case No. IT-95-14-T, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

¹⁷ Prosecution Rule 65 *ter* Witness List, 10 February 2012 (Confidential) ("Prosecution Witness List"), pp 474, 476-479.

¹⁸ Prosecution Witness List, pp 473-474, 478-479.

¹⁹ Prosecution Witness List, pp 476-483.

²⁰ The Chamber notes that the certifications provided by the Prosecution in accordance with Rule 92 *bis* of the Rules refer to ERNs that do not correspond with the ERNs of the statements. However, the referenced ERNs also appear on the statements, having been stricken through.

- a) the statement of Michael Cornish dated 13 February 1996, bearing ERNs 0678-0168-0678-0175 (Eng)/ 0037-6176-0037-6183 (BCST); and
- b) the corresponding declaration and certification, bearing ERNs 0678-0166-0678-0167.

2) *Witness Griffiths Evans (RM-404)*

ADMITS into evidence

- a) the statement of Witness Griffiths Evans dated 6 September 1995, bearing ERNs 0679-5231-0679-5236 (Eng)/ 0679-5226-0679-5236 (BCST);
- b) the corresponding declaration and certification, bearing ERNs 0679-5226-0679-5528 and pp. 42528-42527 of Annex B to the Motion.

3) *Witness Joseph Gelissen (RM-405)*

ADMITS into evidence

- a) the statement of Joseph Gelissen dated 18 January 1996, bearing ERNs 0676-9500-0676-9507 (Eng)/ 0037-1988-0037-1995 (BCST); and
- b) the corresponding declaration and certification, bearing ERNs 0676-9498-0676-9499.

4) *Witness Hugh Nightingale (RM-410)*

ADMITS into evidence

- a) the statement of Hugh Nightingale dated 5 February 1996, bearing ERNs 0678-0160-0678-0165 (Eng)/ 0037-6154-0037-6159 (BCST); and
- b) the corresponding declaration and certification, bearing ERNs 0678-0158-0678-0159.

5) *Witness Aleksandr Vishnevski (RM-413)*

ADMITS into evidence the statement of Aleksandr Vishnevski dated 5 February 1996, bearing ERNs 0042-2585-0042-2588 (Eng)/ 0042-2579-0042-2584 (BCST).

6) *Witness Gunnar Westlund (RM-414)*

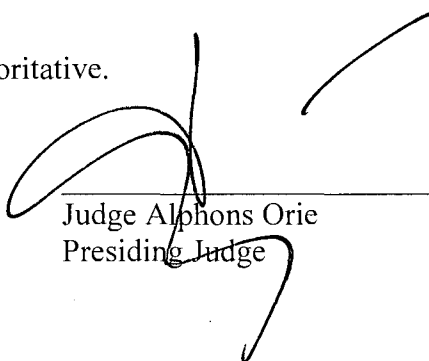
ADMITS into evidence

- a) the statement of Gunnar Westlund dated 22 November 1995, bearing ERNs 0673-9674-0673-9680 (Eng) / 0035-6607-0035-6613 (BCST); and
- b) the corresponding declaration and certification, bearing ERNs 0673-9672-0973-9673 and 0673-9686; and
- c) the supplemental statement of Gunnar Westlund dated 8 December 2009, bearing ERN no. 0673-9681.

INSTRUCTS the Prosecution to upload into eCourt all admitted witness statements and corresponding declarations and certifications and other documents within one week of the date of issue of this decision; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this nineteenth day of October 2012
At The Hague
The Netherlands

[Seal of the Tribunal]