



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 December 2012

Original: English

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**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 December 2012

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF EVIDENCE OF MILORAD  
KRNOJELAC PURSUANT TO RULE 92 *QUATER***

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**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

**Appointed 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 Accused’s “Motion to Admit Evidence of Milorad Krnojelac Pursuant to Rule 92 *quater*”, filed on 15 October 2012 (“Motion”),<sup>1</sup> and hereby issues its decision thereon.

### **I. Background and Submissions**

1. The Motion was originally filed on 12 October 2012. On 15 October 2012, the Chamber denied the Motion orally on the basis that it had been filed after the 27 August 2012 deadline set for the Accused to file motions for the admission of evidence pursuant to Rule 92 *bis* and 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and that the Accused did not even attempt to address why the deadline was not met.<sup>2</sup> That day, the Accused’s legal adviser clarified that one page of the Motion, which explained why the Accused had not complied with the deadline and sought permission from the Chamber for leave to file the Motion, had been missed by the Registry in the original filing.<sup>3</sup> On the same day, the Tribunal’s Court Management Support Services Section filed a certificate to rectify the filing of the Motion, noting that due to a clerical error a page of the Motion was missing and deciding to re-file the Motion in its entirety with the missing page. The Motion was thus re-filed on 15 October 2012.

2. Turning now to the substance of the Motion, the Accused requests the admission of the transcript of testimony of Milorad Krnojelac (“Witness”) in the *Krnojelac* case on 25 to 29 June and, 2 and 4 July 2001 (“Testimony”) pursuant to Rule 92 *quater*.<sup>4</sup> The Witness was the warden of the Foča KP Dom detention facility (“KP Dom”) and he testified over seven days in the case against him.<sup>5</sup>

3. The Accused submits that the criteria for admission of evidence pursuant to Rule 92 *quater* are satisfied with respect to the Testimony and that it should be admitted by the Chamber.<sup>6</sup> In this regard he observes that the Witness is unavailable to testify in this case as he died on 1 March 2010.<sup>7</sup> He notes that the Motion was not filed before the 27 August 2012 deadline for the filing of Rule 92 *quater* motions because he was not aware that the Witness died

<sup>1</sup> See para. 1 *infra* for the background to the filing of the Motion.

<sup>2</sup> Pre-Defence Conference, T. 28812 (15 October 2012).

<sup>3</sup> Pre-Defence Conference, T. 28828–28829, 28846 (15 October 2012).

<sup>4</sup> Motion, para. 1. The Testimony is uploaded into e-court as 65 *ter* 1D6024 and is 595 pages long.

<sup>5</sup> Motion, para. 1.

<sup>6</sup> Motion, paras. 3–5.

<sup>7</sup> Motion, paras. 1, 6, Annex A.

and was actually named on his list of live witnesses which was filed on 27 August 2012.<sup>8</sup> The Accused further submits that the Motion was filed immediately upon receipt and translation of the Witness's death certificate which he received from the Office of the Prosecutor ("Prosecution").<sup>9</sup>

4. The Accused further contends that the Testimony is reliable for the purposes of admission pursuant to Rule 92 *quater* as it was given under oath "with procedural safeguards and the opportunity for cross examination".<sup>10</sup>

5. The Accused submits that the Testimony is of direct relevance and of high probative value to his defence as it contains evidence that (1) Bosnian Muslims could leave Foča freely and there was no plan to expel them; (2) functions of different authorities were unclear, there was no established chain of command or communication between KP Dom and national authorities; and (3) Bosnian Muslim, Bosnian Serb, and Bosnian Croat detainees at KP Dom were treated equally and were not mistreated.<sup>11</sup> In the Accused's submission, this evidence is directly relevant to the allegations of forcible transfer and deportation and the charges with respect to Scheduled Incidents B8.1 and C10.1 of the Third Amended Indictment.<sup>12</sup> The Accused contends that the Testimony also supports his theory that he and the national authorities "lacked control over those who committed crimes at the beginning of the war".<sup>13</sup>

6. The Accused also seeks the admission as associated exhibits of 38 documents which were referred to in the Testimony ("Associated Exhibits").<sup>14</sup>

7. On 29 October 2012, the Prosecution filed the "Prosecution Response to Accused's Motion to Admit Evidence of Milorad Krnojelac pursuant to Rule 92 *quater*" ("Response"). It opposes the admission of the Testimony on the basis that (1) the Witness is not on the Accused's current 65 *ter* witness list ("65 *ter* Witness List") and the Accused has not sought leave to amend this witness list; and (2) that the Testimony is manifestly unreliable and thus of little or no probative value.<sup>15</sup> The Prosecution also observes that the Testimony contains redactions of

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<sup>8</sup> Motion, para. 14.

<sup>9</sup> Motion, para. 14.

<sup>10</sup> Motion, para. 7.

<sup>11</sup> Motion, paras. 8–11.

<sup>12</sup> Motion, paras. 9, 11.

<sup>13</sup> Motion, para. 10.

<sup>14</sup> Motion, para. 13, Annex B. The Chamber notes that the Motion refers to 40 documents but that documents with 65 *ter* numbers 1D28527 and 1D28414 are listed twice.

<sup>15</sup> Response, paras. 1–2.

evidence given in private session and if the Chamber is minded to admit the Testimony, a complete confidential version should also be admitted into evidence.<sup>16</sup>

8. In the Prosecution's submission, in order to entertain the Motion, the Accused should have sought leave to add the Witness to the 65 *ter* Witness List and shown good cause as to why it was in the interests of justice to grant the amendment.<sup>17</sup> The Prosecution notes that the Witness was not recently identified as a possible witness as he was on the Accused's original 65 *ter* Witness List and was dropped from that list following the Chamber's invitation that he reconsider his witness selection in light of the relevance and repetitiveness of potential witnesses.<sup>18</sup> It further observes that the Accused made no attempt to reconcile his claim that the evidence of the Witness was "directly relevant and highly probative" to his case with his earlier decision to drop the Witness from the 65 *ter* Witness List in response to the Chamber's concerns about the relevance and repetitiveness of witnesses.<sup>19</sup> The Prosecution concludes that the Motion should be denied on the basis that the Accused failed to seek leave to add the Witness to the 65 *ter* Witness List and that it would be "contrary to the interests of justice to allow the Accused to tender the evidence of a witness whom he purported to remove from his witness list".<sup>20</sup>

9. In the alternative, the Prosecution submits that the Testimony is manifestly unreliable for the purposes of admission pursuant to Rule 92 *quater* even though it was given under oath and was subject to cross-examination.<sup>21</sup> The Prosecution observes that the Accused seeks to rely on the Witness's "self serving denials of crimes" committed against Bosnian Muslims at KP Dom of which he was accused.<sup>22</sup> It further emphasises the "inherent reliability concerns of an accused's denial of his own responsibility for crimes" and that the Testimony revealed efforts of the Witness to distance himself from the crimes.<sup>23</sup> The Prosecution also submits that the Witness was evasive and/or inconsistent with respect to important issues and refers to a number of examples in support.<sup>24</sup> It also contends that aspects of the Testimony, including parts on which the Accused is seeking to rely, were rejected by the Trial Chamber in the *Krnjelac*

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<sup>16</sup> Response, para. 3.

<sup>17</sup> Response, paras. 4–5.

<sup>18</sup> Response, para. 5.

<sup>19</sup> Response, paras. 6–7.

<sup>20</sup> Response, para. 7.

<sup>21</sup> Response, para. 8.

<sup>22</sup> Response, para. 9.

<sup>23</sup> Response, para. 9.

<sup>24</sup> Response, paras. 9–14, referring to Testimony, T. 7605–7606, 7609–7610, 7618–7619, 7630–7644, 7645–7647, 7663–7670, 7676–7686, 7706–7713, 7741–7742, 7768–7770, 7814, 7824–7826, 7842–7845, 7889–7892, 7932–7933, 7936–7949, 8097, 8112–8116, 8121, 8130–8137, 8181–8191.

case.<sup>25</sup> The Prosecution also argues that the Accused mischaracterised the Testimony in claiming that he testified that Bosnian Muslims could leave Foča freely and that there was no plan to expel them from the municipality.<sup>26</sup>

10. With respect to the Associated Exhibits, the Prosecution notes that seven are duplicates of exhibits which have already been admitted.<sup>27</sup> It further notes that three of the Associated Exhibits are transcripts of interviews conducted by the Prosecution with the Witness (“Interviews”), and if the Testimony is admitted, the Interviews need not be admitted as the relevant portions were read into the trial record and the Testimony is “sufficiently comprehensible” without their admission.<sup>28</sup>

11. On 27 November 2012, the Chamber sought clarification from the Accused about the background to the Motion.<sup>29</sup> The Chamber observed that the Witness was on the original 65 *ter* Witness List which was filed by the Accused on 27 August 2012 and that during the Status Conference held on 3 September 2012, it had instructed the Accused to consider the relevance and potential repetitiveness of some of the 579 witnesses on this list.<sup>30</sup> The Chamber further pointed out that, on 11 September 2012, the Accused filed a supplemental Rule 65 *ter* submission (“Supplemental Submission”) and a revised 65 *ter* Witness List, submitting that he had “taken on board the Trial Chamber’s comments as to the relevance and repetitiveness of some potential witnesses” and that he had dropped ten witnesses from his 65 *ter* list including the Witness.<sup>31</sup> The Accused’s legal adviser submitted that the Witness was actually dropped from the 65 *ter* Witness List when the Accused’s defence team learned of his death and that they had not dropped him for reasons of relevance or repetitiveness as was the case for the other witnesses listed in the Supplemental Submission, and apologised for not making this clear.<sup>32</sup>

## **II. Applicable Law**

12. The Chamber recalls that the pre-Trial Chamber in this case set out the applicable law in the “Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*” issued on 20 August 2009 (“KDZ198

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<sup>25</sup> Response, para. 9.

<sup>26</sup> Response, para. 15.

<sup>27</sup> Response, para. 16.

<sup>28</sup> Response, para. 17.

<sup>29</sup> T. 30420–30424 (27 November 2012).

<sup>30</sup> T. 30420 (27 November 2012).

<sup>31</sup> T. 30420 (27 November 2012), referring to Defence Supplemental Submission Pursuant to Rule 65 *ter*, 11 September 2012, para. 3, fn. 2.

<sup>32</sup> T. 30421 (27 November 2012).

Decision”).<sup>33</sup> It will therefore not repeat that discussion here. It suffices to reiterate that the evidence of an unavailable witness may be submitted in written form if the Chamber finds: (i) the witness unavailable within the meaning of Rule 92 *quater* (A), (ii) from the circumstances in which the statement was made and recorded that it is reliable, (iii) that the evidence is relevant to the proceedings and of probative value, and (iv) that the probative value of the evidence, which may include evidence pertaining to acts and conduct of an accused, is not outweighed by the need to ensure a fair trial.<sup>34</sup>

13. The Chamber also recalls that the pre-Trial Chamber listed a non-exhaustive list of factors which can be considered in assessing the reliability of the proposed evidence which pertain to the circumstances in which it was obtained and recorded.<sup>35</sup> These factors include (1) whether a written statement was given under oath; (2) whether it was signed by the witness with an acknowledgement of the truth of its contents; (3) whether it was given with the assistance of a Registry approved interpreter; and (4) whether it has been subject to cross-examination.<sup>36</sup> Other factors which may be considered include whether the evidence relates to events about which there is other evidence or whether there is an absence of manifest or obvious inconsistencies in the evidence.<sup>37</sup> Even if one or more of these indicia of reliability are absent, the Chamber retains the discretion to admit the evidence and will take into consideration the reliability issues in “determining the appropriate weight to be given to it in its overall consideration of all the evidence in the case”.<sup>38</sup>

14. Finally, the Chamber recalls that when a party tenders evidence pursuant to Rule 92 *bis*, *ter*, or *quater*, it may also tender for admission into evidence documents that have been discussed by the witness in his or her witness statement or previous testimony.<sup>39</sup> Such exhibits should form an “inseparable and indispensable part” of the testimony, meaning that they should not merely have been mentioned during the course of that testimony, but rather have been used

<sup>33</sup> KDZ198 Decision, paras. 4–10.

<sup>34</sup> KDZ198 Decision, paras. 4–6; Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *quater*, 30 November 2009, para. 6. See *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on Beara’s and Nikolić’s Interlocutory Appeals Against Trial Chamber’s Decision of 21 April 2008 Admitting 92 *quater* Evidence, 18 August 2008, para. 30.

<sup>35</sup> KDZ198 Decision, para. 5.

<sup>36</sup> KDZ198 Decision, para. 5.

<sup>37</sup> KDZ198 Decision, para. 5.

<sup>38</sup> KDZ198 Decision, para. 5.

<sup>39</sup> Decision on Accused’s Motion to Admit Evidence of Velibor Ostojić Pursuant to Rule 92 *quater*, 23 October 2012, para. 9; Decision on Accused’s Motion for Admission of Prior Testimony of Thomas Hansen and Andrew Knowles Pursuant to Rule 92 *bis*, 22 August 2012 (“Decision on Accused’s Rule 92 *bis* Motion”), para. 11.

and explained by the witness.<sup>40</sup> In the event the party chooses not to tender associated exhibits and this omission renders the main body of evidence incomprehensible or of low probative value, the Chamber may deny the admission of such evidence.<sup>41</sup>

### **III. Discussion**

15. As a preliminary matter the Chamber decides to reconsider its oral decision of 15 October 2012 which denied the Motion on the basis that it had been filed after the 27 August 2012 deadline set for the Accused to file 92 *bis* and 92 *quater* motions without an “attempt to address why the Defence was unable to comply with the deadline”.<sup>42</sup> Since then the Chamber has received confirmation that when the Motion was originally denied, due to an error in the filing process, it had not received the complete Motion including the Accused’s explanation for missing the 27 August 2012 deadline.<sup>43</sup> Given that on 27 August 2012 the Accused was not aware that the Witness had died and that he filed the Motion as soon as the translation of the Witness’s death certificate was received, the Chamber decides that it is in the interests of justice to reconsider its decision to deny the Motion on the basis that it was untimely.

16. In relation to the fact that the Witness is not on the current 65 *ter* Witness List, the Chamber notes that the Accused should have sought leave to add the Witness back onto the 65 *ter* Witness List and shown good cause as to why it was in the interests of justice to grant the amendment even though the Witness had been dropped from the current 65 *ter* Witness List. The Chamber does not accept the Accused’s argument that none of his Rule 92 *bis* or *quater* witnesses are on the 65 *ter* Witness List and that this somehow explains why the Witness was no longer listed therein. The Chamber recalls its oral ruling issued on 4 December 2012 and that Rule 65 *ter*(G) provides that “[a]fter the close of the Prosecutor’s case and before the commencement of the case, the pre-trial Judge shall order the defence to file the following: (i) a list of witnesses the defence intends to call with: (e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal”.<sup>44</sup> The Witness, as well as all other Rule 92 *bis* or *quater* witnesses whose evidence was sought for admission prior to 27 August 2012 and the admission of which has been granted by the Chamber, should be on the

<sup>40</sup> Decision on Prosecution’s Motion for Admission of the Evidence of Milenko Lazić Pursuant to Rule 92 *quater* and for Leave to Add Exhibits to Rule 65 *ter* Exhibit List, 9 January 2012, para. 24. *See also* *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, para. 65.

<sup>41</sup> Decision on Accused’s Rule 92 *bis* Motion, para. 11. *See also* Decision on Accused’s Motion for Admission of Statement of Rajko Koprivica Pursuant to Rule 92 *quater*, 3 October 2012, para. 17.

<sup>42</sup> Pre-Defence Conference, T. 28812 (15 October 2012).

<sup>43</sup> Pre-Defence Conference, T. 28828–28829, 28846; Registry Certificate to Rectify Filing, 15 October 2012.

65 *ter* Witness List. On 4 December 2012, the Accused was ordered to file a revised Witness List, reflecting, *inter alia*, these changes.<sup>45</sup> Furthermore, the Chamber will not entertain any further Rule 92 *quater* motions unless it pertains to a witness who is on the 65 *ter* Witness List and who has become unavailable since then. However, contrary to the Prosecution's submission, the Chamber finds that this omission, albeit serious in the circumstances, should not in and of itself prevent the admission of the Testimony pursuant to Rule 92 *quater* if the substantive criteria for admission are met. The Chamber will therefore exceptionally proceed to consider the Motion.

17. The Chamber also wishes to express its dissatisfaction with the Accused's misrepresentation in the Supplemental Submission that he had "taken on board the Trial Chamber's comments as to the relevance and repetitiveness of some potential witnesses" and that he had dropped ten witnesses from the 65 *ter* Witness List, including the Witness.<sup>46</sup> The Accused's legal adviser orally confirmed that the witness was not dropped from the 65 *ter* Witness List for reasons of relevance and repetitiveness but because the Accused's defence team had just been informed of his death.<sup>47</sup> This is contrary to the clear wording of the Supplemental Submission which gives the impression that the Accused seriously considered the Chamber's suggestion to review the relevance and repetitiveness of potential witnesses and dropped ten witnesses, including the Witness, from the 65 *ter* Witness List.

18. Turning to the requirements for admission of the Testimony, the Chamber is satisfied with the information provided by the Accused that the Witness is deceased and thus unavailable for the purposes of Rule 92 *quater* (A)(i).

19. Having reviewed the Testimony, the Chamber finds that it is relevant with respect to issues in this case including (1) the chain of command and communication between KP Dom and national authorities; (2) the treatment and conditions of detention for detainees at KP Dom; (3) inter-ethnic relations in Foča in the lead up to the conflict; (4) the authority and structure of KP Dom; and (5) the Witness's knowledge of the departure of Bosnian Muslims from Foča. The Chamber is satisfied that the subject matter of the Testimony is sufficiently relevant to these proceedings for the purpose of admission pursuant to Rule 92 *quater*.

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<sup>44</sup> T. 30893–30898 (4 December 2012).

<sup>45</sup> T. 30897–30898 (4 December 2012).

<sup>46</sup> See T. 30420 (27 November 2012), referring to Defence Supplemental Submission Pursuant to Rule 65 *ter*, 11 September 2012, para. 3, fn. 2.

<sup>47</sup> T. 30421 (27 November 2012).



20. The Chamber recalls that, to have any probative value, evidence must be *prima facie* reliable.<sup>48</sup> The Testimony was given under oath, with the assistance of a Registry approved interpreter, and was subject to cross-examination in the *Krnojelac* case. The Chamber is therefore satisfied that the way in which the Witness's evidence was given and recorded presents sufficient indicia of reliability for its admission.

21. As the Chamber has previously held the status of a witness as an accused does not "necessarily render his evidence unreliable", but there can be other indications including inconsistencies in the testimony which would warrant caution.<sup>49</sup> It remains for the Chamber to assess whether there are inconsistencies within the Testimony and between the Testimony and other documents discussed therein that reach a level which would render the entire Testimony so unreliable or of such low probative value that the Chamber should deny its admission. Having considered the Prosecution's arguments and conducted its own review of the Testimony, the Chamber finds that while there is a level of evasiveness by the Witness and some inconsistencies,<sup>50</sup> they do not reach a level which undermines the reliability of the Testimony so as to warrant denying its admission. Any inconsistencies in the Testimony are factors which the Chamber will consider in attributing the appropriate weight to the Testimony in light of all the evidence but are not a bar to its admission at this stage. Similarly the extent to which the Testimony reflects an attempt by the Witness to deny and distance himself from the crimes allegedly committed at KP Dom will be matters the Chamber will consider in attributing the appropriate weight to this evidence in light of the other evidence which it has and will receive about events in the municipality of Foča. The Chamber is therefore satisfied that the Testimony is sufficiently reliable to be admitted pursuant to Rule 92 *quater*.

22. Having conducted its review of the Testimony,<sup>51</sup> the Chamber will not admit T. 7544–7553 (line 18); T. 7555 (line 4)–7571 (line 14); T. 7700 (line 17)–7704 (line 23); T. 7719 (line 9)–7736 (line 17); and T. 7764–7765 of the Testimony. These portions of the Testimony relate to irrelevant matters, including procedural issues, a detailed personal background of the Witness and his character, and details of the Witness's arrest. While theses

<sup>48</sup> See *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22.

<sup>49</sup> Decision on Prosecution's Motion for Admission of the Evidence of KDZ297 (Miroslav Deronjić) Pursuant to Rule 92 *quater*, 23 March 2010, para. 31.

<sup>50</sup> See, for example, T. 7768 (line 20)–7794 (line 3) where the Witness is evasive and denies knowledge of or contact with the Crisis Staff. See also T. 7623, 7660, 7668, 7821, 7932–7933, 8112, 8115 where the Witness claimed (1) not to know much about the KP Dom even though he was the warden; (2) he never entered the buildings which housed the Bosnian Muslim detainees; (3) he was not responsible for people detained at KP Dom by the military; and (4) he never knew the number of detainees was reducing or heard about detainees being beaten or disappearing.

<sup>51</sup> The Chamber notes that T. 7968–8044 are not being tendered as part of the Testimony as it concerns the evidence of another witness who was interspersed during the Witness's testimony.

issues may have been relevant to the case against the Witness, they are of no relevance to this case. Given that the Chamber considers the remainder of the Testimony to be relevant to the current proceedings, of sufficient reliability and probative value for the purpose of admission, the Chamber finds that the Testimony, with the exception of the pages referred to above, may be admitted into evidence pursuant to Rule 92 *quater*.

23. Certain portions of the Witness's evidence that were conducted in private session have been redacted from the Testimony. The Chamber orders that a complete confidential version of the Testimony, excluding the pages which are denied admission in paragraph 22 above, be uploaded and also admitted into evidence.

24. With respect to the Associated Exhibits which are tendered by the Accused, the Chamber notes that seven are duplicates of exhibits which have already been admitted.<sup>52</sup> The Chamber will therefore not admit 65 *ter* numbers 1D28414, 1D28431, 1D28432, 1D28433, 1D28434, 1D28435, and 1D28527.<sup>53</sup> The Chamber also finds that the Interviews<sup>54</sup> need not be admitted as the relevant portions were read into the trial record and the Testimony can be understood without their admission. The Chamber will therefore not admit 65 *ter* numbers 1D28420, 1D28524, and 1D28428.

25. With respect to 1D28402, 1D28403, 1D28404, 1D28405, 1D28406, 1D28407, 1D28408, 1D28409, 1D28410, 1D28411, 1D28412, 1D28415, 1D28419, 1D28424, 1D28427, 1D28429, 1D28430, 1D28474, 1D28525, 1D28528, and 1D28529, the Chamber finds that the documents are relevant, of probative value, and form an indispensable and inseparable part of the Testimony and will therefore be admitted into evidence.

26. With respect to 1D28413 the Chamber is not satisfied that it forms an indispensable and inseparable part of the Testimony as the Witness is not called to comment upon the document, which in any event is of questionable relevance to this case.<sup>55</sup> 1D28416<sup>56</sup> and 1D28417<sup>57</sup> will not be admitted as they are referred to in a portion of the Testimony which the Chamber has denied admission on the grounds of relevance.<sup>58</sup> 1D28418, 1D28423 and 1D28425 will not be admitted as the Witness does not confirm or offer any contextualisation about the content of the

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<sup>52</sup> Response, para. 16.

<sup>53</sup> 65 *ter* number 1D28414 is a duplicate of P3349; 1D28431 is a duplicate of P3347; 1D28432 is a duplicate of P3341, 1D28433 is included in P1607; 1D28434 is a duplicate of P3340; 1D28435 is a duplicate of P1141; and 1D28527 is a duplicate of P3333.

<sup>54</sup> 1D28420, 1D28524, 1D28428.

<sup>55</sup> See Testimony, T. 7702.

<sup>56</sup> See Testimony, T. 7722.

<sup>57</sup> See Testimony, T. 7725.

<sup>58</sup> See para. 22 *supra*.

documents and thus do not form an indispensable and inseparable part of the Testimony.<sup>59</sup> 1D28422, which addresses the assignment of a military conscript to the position of school teacher, is of questionable relevance and will not be admitted.<sup>60</sup>

#### **IV. Disposition**

27. Accordingly, pursuant to Rules 54, 89, and 92 *quater* of the Rules, the Chamber hereby:

- 1) **GRANTS** the Motion and **ADMITS** the Testimony into evidence with the exception of pages T. 7544–7553 (line 18); T. 7555 (line 4)–7571 (line 14); T. 7700 (line 17)–7704 (line 23); T. 7719 (line 9)–7736 (line 17); T. 7764–7765 which will not be admitted;
- 2) **ORDERS** that a complete confidential version of the Testimony, excluding the pages which are denied admission in paragraph 22 above, be uploaded into e-court and also admitted into evidence;
- 3) **INSTRUCTS** the Registry to assign exhibit numbers to the portion of Testimony admitted and to the confidential version of that Testimony;
- 4) **ADMITS** into evidence the Associated Exhibits bearing 65 *ter* numbers 1D28402, 1D28403, 1D28404, 1D28405, 1D28406, 1D28407, 1D28408, 1D28409, 1D28410, 1D28411, 1D28412, 1D28415, 1D28419, 1D28424, 1D28427, 1D28429, 1D28430, 1D28474, 1D28525, 1D28528, and 1D28529 and **INSTRUCTS** the Registry to assign them exhibit numbers.

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




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Judge O-Gon Kwon  
Presiding

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

**[Seal of the Tribunal]**

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<sup>59</sup> See Testimony, T. 7774, 7796–7799, 8124–8125.

<sup>60</sup> See Testimony, T. 7787.