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28 June 2013

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**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-09-92-T
Date: 28 June 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 28 June 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION FOURTEENTH MOTION TO
ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS***

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 8 February 2013, the Prosecution filed a motion (“Motion”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), seeking to admit into evidence witness statements for Armin Baždar, Witness RM-037 and Mehmed Musić (“Witness Statements” and “Witnesses” respectively) along with transcript excerpts of witnesses’ Baždar’s and Musić’s testimonies in the *Karadžić* case and two associated exhibits tendered through Witness RM-037.¹ The Prosecution does not tender attestations and declarations pursuant to Rule 92 *bis* (B) in relation to the Witness Statements, but argues that the requirements of Rule 92 *bis* are met because the Witness Statements were previously attested to in court during the Witnesses’ Rule 92 *ter* testimonies in other trials before the Tribunal.² Further, the Prosecution contends that the proposed evidence of the Witnesses is relevant to and probative of issues in the instant case and that it does not address the acts or conduct of the Accused.³ The Prosecution submits that the excerpts of the respective witnesses’ previous testimonies are necessary additions offering clarifications to and corrections of the related witness statements, and that the two associated exhibits, a photograph and an official record, are inseparable and indispensable parts of Witness RM-037’s evidence.⁴ Finally, the Prosecution avers that it has redacted the transcripts of the respective witnesses’ testimonies to the extent that they overlap with adjudicated facts, unless such redaction would negatively impact the understanding of the context of their testimonies.⁵

2. On 21 February 2013, the Defence confidentially filed a motion seeking, *inter alia*, an extension of an additional 45 days to respond, which the Chamber granted in part on 1 March 2013, allowing an extension of 30 days.⁶ However, the Defence did not file a response to the Prosecution’s Motion by the deadline of 25 March 2013. On 2 May 2013, the Defence orally requested an extension of an additional 21 days as of 2 May 2013, which the Chamber denied on 3 May 2013.⁷

¹ Prosecution Fourteenth Motion to Admit Evidence Pursuant to Rule 92*bis*, 8 February 2013 (Confidential Annex D), paras 2, 25.

² Motion, para. 8.

³ Motion, paras 5, 7-10.

⁴ Motion, paras 11-12, 14, 21.

⁵ Motion, para. 4.

⁶ Defence Motion to Enlarge Time to Respond to Prosecution’s Fourteenth, Fifteenth, Sixteenth, and Seventeenth Rule 92*bis* Motions, 21 February 2013 (Confidential); T. 9503.

⁷ T. 10535, 10688.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law, as set out in previous decisions, governing the admission of evidence pursuant to Rule 92 *bis* of the Rules as well as the admission of associated exhibits.⁸

III. DISCUSSION

(a) Relevance and Probative Value

4. The focus of the Witnesses' evidence is on events which the Witnesses report to have experienced or witnessed, including attacks on different villages in the Municipalities as referred to in Schedules B and C of the Indictment.⁹ After a review of the relevant passages of the Witness Statements and the other related material, the Chamber considers the Witnesses' evidence to be reliable and relevant to scheduled incidents B.14.2, C.16.1, C.16.3, and D.12 of the Indictment as regards witness Baždar and Witness RM-037; and scheduled incident C.8.1 of the Indictment as regards witness Musić. The Chamber, considering the evidence of the Witnesses to have *prima facie* probative value, finds that the requirements as set out in Rule 89 (C) of the Rules are satisfied.

(b) Requirements of Rule 92 *bis* (A)

5. With regard to admissibility pursuant to Rule 92 *bis* (A) of the Rules, the Chamber does not find that the evidence of the Witnesses relates to the acts and conduct of the Accused. The Chamber furthermore observes that other witnesses in this case have provided oral evidence regarding the incidents concerned. This evidence includes, but is not limited to, the testimonies of witness Šefik Hurko, Witness RM-081 and Witness RM-046. Witness Šefik Hurko testified about events in Rogatica in 1992, in particular about being detained at Vlahović secondary school and at Rasadnik prison.¹⁰ Witness RM-081 also testified about the conditions of detention at Vlahović secondary school, about killings of detained people there and about the destruction of mosques in Rogatica.¹¹ Witness RM-046 provided evidence on his detention in Kula prison and the conditions and incidents therein.¹² Thus, the Chamber considers the proffered evidence to be of a cumulative nature. In addition, the Chamber notes that the evidence of the Witnesses concerns the impact the

⁸ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012 ("Decision on Third 92 *bis* Motion"), paras 5-8; Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

⁹ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Prosecution Submission of the Fourth Amended Indictment and Schedule of Incidents, 16 December 2011 ("Indictment").

¹⁰ *See, e.g.* T. 2215, 2219-2225, 2281-2282.

¹¹ *See, e.g.* T. 3687, 3692-3693, 3700-3705.

alleged crimes had upon them as victims. The Chamber finds that the factors discussed in this paragraph weigh in favour of admission. Further, the Chamber does not find any factors against admitting the evidence as provided for in Rule 92 *bis* (A) (ii) of the Rules.

(c) Requirements of Rule 92 *bis* (B)

6. Observing that the Prosecution has not tendered attestations and declarations pursuant to the requirements set out in Rule 92 *bis* (B) of the Rules, the Chamber recalls and refers to its previous decision where it set out that in-court attestations given in connection with Rule 92 *ter* testimony may meet the requirements of Rule 92 *bis* (B).¹³ In respect of witnesses Baždar and Musić, the Chamber considers the prerequisites of its aforementioned ruling, and those of Rule 92 *bis* (B), to be met as both witnesses attested to their witness statements during their testimony in the *Karadžić* case.¹⁴

7. With regard to Witness RM-037, the Chamber observes that in the *Karadžić* case this witness attested to a previous amalgamated statement upon which his proffered statement of 27 November 2012 (“Witness RM-037’s Statement of 27 November 2012”) is based.¹⁵ The statements are not identical; with the proffered statement containing additional clarifications and information.¹⁶ The Chamber therefore considers the circumstances under which the current statement is tendered to fall outside the scope of the Chamber’s aforementioned ruling and that the requirements of Rule 92 *bis* (B) have not been met. However, unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.¹⁷ In line with this practice, the Chamber will conditionally admit the unattested witness statement, pending the submission of the required attestation and declaration.

(d) Associated Exhibits

8. Both exhibits tendered through Witness RM-037 – a photo of the former detention facilities in Rogatica and an official record concerning the authorities and the persons in charge – are mentioned in Witness RM-037’s Statement of 27 November 2012.¹⁸ Further, the Chamber notes that the exhibits complement the related parts of the witness statement and that they are not more than one page each and, to this extent, form an inseparable and indispensable part of Witness RM-037’s evidence.¹⁹ The Chamber therefore is satisfied that the requirements for admission of the

¹² See, e.g. T. 7008, 7014-7019.

¹³ Decision on Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Hostage Witnesses, 19 October 2012, para. 7.

¹⁴ See Motion, para. 8, footnote 10.

¹⁵ Confidential Annex D to Prosecution Motion, Amalgamated Witness Statement, 27 November 2012, paras 1-2.

¹⁶ Witness RM-037’s Statement of 27 November 2012, para. 2.

proposed associated exhibits have been fulfilled and will accordingly allow their admission into evidence.

(e) Compliance with guidance

9. Pertaining to the tendering of additional transcript excerpts as part of the Rule 92 *bis* packages of witnesses Baždar and Musić, the Chamber notes that for these witnesses the Prosecution tenders only limited portions of the transcript from the *Karadžić* case and that these transcript excerpts clarify and supplement the evidence of these witnesses.²⁰ Hence, the Chamber considers the tendering of additional transcript excerpts to be in line with the Chamber's guidance and to be admissible.²¹

(f) Confidentiality

10. In accordance with Rule 75 (F) (i) of the Rules, protective measures as granted to Witness RM-037 in a previous case continue to apply in this case. Thus, Witness RM-037's Statement of 27 November 2012 and the associated exhibit bearing ERN 0684-5139 should be confidential and be admitted under seal.

IV. DISPOSITION

11. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber **GRANTS** the Prosecution Motion **IN PART**;

¹⁷ Decision on Third 92 *bis* Motion, para. 27, footnote 44.

¹⁸ Witness RM-037's Statement of 27 November 2012, paras 51, 57.

¹⁹ *Ibid.*

²⁰ Public Annex B to Prosecution Motion.

²¹ T. 106-110, 137-138, 315-325, 525-532.

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ADMITS into evidence

- a) witness Armin Baždar's witness statement of 23 January 1999, bearing ERNs 0300-9009-0300-9016;
- b) excerpts of witness Armin Baždar's testimony in Case No. IT-95-5/18-T, T. 18380:1-18386:8, and T. 18388:12-18391:9;
- c) witness Mehmed Musić's amalgamated witness statement of 28 February 2011, bearing ERNs 0679-7280-0679-7317;
- d) excerpts of witness Mehmed Musić's testimony in Case No. IT-95-5/18-T, T. 12829:1-12832:20, and T. 12833:7-12833:12;

PROVISIONALLY ADMITS into evidence, **UNDER SEAL**, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules

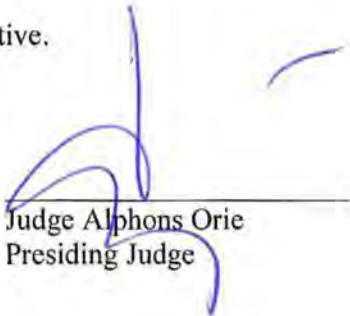
- a) Witness RM-037's Statement of 27 November 2012, bearing ERNs 0684-5167-0684-5193;
- b) the photograph marked and signed by Witness RM-037, dated 27 November 2012, bearing ERN 0684-5139;

PROVISIONALLY ADMITS into evidence the associated exhibit bearing ERNs 0359-7307-0359-7308, pending the filing of a corresponding attestation and declaration to Witness RM-037's Statement of 27 November 2012 in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

INSTRUCTS the Prosecution to file the corresponding attestation and declaration to Witness RM-037's Statement of 27 November 2012 within four weeks of the filing of this decision;

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 twenty-eighth day of June 2013
At The Hague
The Netherlands

[Seal of the Tribunal]