

4-09-92-T
D63838-D63823
18 July 2013

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Ms.



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: 18 July 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: 18 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION EIGHTH MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92 *BIS*: SREBRENICA
SURVIVORS**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 29 October 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 Witnesses RM-204, RM-257, RM-258, RM-274, RM-297, RM-301, RM-358, and RM-362 ("Motion").¹ On 5 November 2012, the Defence filed a motion seeking an extension of 18 days to respond.² The Prosecution did not object and on 6 November 2012, the Chamber granted the extension of 18 days.³ On 22 November 2012, the Prosecution informed the Chamber through an informal communication that all associated exhibits were uploaded into eCourt, including the exhibits that were previously missing. On 23 November 2012, the Defence filed its response ("Response").⁴ On 3 December 2012, the Prosecution informed the Chamber through an informal communication that the English translation for the document bearing Rule 65 *ter* no. 05725, part of the Rule 92 *bis* witness package of Witness RM-362, had been uploaded into eCourt. On 4 December 2012, the Prosecution advised the Chamber, through an informal communication, to consider the following minutes of the associated video exhibit, bearing Rule 65 *ter* no. 22278: 02:37:42 – 02:52:04. On 10 December 2012, the Prosecution confirmed through an informal communication that the Defence had been informed accordingly. On 3 May 2013, the Prosecution filed a motion to amend the Rule 92 status for Witness RM-297 from Rule 92 *bis* to Rule 92 *ter* of the Rules.⁵ The Chamber formally granted this request on 8 May 2013 and Witness RM-297 testified on 9 and 10 May 2013.⁶ As a consequence, the Chamber will not further address Witness RM-297 in this decision.⁷

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution requests that it be permitted to exceed the usual word limit for motions considering that the Motion addresses the evidence of eight Rule 92 *bis* witnesses.⁸ Further, the Prosecution requests leave to add 15 proposed associated exhibits to its Rule 65 *ter* exhibit list.⁹ The Prosecution contends that the proposed evidence of all eight witnesses is reliable, relevant and

¹ Prosecution Eighth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica Survivors, 25 October 2012 (Confidential).

² Defence Motion to Enlarge Time to Respond to Prosecution Eighth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica Survivors, 5 November 2012 (Confidential).

³ T. 4587-4588.

⁴ Defence Response to Prosecution Eighth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica Survivors, 23 November 2012 (Confidential).

⁵ Prosecution Motion to Amend Rule 92 Status for Orahovac Survivors Witness RM-297 and Witness RM-324, 3 May 2013, paras 1, 6.

⁶ T. 10799, 10845, 10934-10994.

⁷ The Chamber considers any requests contained in the Motion and related to Witness RM-297 thus withdrawn.

⁸ Motion, para. 5.

probative of issues in the instant case and submits that the proposed evidence does not address the acts or conduct of the Accused.¹⁰ According to the Prosecution, the eight witnesses provide evidence that primarily concerns proof of the crime-base, as well as the historical, political, and military context relevant for this case.¹¹

3. With regard to Witness RM-204, the Prosecution seeks admission of a Rule 92 *bis* witness package that is comprised of a witness statement, a supplementary witness statement, excerpts from the witness's testimony in *Prosecutor v. Blagojević & Jokić*, and ten associated exhibits.¹² The Rule 92 *bis* witness package of Witness RM-257 consists of a witness statement, excerpts from the witness's testimony in *Prosecutor v. Popović et al.*, and four associated exhibits.¹³ With regard to Witness RM-258, the Prosecution seeks admission of a Rule 92 *bis* witness package that is comprised of a witness statement, which includes one sketch and ten video-stills, as well as the associated Declaration and Attestation.¹⁴ For Witness RM-274, the Prosecution seeks admission of a Rule 92 *bis* witness package that is comprised of a witness statement, a supplementary witness statement, excerpts from the witness's testimony in *Prosecutor v. Popović et al.*, and eight associated exhibits.¹⁵ The Rule 92 *bis* package proffered for Witness RM-301 consists of one witness statement.¹⁶ For Witness RM-358, the Prosecution seeks admission of a Rule 92 *bis* witness package that is comprised of a witness statement and excerpts from the witness's testimony in *Prosecutor v. Popović et al.*¹⁷ The Rule 92 *bis* witness package of Witness RM-362 consists of a witness statement, excerpts from the witness's testimony in *Prosecutor v. Popović et al.* and *Prosecutor v. Tolimir*, and eight associated exhibits.¹⁸ The Prosecution submits that all associated exhibits comprise an "inseparable and indispensable part of the witnesses' evidence".¹⁹ Finally, the Prosecution avers that, in the above instances, proffering excerpts of the transcripts of the testimonies of the witnesses is justified so as not to re-traumatize the witnesses by providing a further statement on events they survived.²⁰

4. The Defence opposes the Motion on six grounds.²¹ First, the Defence objects to the conditional admission of uncertified statements.²² Second, the Defence notes that the Prosecution

⁹ Motion, para. 6.

¹⁰ Motion, paras 2, 10-12.

¹¹ Motion, para. 8.

¹² Motion, paras 16-18.

¹³ Motion, paras 21-23.

¹⁴ Motion, para. 26.

¹⁵ Motion, paras 29-31.

¹⁶ Motion, para. 39.

¹⁷ Motion, para. 42-43.

¹⁸ Motion, paras 46-50.

¹⁹ Motion, para. 14.

²⁰ Motion, para. 15.

²¹ Response, paras 7-19.

has neither argued in its motion that witnesses have been extensively cross-examined in the past, nor annexed transcripts of the cross-examination of any of the witnesses in previous cases and requests the Chamber to take this into consideration.²³ Third, the Defence argues that the statements of Witnesses RM-204, RM-257, and RM-274 are unreliable and should be redacted on the basis that portions of these statements either rely on “untraceable” hearsay, provide speculations or vague references, or consist of expert-like opinions.²⁴ Fourth, the Defence avers that the evidence of Witness RM-257 goes directly to the acts or conduct of the Accused.²⁵ Fifth, the Defence asserts that the significance of the evidence of Witnesses RM-257 and RM-274 requires that they be brought for cross-examination.²⁶ Finally, the Defence argues that the statements of Witness RM-274 might have been unduly influenced by “economic” promises.²⁷

III. APPLICABLE LAW

(a) Rule 92 bis

5. The Chamber recalls and 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.²⁸

(b) Admission of Associated Exhibits

6. With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to one of its previous decisions dealing with this matter.²⁹

(c) Additions to the Rule 65 ter Exhibit List

7. The Chamber recalls and refers to the applicable law governing additions to the Rule 65 *ter* exhibit list, as set out in a previous decision.³⁰

²² Response, para. 7.

²³ Response, paras 8-9.

²⁴ Response, paras 10-12, 14 -15, 17.

²⁵ Response, para. 13.

²⁶ Response, paras 13, 17-18.

²⁷ Response, para. 16.

²⁸ 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.

²⁹ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

³⁰ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

IV. DISCUSSION

(a) Preliminary matters

8. The Chamber grants the Prosecution request to exceed the word limit for the Motion given the number of witnesses it needed to address therein.

9. Out of an abundance of caution, the Chamber has not referred to the name of Witness RM-258. Since he has not been accorded protective measures, the Chamber will instruct the Registry to change the status of his evidence into public, unless the Prosecution files a request for protective measures.

10. The Chamber notes that the English version of the statement of Witness RM-257 uploaded into eCourt does not contain redactions in accordance with the adjudicated facts applicable to the evidence, whilst the BCS version does contain the respective redactions. The Chamber instructs the Prosecution to upload a redacted version of Witness RM-257's statement, dated 8 March 1999, into eCourt, in which page three is redacted in accordance with the adjudicated facts taken judicial notice of by this Chamber.

11. The Prosecution seeks admission of three photographs with Rule 65 *ter* nos 05050, 05151, and 05152, which form part of Witness RM-204's Rule 92 *bis* package and on which Witness RM-257 commented in *Prosecutor v. Blagojević & Jokić*. The Chamber notes that the tendered photographs do not depict the exhibit number, ERN, or Rule 65 *ter* number to which the Prosecution makes reference in its Motion. The Chamber has verified that the tendered photographs are similar to the photographs to which Witness RM-204 makes reference in his testimony by looking at the official exhibits in *Prosecutor v. Blagojević & Jokić*. The Chamber expects that the Prosecution will endeavour to include the exhibit number, ERN, or Rule 65 *ter* number on the materials it seeks to admit into evidence.

(b) Additions to the Rule 65 *ter* Exhibit List

12. Three documents, with Rule 65 *ter* nos 05151, 05152, and 05150, which form part of Witness RM-204's Rule 92 *bis* witness package, consist of three photographs which depict the injuries suffered by Witness RM-204 after being shot by Bosnian Serb soldiers, commented upon by the witness in *Prosecutor v. Blagojević & Jokić*. Seven documents bearing ERNs R103-

9523/R103-9524, R103-9527/R103-9528, 0678-4293, 0040-9648, 0678-4294, 0678-4295, and 0678-4296, which form part of Witness RM-362's Rule 92 *bis* witness package, are several sketches and photographs of the Orahovac school and the Orahovac gymnasium, marked by Witness RM-362 during his testimony in *Prosecutor v. Tolimir*. Considering the number and the length of the exhibits and the fact that they are photographs, the Chamber finds that it is in the interests of justice to add these 10 documents to the Prosecution's Rule 65 *ter* exhibit list. The Prosecution's request for leave to add five associated exhibits which are part of the Rule 92 *bis* witness package of Witness RM-274 will be addressed in the following section.

13. The Chamber will now assess the admissibility of the witnesses' evidence under Rule 92 *bis* of the Rules.

(c) Witnesses RM-204, RM-257, RM-258, RM-274, RM-301, RM-358, and RM-362

i. Attestations and Declarations

14. The statement of Witness RM-258 was submitted with the corresponding Attestation and Declaration pursuant to Rule 92 *bis* of the Rules. The statements of Witnesses RM-204, RM-257, RM-274, RM-301, RM-358, and RM-362 have no corresponding Attestations and Declarations as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.³¹ In line with this practice, the Chamber will conditionally admit the unattested witness statements of the witnesses listed above, pending the filing of the required Attestations and Declarations, provided that all other admissibility requirements are met.

ii. Relevance and Probative Value

15. The Chamber considers the evidence of Witnesses RM-204, RM-257, RM-258, RM-274, RM-301, RM-358, and RM-362 relevant to the allegations of genocide, persecutions, extermination, murder, deportation, and inhumane acts against the Bosnian Muslims of Srebrenica. The Chamber therefore considers the evidence provided by these witnesses relevant to Counts 2, 3, 4, 5, 6, 7, and 8 of the Indictment.³²

16. As to the probative value of the proposed evidence of Witnesses RM-258, RM-301, RM-358, and RM-362 the Defence has not made any objections, and the Chamber finds that, the

³¹ Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

³² Indictment, Counts 2, 3, 4, 5, 6, 7, and 8.

evidence has probative value. Therefore, the Chamber is satisfied that the requirements of Rule 89 (C) of the Rules have been met in relation to the materials of the witnesses listed above.

17. With respect to the Defence objection that the statement of Witness RM-204 relies on unsourced hearsay and hearsay with vague references to sources,³³ 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.³⁴ The Chamber takes the same approach in relation to evidence that relies on or contains vague references and will carefully assess the weight to be attributed to it. As the source of knowledge is clear from the portions at issue, the Chamber considers that there is no need for redactions of the witness statement on these grounds.

18. Concerning the Defence objection that some specific portions of Witness RM-257's statement contain improper "expert-like" testimony, the Chamber considers that the final sentences of paragraph 6, which read "[t]he shells were fired from handheld rocket launchers. I had learnt about weapons during high school" are based on the witness's own observations but that it does not become clear if the witness was able to see the handheld rocket launcher himself. However, this uncertainty does not necessitate a redaction of this portion of the testimony. With regard to the second and third sentences of paragraph 20, which read "[I] saw two black big cars coming from the direction of the water fountain towards the house and meadow. I saw that they were officers, they had ranks", the Chamber notes that the sentences contain an opinion for which the witness provides a sufficient basis.

19. Based on the above, the Chamber is satisfied that the evidence of Witnesses RM-204 and RM-257, upon submission of the missing Attestations and Declarations, have probative value and that, therefore, the requirements of Rule 89 (C) of the Rules have been met.

20. The Chamber notes that the statement provided by Witness RM-274 repeatedly makes reference to a prior statement given by the witness to the "A.I.D" Sector Tuzla, Bosnia and Herzegovina (" "A.I.D" Sector Tuzla"), in February 1996. This statement given to the "A.I.D" Sector Tuzla is not tendered as part of the Rule 92 *bis* witness package of Witness RM-274. The Chamber finds that the statement provided by Witness RM-274 is not comprehensible without Witness RM-274's statement given to the "A.I.D" Sector Tuzla and finds that it is not suitable for admission into evidence pursuant to Rule 92 *bis* of the Rules. The Chamber will deny the Motion in respect of Witness RM-274's statement and the associated exhibit thereto. In light of this decision,

³³ See Response, para. 10, items 1 and 3.

³⁴ See *Prosecutor v. Aleksovski*, Case No. IT-95-14/I-AR73 Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

the Chamber does not deem it necessary to address the Defence objections regarding the admission of Witness RM-274's evidence pursuant to Rule 92 *bis* of the Rules.

iii. Admissibility Pursuant to Rule 92 *bis* of the Rules

21. With respect to Witness RM-257, the Defence contends that page three of the statement contains a direct reference to the acts and conduct of the Accused, and argues that this reference should therefore be redacted.³⁵ The Chamber notes that the reference in question does not relate to the acts and conduct of the Accused, but merely elaborates on the statements of the commanders making a reference to the Accused, without any confirmation what the Accused actually did. Therefore, the Chamber does not find it necessary to order a redaction of the sentence. With regard to admissibility pursuant to Rule 92 *bis* of the Rules of the evidence of the remaining witnesses, the Defence has not argued, and the Chamber does not find that the evidence relates to the acts and conduct of the Accused.

22. The Chamber finds that the evidence of the proffered witnesses relates to the crime base part of the case, including Scheduled Incidents E.3, E.4, E.6, and E.7.³⁶ Moreover, other witnesses are expected to give evidence with regard to Scheduled Incidents E.3, E.4, E.6, and E.7 of the Indictment.

23. Witness RM-204, a survivor of the mass-execution at a dam near Petkovci, provides evidence on this incident, as included in Scheduled Incident E.7. Witness RM-204's evidence is cumulative to and corroborated by Witnesses RM-253 and RM-304. Witness RM-253, who has provided evidence pursuant to Rule 92 *ter* of the Rules, is also a survivor of the said mass-execution at a dam near Petkovci.³⁷ Witness RM-304, a member of the Zvornik Brigade who is anticipated to provide evidence pursuant to Rule 92 *bis* of the Rules, witnessed Bosnian Serb soldiers guard the dam and heard shootings taking place.³⁸

24. Concerning the alleged massacre at Sandići meadow as referred to in Scheduled Incident E.4 on which Witnesses RM-257 and RM-258 provide evidence, Witness RM-333 provided evidence pursuant to Rule 92 *ter* of the Rules, Witness RM-272 is expected to testify pursuant to Rule 92 *ter* of the Rules, and Witness RM-332 is expected to provide evidence pursuant to Rule 92 *bis* of the Rules.³⁹ Witnesses RM-272 and RM-333 were members of the Republika Sprksa

³⁵ Response, para. 13.

³⁶ Indictment, Scheduled Incidents E.3, E.4, E.6, and E.7.

³⁷ T. 12480-12561.

³⁸ Prosecution Sixteenth Motion to Admit Evidence Pursuant to Rule 92 *bis*: VRS Personnel, 14 February 2013.

³⁹ Prosecution Witness List, pp. 406-407; T. 6730 – 6807; Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica (Various), 3 April 2013.

Ministry of Interior Special Police and were allegedly involved in shooting prisoners at Sandići meadow.⁴⁰ Witness RM-332, a Serbian journalist present in Srebrenica around 13 July 1995, is scheduled to testify about the situation in Srebrenica around that time, and the alleged deportation of thousands of Bosnian Muslim women, children and elderly men by Bosnian Serb forces.⁴¹ Since there are several witnesses who have provided or are expected to provide evidence on the same or similar incidents as Witness RM-257, the Chamber finds the Defence objection that the witness should be cross-examined on his “significant” testimony without merit.

25. The evidence proffered by Rule 92 *bis* Witness RM-362, a survivor of the alleged execution in Orahovac as referred to in Scheduled Incident E.6.1 and E.6.2, is cumulative to and corroborated by Witnesses RM-297, RM-313, and RM-269 who have testified pursuant to Rule 92 *ter* of the Rules, as well as by Witnesses Orić, RM-339, RM-340, RM-324, RM-247, RM-212, RM-261, and RM-213 who have provided or are expected to provide evidence pursuant to Rule 92 *bis* of the Rules.⁴² Witnesses RM-297, RM-313, RM-324, and RM-362 are also survivors of the alleged massacre in Orahovac as set out in Scheduled Incident E.6.1 and E.6.2.⁴³ Witnesses RM-340, RM-269, RM-339, RM-247, RM-212, RM-261, and RM-213 are former members of the VRS and provide further cumulative and corroborating evidence on the alleged massacre in Orahovac.⁴⁴

26. Witnesses RM-301 and RM-358 are both survivors of an unscheduled killing incident in Nezuk in July of 1995. In respect to the unscheduled incident, the Chamber notes that there is a similar pattern with the scheduled incidents referred to above. Therefore, the proffered evidence of Witnesses RM-301 and RM-358 is cumulative in nature to the evidence of several witnesses who are anticipated to provide evidence on the scheduled killing incidents of Bosnian Muslim men and boys in and around Srebrenica.

27. Finally, the Defence point out that Witness RM-204 was not cross-examined during his testimony in *Prosecutor v. Blagojević & Jokić*, and Witness RM-258 has not previously testified before the Tribunal.⁴⁵ It requests that the Chamber take this into consideration when assessing the need for the Defence to cross-examine these witnesses.⁴⁶ The Chamber considers, however, that

⁴⁰ Prosecution Witness List, pp. 406-409.

⁴¹ Prosecution Witness List, pp. 362-363.

⁴² T. 10934-10994; 12250-12273; 12699-12742; Decision on Prosecution Motion to Admit Evidence Pursuant to Rule 92 *bis*: Mevludin Orić, 8 July 2013; Prosecution Tenth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica, 20 December 2012; Prosecution Eleventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 24 December 2012; Prosecution Twelfth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 28 January 2013; Prosecution Sixteenth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 14 February 2013.

⁴³ Prosecution Witness List, pp. 411-414.

⁴⁴ Prosecution Witness List, pp. 419-420, 423-428.

⁴⁵ Response, para. 8.

⁴⁶ Response, para. 8.

these witnesses neither address live and important issues nor do their statements raise any concerns of unreliability. Therefore, the Chamber does not consider the lack of cross-examination or the absence of a prior testimony before this Tribunal to be a factor against admission pursuant to Rule 92 *bis* of the Rules. The Chamber finds, moreover, that there are no other factors against admitting the proffered witness statements pursuant to this Rule.

28. For the above reasons, the witness statements of Witnesses RM-204, RM-257, RM-258, RM-301, RM-358, and RM-362 are conditionally admissible under Rule 92 *bis* of the Rules, pending the filing of all missing Attestations and Declarations.

iv. Associated Exhibits

29. The Chamber notes that the Prosecution seeks to have one sketch and ten photographs admitted as part of the statement of Witness RM-258.⁴⁷ However, the Chamber finds that the sketch and photographs qualify as associated exhibits and shall therefore discuss their admission in this section.

30. The Prosecution seeks to tender associated exhibits for Witnesses RM-204, RM-257, RM-258, and RM-362. These associated exhibits consist of photographs, sketches, a video still, a video compilation, and a medical record, addressed by the respective witnesses in either their statement or the excerpts of their transcripts of previous testimony. The Chamber is of the view that the associated exhibits of the Rule 92 *bis* witness packages of Witness RM-204, RM-257, RM-258, and RM-362 are an inseparable and indispensable part of the respective witnesses' testimony.

31. Recalling the Prosecution's informal communication concerning its request for the Chamber to consider a specific time range within proffered associated video exhibit bearing Rule 65 *ter* no. 22278, the Chamber instructs the Prosecution to replace the current exhibit with a version containing this time range, namely, from 02:37:42-02:52:04.

32. In light of the foregoing, the Chamber finds that the requirements for admission have been met with respect to the associated exhibits of Witnesses RM-204, RM-257, RM-258, and RM-362 and will admit them into evidence. The Chamber will conditionally admit the exhibits associated with unattested witness statements, pending the fulfilment of all Rule 92 *bis* (B) requirements.

⁴⁷ Motion, para. 26.

v. Compliance with Guidance

33. The Chamber notes that the Prosecution wishes to tender limited portions of the transcripts from previous cases, which supplement the evidence in the witness statements, as part of the Rule 92 *bis* packages of Witnesses RM-204, RM-257, RM-358, and RM-362. The Chamber finds that the tendering of this transcript evidence complies with the Chamber's Guidance.⁴⁸

V. DISPOSITION

34. For the foregoing reasons, pursuant to Rules 73, 89, and 92 *bis* of the Rules, the Chamber

GRANTS the Prosecution request to exceed the word limit in its Motion;

GRANTS the Motion **IN PART**;

With respect to

(i) Witness RM-204

GRANTS LEAVE to add the photographs bearing Rule 65 *ter* nos 05151, 05152, and 05150 to the Prosecution's Rule 65 *ter* exhibit list;

CONDITIONALLY ADMITS into evidence, **UNDER SEAL** the Statement of Witness RM-204 dated 13 August 1995, bearing ERNs R103-9393-R103-9403 and the Supplementary Statement of Witness RM-204 dated 19 August 1996, bearing ERNs 0042-3153-0042-3155 pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

CONDITIONALLY ADMITS into evidence

- a) the photograph depicting the concrete ditch in which the witness hid attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 04998;
- b) the photograph depicting the concrete ditch in which the witness hid attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 04999;

⁴⁸ T. 106-110, 137-138, 194, 315-325, 525-532.

- c) the photograph depicting the concrete ditch in which the witness hid attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 05000;
- d) the photograph depicting the area of a dam near Petkovci attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 09436;
- e) the photograph depicting the area of a dam near Petkovci attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 09437;
- f) the photograph depicting the forest where the witness hid attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 09438;
- g) the photograph depicting the forest where the witness hid attached to the 19 August 1996 statement of Witness RM-204, Rule 65 *ter* no. 09439;

ADMITS into evidence the testimony of Witness RM-204 dated 21 and 22 July 2003 in *Prosecutor v. Blagojević & Jokić*, Case no. IT-02-60-T, T.1380:2-4, 1404:18-1405:6, and 1424:17-1425:4;

ADMITS into evidence, **UNDER SEAL**

- a) the photograph depicting injuries to Witness RM-204's chest, Rule 65 *ter* no. 05151;
- b) the photograph depicting injuries to Witness RM-204's chest, Rule 65 *ter* no. 05152; and
- c) the photograph depicting injuries to Witness RM-204's foot, Rule 65 *ter* no. 05150;

(ii) Witness RM-257

INSTRUCTS the Prosecution to redact paragraph 10 and 13 of the Statement of Witness RM-257 dated 8 March 1999, bearing ERN 0070-7330 in accordance with paragraph ten above;

INSTRUCTS the Prosecution to file a merged video compilation of Srebrenica 1995 by Marta Fracasetti, Rule 65 *ter* no. 22278, containing the time range 02:37:42-02:52:04;

CONDITIONALLY ADMITS into evidence, **UNDER SEAL**

- a) the redacted version of the Statement of Witness RM-257 dated 8 March 1999, bearing ERNs 0070-7328-0070-7333 pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules; and

- b) a sketch of the Sandići meadow attached to the 8 March 1999 Statement of Witness RM-257, Rule 65 *ter* no. 25613;

CONDITIONALLY ADMITS into evidence the merged video compilation of Srebrenica 1995 by Marta Fracasetti, relevant minutes: 02:37:42-02:52:04, Rule 65 *ter* no. 22278;

ADMITS into evidence, **UNDER SEAL** the testimony of Witness RM-257 dated 2 November 2006 in *Prosecutor v. Popović et al.*, Case no. IT-05-88-T, T. 3498:20-3499:3, 3502:12-3504:25, 3505:17-3508:5, 3509:8, 3509:24, 3510:19-3511:10, 3512:6-3512:14, 3520:22-3522:23, 3527:6-3528-21, 3528:23-3530:15, 3533:16-3534:16, and 3538:3-3547:12;

ADMITS into evidence

- a) a still from aerial video of Sandići meadow marked by Witness RM-257 in *Prosecutor v. Popović et al.*, Case no. IT-05-88-T, Rule 65 *ter* no. 13185;
- b) the photograph of belongings scattered around the “White House” in Potočari marked by Witness RM-257 in *Prosecutor v. Popović et al.*, Case no. IT-05-88-T, Rule 65 *ter* no. 13187; and

(iii) Witness RM-258

ADMITS into evidence, **UNDER SEAL**

- a) the statement of Witness RM-258 dated 9 June 1999, bearing ERNs 0613-9631-0613-9638;
- b) the corresponding Declaration and Certification, bearing ERNs 0613-9629-0613-9630;
- c) a sketch of the area around Sandići meadow, bearing ERN 0613-9639;
- d) photograph 1, printed of video ERN V000-0550, bearing ERN 0613-9640;
- e) photograph 2, printed of video ERN V000-0550, bearing ERN 0613-9641;
- f) photograph 3, printed of video ERN V000-0550, bearing ERN 0613-9642;
- g) photograph 4, printed of video ERN V000-0550, bearing ERN 0613-9643;
- h) photograph 5, printed of video ERN V000-0550, bearing ERN 0613-9644;

- i) photograph 6, printed of video ERN V000-0550, bearing ERN 0613-9645;
- j) photograph 7, printed of video ERN V000-0550, bearing ERN 0613-9646;
- k) photograph 8, printed of video ERN V000-0550, bearing ERN 0613-9647;
- l) photograph 9, printed of video ERN V000-0550, bearing ERN 0613-9648; and
- m) photograph 10, printed of video ERN V000-0550, bearing ERN 0613-9649;

(iv) Witness RM-274

DENIES the admission of the proffered evidence of Witness RM-274 under Rule 92 *bis* of the Rules;

(v) Witness RM-301

CONDITIONALLY ADMITS into evidence, **UNDER SEAL** the Statement of Witness RM-301 dated 26 August 1995, bearing ERNs 0033-7840-0033-7846 pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

(vi) Witness RM-358

CONDITIONALLY ADMITS into evidence, **UNDER SEAL** the Statement of Witness RM-358 dated 28 May 2000, bearing ERNs 0095-3447-0095-3454 pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

ADMITS into evidence the testimony of Witness RM-358 dated 6 and 7 November 2006 in *Prosecutor v. Popović et al.*, Case no. IT-05-88-T, T.3657:25-3658:6, 3673:21-3674:8, 3719:1-3720:13;

(vii) Witness RM-362

GRANTS LEAVE to add the photographs bearing ERNs R103-9523/R103-9524, R103-9527/R103-9528, 0678-4293, 0040-9648, 0678-4294, 0678-4295, 0678-4296 to the Prosecution's Rule 65 *ter* exhibit list;

CONDITIONALLY ADMITS into evidence, **UNDER SEAL**

- a) the Statement of Witness RM-362 dated 12 August 1995, bearing ERNs R103-9513-R103-9522 pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;
- b) a sketch showing the layout of features in Potočari, bearing ERNs R103-9523(Eng)/R103-9524(BCS);
- c) a sketch of the hangar in Bratunac where Witness RM-362 was detained, Rule 65 *ter* no. 05725; and
- d) a sketch of the area around the Orahovac school gymnasium, bearing ERNs R103-9527 (Eng)/R103-9528 (BCS);

ADMITS into evidence

- a) the testimony of Witness RM-362 dated 1 November 2007 in *Prosecutor v. Popović et al.*, Case no. IT-05-88-T, T. 17300:7-11, 17318:4-17320:19, 17333-12-17334:3, 17334:17-17335:18;
- b) the testimony of Witness RM-362 dated 22 March 2010 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, T. 734:22-735:8, 742:19-751:7;
- c) the interior photograph of the gymnasium of the Orahovac school marked by Witness RM-362 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, Rule 65 *ter* no. 28576;
- d) the interior photograph of the gymnasium of the Orahovac school commented on by Witness RM-362 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, Rule 65 *ter* no. 04956;
- e) the exterior photograph of the gymnasium of the Orahovac school marked by Witness RM-362 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, Rule 65 *ter* no. 28577;

- f) the exterior photograph of the gymnasium of the Orahovac school marked by Witness RM-362 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, Rule 65 *ter* no. 28578; and
- g) the exterior photograph of the gymnasium of the Orahovac school marked by Witness RM-362 in *Prosecutor v. Tolimir*, Case no. IT-05-88/2-T, Rule 65 *ter* no. 28579;

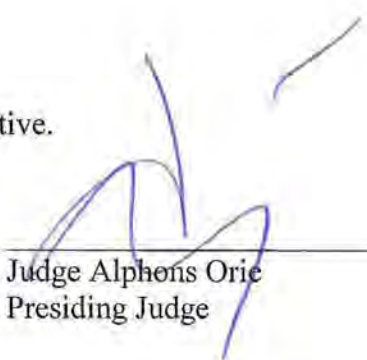
INSTRUCTS the Registry to change the status of the evidence identified in paragraph *iii* (a-m) above into public, unless the Prosecution files a request for protective measures for Witness RM-258 within 14 days;

INSTRUCTS the Prosecution to file the corresponding Attestations and Declarations to the statements of Witnesses RM-204, RM-257, RM-301, RM-358, and RM-362 within four weeks of the filing of this decision;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within two weeks 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 Eighteenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]