

IT-09-92-T
D67321-D67318
27 August 2013

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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: 27 August 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: 27 August 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S NINETEENTH MOTION TO
ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS*: MEJRA
MEŠANOVIĆ**

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 5 October 2012, the Prosecution filed a motion (“Seventh 92 *bis* Motion”), seeking to admit into evidence, *inter alia*, a set of materials relating to Mejra Mešanović (“Witness”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 18 October 2012, the Defence filed its response.² On 6 February 2013, the Chamber denied admission of the Witness’s materials without prejudice.³ The Chamber did not consider the evidence suitable for admission, as it was unable to conclude on the basis of the evidence tendered whether the Witness would have been able to recognize her husband in a video still tendered as an associated exhibit.⁴

2. On 1 March 2013, the Prosecution filed a new motion (“Motion”) seeking to admit into evidence two statements of the Witness and one associated exhibit pursuant to Rule 92 *bis* of the Rules.⁵ The Defence did not file a response to the Motion.

II. SUBMISSIONS OF THE PARTIES

3. In its Motion, the Prosecution resubmits for admission into evidence a statement before the Prosecution (“OTP Witness Statement”), a statement before the Cantonal Court of Tuzla (“Tuzla Statement”), both dated 19 June 2000, and one associated exhibit (comprising a video still).⁶ The Prosecution submits that it has redacted the Witness’s identification of her husband in the aforementioned video still from the OTP Witness Statement.⁷ The Prosecution submits that the Witness’s evidence, as presented, does not address the acts or conduct of the Accused.⁸ The Prosecution further submits that the evidence pertains to the crime-base and is relevant to the allegations of forcible removal, detention, murder, and terrorisation of Bosnian Muslims in Potočari.⁹ The Prosecution finally submits that the evidence is reliable and is cumulative to and corroborated by adjudicated facts and the evidence of other witnesses already admitted by the Chamber pursuant to Rule 92 *bis* of the Rules.¹⁰

¹ Prosecution’s Seventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 5 October 2012, paras 1, 22-23, 42.

² Defence Response to Prosecution Seventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 18 October 2012.

³ Decision on Prosecution’s Seventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 6 February 2013 (“Decision of 6 February 2013”), paras 16, 28.

⁴ Decision of 6 February 2013, para. 16.

⁵ Prosecution’s Nineteenth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Mejra Mešanović, 1 March 2013.

⁶ Motion, paras 1, 4, 11, Annex A.

⁷ Motion, para. 1.

⁸ Motion, para. 7.

⁹ Motion, paras 5-6.

¹⁰ Motion, paras 8-9.

III. APPLICABLE LAW

4. 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.¹¹

5. With regard to the applicable law concerning the admission of associated exhibits, the Chamber recalls and refers to a previous decision dealing with this matter.¹²

IV. DISCUSSION

(a) Attestations and Declarations

6. The OTP Witness Statement and the Tuzla Statement fulfil the requirements of Rule 92 *bis* (B) of the Rules.¹³

(b) Relevance and probative value pursuant to Rule 89 (C) of the Rules

7. The Chamber further recalls that the Witness's evidence relates to crimes charged in counts 2, 3, 7 and 8 of the Indictment and deals with the impact of crimes on victims.¹⁴

8. The Prosecution no longer seeks admission of the portion of the OTP Witness Statement in which the Witness identified her husband in a video still. The Chamber had previously considered this portion to be unsuitable for admission.¹⁵ The Chamber considers that there are no indications that the remaining evidence is unreliable. The Chamber finds the Witness's statements, as presently tendered, relevant and of probative value in accordance with Rule 89 (C) of the Rules.

(c) Admissibility pursuant to Rule 92 *bis* of the Rules

9. The Chamber considers that the Witness's evidence does not relate to the acts and conduct of the Accused. Instead, her evidence relates to the crime-base part of the case. The Witness's evidence is cumulative to, *inter alia*, the evidence of Christine Schmitz, Joseph Kingori, Saliha Osmanović, and Mirsada Malagić, who testified pursuant to Rule 92 *ter* of the Rules.¹⁶ Based on

¹¹ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.

¹² Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13.

¹³ Decision of 6 February 2013, para. 11.

¹⁴ Decision of 6 February 2013, paras 12-13.

¹⁵ Decision of 6 February 2013, para. 16.

¹⁶ Christine Schmitz, T. 923-1013; Joseph Kingori, T. 1018-1160; Saliha Osmanović, T. 11170-11203; Mirsada Malagić, T. 11204-11247.

the foregoing and in the absence of Defence objections, the Chamber finds the proffered evidence admissible under Rule 92 *bis* of the Rules.

(d) Associated exhibit

10. The Chamber considers that the Witness recognized her brother-in-law in the video still which the Prosecution has tendered as an associated exhibit.¹⁷ The Chamber is of the view that this video still is an inseparable and indispensable part of her statement and will admit it into evidence.

V. DISPOSITION

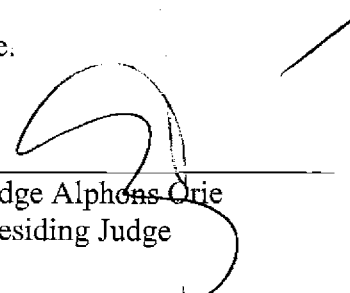
11. For the foregoing reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and **ADMITS** into evidence:

- a) the Witness's redacted statement of 19 June 2000, bearing ERNs 0100-3610-0100-3615;
- b) the Witness's statement before the Tuzla Cantonal Court of 19 June 2000, bearing ERNs 0096-8655-0096-8656; and
- c) the video still bearing ERN 0069-6318-0069-6318;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within two weeks of the date of issue of this decision; and

INSTRUCTS the Registry to assign exhibit numbers to the documents above 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-seventh day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ Motion, Annex B, OTP Witness Statement, p. 4.