

IT-09-92-T
D 71551 - D 71561
23 September 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: 23 September 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: 23 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S 18th MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92bis**

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 22 February 2013, the Prosecution filed a motion (“Motion”) seeking the admission of the evidence of four witnesses pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”).¹ On 4 March 2013, the Defence filed a motion seeking to extend the time to respond to the Motion by a period of 120 days.² By informal communication to the parties dated 13 March 2013, the Chamber extended the deadline for filing the Defence response until 13 May 2013. On 13 May 2013, the Defence filed its response, opposing the Motion (“Response”).³

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution submits that the evidence being tendered is reliable and cumulative to other evidence in the proceedings.⁴ It contends that three of the witnesses have attested to their witness statement(s), provided with the Motion.⁵ In relation to the fourth, Witness RM-073, the Prosecution proposes that the Chamber provisionally admit the witness statement subject to obtaining an attestation.⁶ The Prosecution submits that the evidence being tendered does not relate to the acts and conduct of the Accused, but rather is relevant to crime-base incidents, in particular scheduled incidents B2.1, B16.1, C2.1, C8.1 and C19.3.⁷ According to the Prosecution, the associated exhibits are integral to the tendered evidence.⁸ Further, the Prosecution argues that the transcript evidence, upon which it proposes to rely for one of the witnesses, comports with the Chamber’s guidance and ought to be admitted.⁹

3. The Defence contends that the Motion ought to be denied in respect of sections of the proposed witness statement of Mirsad Kuralić, the statement of 11-13 October 1994 of Witness RM-029, and the six-page statement of Safet Gagula which appears first in the witness package, dated 12 June 2001,¹⁰ as they contain “extreme hearsay” which demonstrates that these sections are unreliable.¹¹ Further, it submits that some of the statements are based on opinion evidence which

¹ Prosecution’s 18th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 22 February 2013.

² Defence Motion to Enlarge Time to Respond to Prosecution 18th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 4 March 2013.

³ Defence Response to Prosecution 18th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 13 May 2013.

⁴ Motion, paras 2, 7, 13, 15, 17, 19.

⁵ Motion, paras 8, 14.

⁶ Motion, para. 8.

⁷ Motion, paras 9, 12, 14, 16, 18.

⁸ Motion, para. 10.

⁹ Motion, para. 11.

¹⁰ The Defence has not made any objections in relation to the three-page statement of Safet Gagula given to the CBS Sarajevo on 20 August 1993 and signed on 12 June 2001.

¹¹ Response, paras 9-11; see also p. 7, paras 2-3 of statement of Mirsad Kuralić; p. 4, para. 6 of witness statement of Safet Gagula, 12 June 2001; p. 3, para. 3 and p. 4, para. 2 of statement of RM-029.

the statement providers are not qualified to give.¹² The Defence suggests that this “unqualified expert testimony” should undergo the procedure outlined in Rule 94 *bis* of the Rules and is not appropriate material to be tendered pursuant to Rule 92 *bis* of the Rules.¹³ The Defence objects to the admission of the entirety of the evidence of Witness RM-029 and to certain sections of the witness statement of Safet Gagula dated 12 June 2001 on this basis.¹⁴

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.¹⁵

5. With regard to the applicable law related to the admission of associated exhibits, the Chamber also recalls and refers to one of its previous decisions dealing with this matter.¹⁶

IV. DISCUSSION

a. Preliminary matters

6. The Chamber notes that the statements of Safet Gagula, and Witness RM-029 have the necessary attestations and declarations. The Prosecution requests that the statement of Witness RM-073 be admitted “provisionally” subject to the attestation being provided. Unattested witness statements have been conditionally admitted by the Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.¹⁷ In line with this practice, the Chamber will consider conditional admission of this unattested witness statement, pending the submission of the required attestation and declaration.

7. The Chamber further notes in relation to Mirsad Kuralić that the Prosecution seeks to rely on an attestation he gave in his testimony in the *Prosecutor v. Krajišnik* case.¹⁸ In line with its previous practice, and absent any contestation by the Defence of the attestation in the *Prosecutor v.*

¹² Response, paras 12-13.

¹³ *Ibid.*

¹⁴ Response, para. 14; see also p. 2, para. 4 and p. 4, paras 1-2, 6 witness statement of Safet Gagula, 12 June 2001.

¹⁵ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses (“Decision on Third 92 *bis* Motion”), 19 October 2012, paras 5-7.

¹⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quarter*, 22 July 2012, para. 13.

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

¹⁸ Motion, para. 14; *Prosecutor v. Krajišnik* case at T. 12554:22-12556:25.

Krajišnik case, the Chamber considers that this meets the attestation requirement of Rule 92 *bis* (B) of the Rules.¹⁹

b. Relevance and probative value

8. With respect to the Defence objection that sections of the statements of Mirsad Kuralić, Safet Gagula, and Witness RM-029 are partially based on “extreme hearsay”, 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.²⁰ Moreover, the Chamber considers that the sections meet the standard of reliability. The Chamber reiterates that it will carefully review the claims of fact witnesses and their sources of knowledge.

9. Having reviewed the statements of each of the witnesses, the Chamber considers that they are relevant and probative in relation to the crimes charged in the Indictment, and in particular to scheduled incidents B2.1, B16.1, C2.1, C8.1, and C19.3.²¹

c. Admissibility pursuant to Rule 92 *bis* of the Rules

10. The Chamber notes that in relation to Witness RM-029, the Defence has made a general objection to the entirety of the proposed evidence without providing specific examples of the alleged opinion testimony to which it objects. In relation to the Defence’s objections to the evidence of Witness RM-029 and Safet Gagula, the Chamber refers to and incorporates its previous reasoning concerning proposed fact witnesses providing conclusions or opinions.²² The Chamber finds that there is no need to redact information from the statements on this ground under Rule 92 *bis* (A) of the Rules.

11. The proposed evidence of Mirsad Kuralić, Witness RM-029, Witness RM-073, and Safet Gagula relates, *inter alia*, to the conditions at Sušica and Batković camps. The proposed evidence of Witness RM-029 also relates to alleged killings at Batković camps. The evidence provided by the proposed witnesses therefore relates to the crime base part of the case, and does not address the acts and conduct of the Accused. The evidence of each of the proposed witnesses, moreover, is

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

²⁰ 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.

²¹ Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, Schedules B and C.

²² Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland’s Statement and Associated Documents, 3 July 2012, para. 8.

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cumulative to the evidence that other witnesses have already provided.²³ In addition, the Chamber notes that the evidence of the proposed witnesses also concerns the impact the alleged crimes had upon victims.

12. The Chamber finds that these factors, which are relevant pursuant to Rule 92 *bis* A (i), weigh in favour of admission. There are no other factors under Rule 92 *bis* (A) (ii) weighing against admitting the tendered evidence in written form.

d. Associated exhibits

13. The Prosecution tenders one associated exhibit in relation to Mirsad Kuralić namely his medical records.²⁴ The medical records detail the injuries which he allegedly sustained while detained by Serb forces, including at Batković Camp. Having reviewed the witness's statement and the associated exhibit the Chamber considers that this associated exhibit is an inseparable and indispensable part of the witness's statement and will admit it into evidence.

e. Compliance with guidance

14. In relation to Mirsad Kuralić, the Prosecution tenders two pages of transcript from his testimony in the *Prosecutor v. Krajišnik* case.²⁵ This is a very limited excerpt of the transcript which clarifies and supplements the evidence of the witness, in verifying that the above referenced medical records are in fact his. As such, the Chamber considers the tendering of the additional transcript excerpts to be in line with its guidance.²⁶

²³ The evidence of each of the witnesses addressed in this Decision is cumulative to the previous testimony of Ibro Osmanović, T. 2747-2852; Elvir Pasić, T. 4465-4507; Witness RM-066, T. 2418-2557, and Witness RM-088, T. 5340-5404.

²⁴ Motion, para. 14.

²⁵ Motion, Annex A, p. 2, Annex B, pp.27-28.

²⁶ T. 106-110, 137-138, 315-325, 525-532.

V. DISPOSITION

15. For the foregoing reasons, pursuant to Rules 89 and 92 bis of the Rule, the Chamber **GRANTS** the Motion

With respect to

1) Witness Mirsad Kuralić

ADMITS into evidence

- (i) Excerpts of the witness' testimony in Case No. IT-00-39-T at T.12582:21-12583:14;
- (ii) The witness statement of 27 June 1996 bearing ERNs 0040-4685-0040-4696;
- (iii) An information sheet containing corrections to the witness' statement, dated 24 April 2005, bearing ERNs 0365-4241-0365-4241

ADMITS into evidence **UNDER SEAL**

- (iv) The witness' medical records bearing Rule 65 *ter* no. 11869, ERNs L004-5452-L004-5455 and L004-5459-L004-5461;

2) Witness Safet Gagula

ADMITS into evidence

- (v) The witness statement of 12 June 2001 bearing ERNs 0206-2408-0206-2415;
- (vi) The witness statement given to the CBS Sarajevo on 20 August 1993 and signed on 12 June 2001 bearing ERNs 0302-5165-0302-5167;
- (vii) The attestation and declaration bearing ERN 0213-2093-0213-2094;

3) Witness RM-029

ADMITS into evidence **UNDER SEAL**

- (viii) The witness statement of 11-13 October 1994, bearing ERNs 0018-4582-0018-4591;
- (ix) The witness statement of 9 July 2002, bearing ERNs 0304-8130-0304-8132;
- (x) The attestation and declaration bearing ERNs R109-1892-R109-1894;
- (xi) An information sheet of 21 August 2003 containing additional evidence regarding Batković and Sušica Camps, bearing ERNs 0335-4289-0335-4290;

4) Witness RM-073

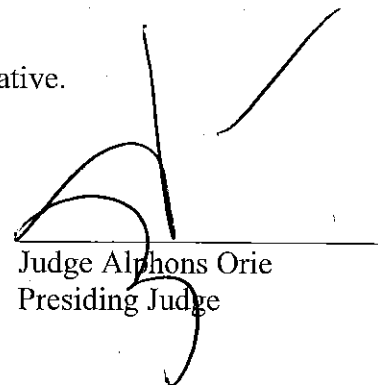
PROVISIONALLY ADMITS into evidence, **UNDER SEAL**, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules:

- (xii) The witness statement of 23 February 2010, bearing ERNs 0674-5258-0674-5260;

INSTRUCTS the Prosecution to file the corresponding attestation and declaration to Witness RM-73's statement of 23 February 2010, and Mirsad Kuralić's statement of 27 June 1996 and supplement information sheet of 24 April 2005, within four weeks of the filing 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 twenty-third day of September 2013
At The Hague
The Netherlands

[Seal of the Tribunal]