

IT-09-92-T
D 73958 - D 73969
08 November 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: 8 November 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: 8 November 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON THE PROSECUTION'S 27th 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 3 May 2013, the Prosecution filed its 27th 92 *bis* Motion (“Motion”) tendering statements, transcript excerpts, and associated exhibits for a total of ten witnesses: Jusuf Arifagić, Bekir Delić, Atif Džafić, Asim Egrić, Kerim Mešanović, Sakib Muhić, Witness RM-004, Witness RM-054, Witness RM-074, and Witness RM-709 pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution further requests leave to add a number of documents to the Prosecution’s Rule 65 *ter* exhibit list (“Exhibit List”).²

2. On 17 May 2013, the Defence filed a request for an extension of time to file its Response, which the Chamber granted on 22 May 2013 setting the new deadline to 16 July 2013.³ In court on 26 July 2013, the Defence requested an additional seven days from that day to file its response, which the Chamber granted.⁴ The Defence filed its Response on 2 August 2013 (“Response”), objecting to the Motion as regards six witnesses: Arifagić, Delić, Džafić, Muhić, Witness RM-004, and Witness RM-709.⁵

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, and the Rule 65 *ter* exhibit list as set out in previous decisions.⁶ 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.⁷

III. DISCUSSION

a. Preliminary Matters

4. In light of the number of witnesses and amount of material addressed in the Motion, the Chamber grants the Prosecution’s request to exceed the word limit. The Chamber further notes that

¹ Prosecution 27th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 3 May 2013 (Confidential).

² Motion, paras 17-19 and Annex A to the Motion.

³ Defence Motion to Enlarge Time to Respond to Prosecution 27th Motion to Admit Evidence Pursuant to Rule 92 *BIS*, 17 May 2013 (Confidential); T. 11334.

⁴ T. 15283.

⁵ Defence Response to Prosecution 27th Motion to Admit Evidence Pursuant to Rule 92 *BIS*, 2 August 2013 (Confidential). For the parties submissions, see the Motion and the Response.

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

the protective measures granted in the previous cases in which certain of the witnesses testified continue to apply in this case pursuant to Rule 75 (F) (i).

5. The statements of witness Džafić and of Witness RM-004 dated 30 August 2011 do not have any corresponding attestation or declaration as required by Rule 92 *bis* (B) of the Rules. The witnesses did, however, attest to the truth and accuracy of their statements in the transcripts from prior testimonies that form part of the tendered evidence. In accordance with a previous decision, the Chamber finds that such an in-court attestation is sufficient to meet the requirement of Rule 92 *bis* (B) of the Rules.⁸ The witness statements of witnesses Arifagić, Delić, Egrić, Mešanović, and Witness RM-709, the witness statements of Witness RM-004 and Witness RM-074 dated 3 April 2013 and 15 December 2002 respectively and an undated proofing note tendered in relation to witness Muhić, do not have the necessary attestations and declarations. Un-attested witness statements have been conditionally admitted by the Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.⁹ In line with this practice, the Chamber will consider conditional admission of these unattested witness statements, pending the submission of the required attestation and declaration.

6. The Chamber has reviewed the tendered evidence in light of its guidance.¹⁰ In relation to a number of witnesses, the Prosecution tenders, in addition to a witness statement, transcript pages of testimony in previous proceedings, and supplementary statements. In light of the limited number of pages concerned the Chamber will consider their admission pursuant to Rule 92 *bis* of the Rules.¹¹ With regard to Witness RM-054, the Prosecution tenders almost 100 pages of transcript in place of a witness statement, on the basis that it does not wish to re-traumatize the witness by taking an additional statement.¹² The tendered pages of transcript represent selective portions of the overall testimony, and the Prosecution provides a compelling reason for not wishing to take a further statement from the witness. The Chamber is satisfied that the Prosecution has complied with the guidance and will therefore consider the admission of the transcript pursuant to Rule 92 *bis* of the Rules.

⁷ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

⁸ Decision on Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Hostage Witnesses, 19 October 2012, para. 7.

⁹ Decision on Third 92 *bis* Motion, para. 27, fn. 44.

¹⁰ T. 106-110, 137-138, 194, 315-325, 525-532.

¹¹ This concerns witnesses Arifagić, Delić, Džafić, Egrić, Muhić, Witness RM004, and Witness RM-709.

¹² Motion, paras 15, 39.

7. In relation to witness Mešanović, the Prosecution requests an exception to the guidance in tendering 13 associated exhibits.¹³ The proposed exhibits, with one exception, are but one page long and thus amount to a total of 23 pages. Given that the overall number of pages is relatively low, an exception to the guidance is warranted on this occasion.

b. Additions to the Exhibit List

8. The Prosecution seeks the addition of two associated exhibits relating to Witness RM-709 to the Exhibit List, which it contends are relevant to and probative of “live issues in the case of which the Defence has had ample notice”.¹⁴ The Chamber considers that the two associated exhibits in relation to Witness RM-709 are *prima facie* relevant to and probative of issues raised in the Indictment. While the Prosecution has not shown good cause for the late addition of the documents to the Exhibit List, they amount to a total of two pages, only one of which amounts to substantive evidence. As such, it is in the interests of justice to add them to the Exhibit List. The Prosecution also seeks the addition of tables of concordance for six proposed witnesses to the Exhibit List.¹⁵ As these documents’ purpose is merely to assist the Chamber, and they do not contain any substantive evidence, the Chamber will also grant leave to add them to the Exhibit List.

c. Relevance and Probative Value

9. With respect to the Defence objection that sections of the statements of witnesses Arifagić, Džafić, Witness RM-004, and Witness RM-709 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.¹⁶ Moreover, the Chamber considers that the sections meet the standard of reliability. The Chamber reiterates that it will carefully review the claims of witnesses and their sources of knowledge.

10. In relation to the Defence’s objections to the evidence of witness Delić, the Chamber refers to and incorporates its previous reasoning concerning proposed fact witnesses providing

¹³ Motion, paras 13, 47.

¹⁴ Motion, paras 17-18

¹⁵ This concerns witnesses Delić, Džafić, Egrić, Muhić, Witness RM-054, and Witness RM-709. While the Motion at paragraph 16 refers to five tables of concordance, the Chamber notes there are six in total mentioned in paragraph 70 and in Annex A to the Motion.

¹⁶ Response, paras 10-12; *See Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15; While the Defence objects to para. 1 of the first statement of Witness RM-004 on grounds of hearsay, the Chamber notes that para. 1 relates to the witness’s personal background and therefore fails to follow the Defence’s objection.

conclusions or opinions.¹⁷ 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. Having reviewed the statements and transcript excerpts of each of the witnesses, the Chamber finds them relevant and probative in relation to the crimes charged in the Indictment, and in particular to scheduled incidents A6.1, A6.5, A6.6, A9.1, B 8.1, B1.1, B 1.2, B1.4, B13.1, B13.4, B16.1, C 1.2, C15.2, C15.4, and C19.3.

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

12. The Chamber notes that the Defence does not oppose the admission of the evidence relating to witnesses Asim Egrić, Kerim Mešanović, Witness RM-054, and Witness RM-074.¹⁸

13. With regard to the admissibility of the Witnesses' evidence pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find that the tendered evidence relates to the acts and conduct of the Accused. Moreover, the proposed evidence is cumulative to evidence that other witnesses have already provided.¹⁹ In addition, the Chamber notes that the evidence of the proposed witnesses also concerns the impact the alleged crimes had upon victims.

14. 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.

15. For the foregoing reasons the Chamber finds that the tendered witness statements and excerpts of testimony are admissible pursuant to Rule 92 *bis* of the Rules.

e. Associated Exhibits

16. Having reviewed the witnesses' statements, transcripts and associated exhibits, the Chamber considers that these associated exhibits are an inseparable and indispensable part of the respective witnesses' statements and transcripts and will admit them into evidence.

¹⁷ Response, paras 13-16; see Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

¹⁸ Response, para. 4.

¹⁹ Witness Arifagić's proposed evidence is cumulative to the oral evidence of, *inter alia*, witnesses Idriz Merdžanić, Mevludin Sejmenović, and Osman Selak; Witness RM-004's evidence is cumulative to, *inter alia*, the oral evidence of witnesses Ibro Osmanović, Elvir Pasić, Witness RM-066, and Witness RM-088; witnesses Džafić's proposed evidence is cumulative to the oral evidence of, *inter alia*, witnesses Adil Medić, Osman Selak, Witness RM-010, Witness RM-018, and Witness RM-051; Witness Muhić's proposed evidence is cumulative to, *inter alia*, the oral evidence of witnesses Adil Medić, Grgo Stojić, Witness RM-015, Witness RM-018, and Witness RM-051; Witness Delić's proposed evidence is cumulative to, *inter alia*, the oral evidence of witness Grgo Stojić, Witness RM-015, Witness RM-018, and Witness RM-051; RM-709's proposed evidence is cumulative to, *inter alia*, the oral evidence of witnesses Idriz Merdžanić, Mevludin Sejmenović, RM-018, and RM-051.

IV. DISPOSITION

17. For the foregoing reasons, pursuant to Rules 54, 89 and 92 *bis* of the Rules the Chamber

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

GRANTS the Prosecution requested leave to add the documents bearing Rule 65 *ter* numbers 28855, 28856, 28864, 28865, 28866, 28867, 28868, and 28869 to the Exhibit List;

GRANTS the Motion

With Respect to

(i) *Jusuf Arifagić*

ADMITS into evidence

(a) Excerpts of the witness's testimony from *Prosecutor v. Stakić*, Case No. IT-97-24-T, T. 7064, line 20 to T. 7065, line 8;

(b) Excerpts of the witness' testimony from *Prosecutor v. Tadić*, Case No. IT-94-1-T, T.4930, line 25 to T. 4931 line 7 and T. 4936 line 20 to T. 4937, line 1;

CONDITIONALLY ADMITS into evidence

(c) ICTY witness statement dated 22 October 1994 bearing ERNs 0017-4414-0017-4438 and 0201-5259-0201-5259;

(ii) *Bekir Delić*

ADMITS into evidence

(a) Excerpts of testimony in *Prosecutor v. Brđanin*, Case No. IT-99-36, T. 7977, line 7 to T. 7978, line 17;

(b) The documents bearing Rule 65 *ter* numbers 02721, and 28864;

CONDITIONALLY ADMITS into evidence

- (a) ICTY witness statement dated 12-13 September 2001, bearing ERNs 0210-9302-0210-9312;
- (b) The document bearing Rule 65 *ter* number 06595;

(iii) *Atif Džafić*

ADMITS into evidence

- (a) Excerpts of the witness' testimony in *Prosecutor v. Karadžić*, Case No. IT-95-5/18, T. 19655 line 9 to T. 19659, line 19;
- (b) The documents bearing Rule 65 *ter* numbers 03075, 03142, 15050, 15051, 07094, and 28865;
- (c) ICTY witness statement bearing ERNs 0680-7299-0680-7354;

(iv) *Asim Egrlić*

ADMITS into evidence

- (a) Excerpts of the witness' testimony from *Prosecutor v. Brđanin*, Case No. IT-99-36-T, T. 10562, line 4 to T. 10569, line 11; T. 10605, line 21 to T. 10611, line 12; T10615, line 1 to T. 10616, line 22; T. 10618, line 7 to T. 10619, line 11, and T. 10621, line 13 to T. 10622, line 12;
- (b) The documents bearing Rule 65 *ter* numbers 03072, 11294, 03089, and 28866;

CONDITIONALLY ADMITS into evidence

- (a) ICTY witness statement dated 22 May 1997 bearing ERNs 0050-7052-0050-7057;

(v) *Kerim Mešanović*

CONDITIONALLY ADMITS into evidence

- (a) ICTY witness statement dated 18 March 2013, bearing ERNs 0685-2867-0685-2884;
- (b) The documents bearing Rule 65 *ter* numbers 06901, 14015, 07125, 14025, 07132, 10893A, 07131, 14883, 14881, 07150, 10882, 10883, and 10884;

(vi) *Sakib Muhić*

ADMITS into evidence

- (a) ICTY witness statement dated 10-11 April 2000 bearing ERNs 0094-2643-0094-2653, including corresponding attestation and declaration bearing 0302-5672-0302-5678;
- (b) Excerpts of the witness' testimony in *Prosecutor v. Brđanin*, Case No. IT-99-36, T. 8102, line 22 to T. 8103, line 8; T. 8104, line ten to T. 8105, line 10; T.8131, line 22 to T. 8132, line 23; T. 8145, line 14 to T. 8148, line 2;
- (c) The documents bearing Rule 65 *ter* numbers 06606, 17447, and 28868;

CONDITIONALLY ADMITS into evidence

- (a) ICTY proofing note bearing ERNs 0354-9544-0354-9545;

(vii) *Witness RM-004*

ADMITS into evidence **UNDER SEAL**

- (a) Excerpts of the witness' testimony from *Prosecutor v. Karadžić*, Case No. IT-95-5/18, T. 18132, line 17 to 25 and T. 18133, line 11 to 18;
- (b) ICTY witness statement dated 20 August 2011 bearing ERNs 0680-5790-0680-5800;

CONDITIONALLY ADMITS into evidence **UNDER SEAL**

- (a) ICTY witness statement dated 3 April 2013 bearing ERNs 0685-3228-0685-3231;

(viii) *Witness RM-054*

ADMITS into evidence

- (a) Excerpts of witness' testimony from *Prosecutor v. Kvočka et al.*, T. 2610, line 14 to T. 2652, line 13; T. 2655, line 11 to T. 2663, line 15; T. 2727, line 22 to T.

2751, line 5; T. 2754, line 12 to T. 2756, line 5; T. 2757, line 21 to T. 2765, line 5; T. 2765, line 21 to T. 2766, line 23; T. 2769, line 8 to T. 2772, line 14;

- (b) The documents bearing Rule 65 *ter* numbers 13896, 13888, 10901, 10912, and 28867;

(ix) *Witness RM-074*

ADMITS into evidence UNDER SEAL

- (a) ICTY witness statement dated 2 December 2000 bearing 0107-0416-0107-0423, including the corresponding attestation and declaration bearing ERNs 0229-4860-0229-4863;

CONDITIONALLY ADMITS into evidence UNDER SEAL

- (a) ICTY witness statement dated 12 December 2002, bearing ERNs 0229-6867-0229-6871;

(x) *Witness RM-709*

ADMITS into evidence

- (a) The documents bearing Rule 65 *ter* numbers 28856, 03024, 16475, 16495, 02838, 28869;

ADMITS into evidence UNDER SEAL

- (a) Excerpts of the witness' testimony in *Prosecutor v. Brđanin*, Case No. IT-99-36, T. 11004, lines 7 to 21; T. 11006, lines 7 to 18; T. 11007, line 2 to T. 11008, line 23; T. 11009, line 21 to T. 11011, line 11; T. 11021, line 3 to T. 11023, line 10;
- (b) The document bearing Rule 65 *ter* number 28855;

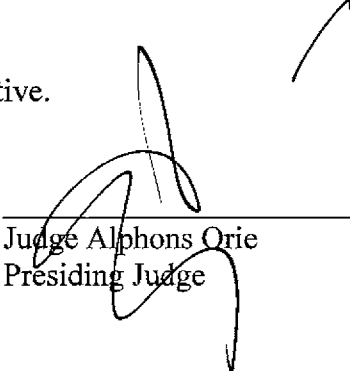
CONDITIONALLY ADMITS into evidence UNDER SEAL

- (a) ICTY witness statement dated 5-6 June 2000, bearing ERNs 0100-0652-0100-0662;

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- (b) ICTY witness statement dated 16 February 2002, bearing ERNs 0305-4978-0305-4980;
- (c) ICTY witness statement dated 26 October 2002, bearing ERNs 0113-1343-0113-1349.

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



Judge Alphons Orie
Presiding Judge

Dated this eighth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]