

IT-09-92-T
Δ74933-Δ74931
11 December 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: 11 December 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: 11 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S 42ND MOTION
TO ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS*:
NEDIM GAVRANOVIĆ**

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 30 September 2013, the Prosecution filed a motion ("Motion") pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") requesting the admission into evidence of excerpts of the transcripts of Nedim Gavranović's evidence in the case *Prosecutor v. Stanislav Galić*.¹ On 14 October 2013, the Defence filed its response, requesting the Chamber to deny the Motion in its entirety.²

II. APPLICABLE LAW

2. 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.³

III. DISCUSSION

3. Considering the very limited number of transcript pages that are being tendered, the Chamber accepts that the Motion is in accordance with the Chamber's guidance.⁴ Further, the Chamber notes that the Prosecution is seeking to tender transcripts from a previous case and that Rule 92 *bis* (B) of the Rules therefore, contrary to the Defence's submission,⁵ does not apply.

4. The Chamber considers that the proffered evidence of Gavranović concerns Scheduled Incident G4 of the Indictment and is therefore relevant pursuant to Rule 89 (C) of the Rules. With regard to probative value, the Defence indicates two instances of hearsay, which it argues are unreliable.⁶ Having reviewed the relevant portions of the transcripts, the Chamber does not find that they qualify as hearsay evidence and rejects the Defence's arguments in this respect. In relation to the Defence's objections that the evidence contains opinion, including expert testimony, and speculation,⁷ the Chamber considers that the Defence mischaracterizes certain passages in the transcripts as expert testimony.⁸ Further, the Chamber refers to and incorporates its previous

¹ Prosecution 42nd Motion to Admit Evidence Pursuant to Rule 92*bis*: Nedim Gavranović (RM182), 30 September 2013. For further details, see Motion.

² Defence Response to Prosecution 42nd Motion to Admit Evidence Pursuant to Rule 92*bis*: Nedim Gavranović (RM182), 14 October 2013 ("Response"). For further details, see Response.

³ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

⁴ T. 106-110, 137-138, 194, 315-325, 525-532.

⁵ Response, paras 10-12.

⁶ Response, paras 13-17.

⁷ Response, paras 18-21.

⁸ See, in particular, transcript pages 6718:8-12 and 6723:4. The Defence submits that they qualifies as "expert testimony on psychological conditions" and "expert testimony on weapons", respectively.

reasoning concerning proposed fact witnesses providing conclusions or opinions.⁹ The Chamber considers that there is no need to redact the relevant portions of the transcripts. The Chamber finds that the proffered evidence has probative value. The requirements set out in Rule 89 (C) of the Rules have therefore been met for the proffered evidence.

5. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued and the Chamber does not find that the proffered evidence deals with the acts and conduct of the accused. Considering that the proffered evidence concerns the crime base of the case and that it is cumulative to the evidence presented by other Prosecution witnesses,¹⁰ the Chamber decides to admit it pursuant to Rule 92 *bis* of the Rules.

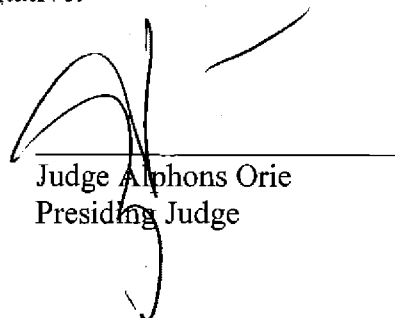
IV. DISPOSITION

6. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and **ADMITS** into evidence the following transcript excerpts from Nedim Gavranović's prior testimony in the *Galić* case, dated 5 April 2002: T. 6711:1-6730:25, as included in Annex B of the Motion;

INSTRUCTS the Prosecution within one week of the date of this decision to upload into eCourt the above admitted materials, to the extent this is not done already; 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 Orié
Presiding Judge

Dated this eleventh day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

¹⁰ See the witnesses referred to in the Motion, para. 9.