

IT-09-92-T
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18 December 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: 18 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: 18 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION 35TH MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92 *BIS*: ESET MURAČEVIĆ**

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 29 August 2013, the Prosecution filed a motion (“Motion”) tendering evidence of Eset Muračević pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), seeking admission of one statement and 29 associated exhibits.¹ On 3 October 2013, after having been granted an extension of time to respond to the Motion, the Defence filed its response (“Response”), objecting to the admission of the evidence 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 With regard to the applicable law related to the admission of associated exhibits, the Chamber further recalls and refers to one of its previous decisions dealing with this matter.⁴

III. DISCUSSION

i. Admissibility Pursuant to Rule 89 (C) of the Rules

3. The tendered material relates to the siege of Sarajevo. The Prosecution concedes that much of the evidence concerns incidents and municipalities which were dropped from the Indictment.⁵ It submits however that the witness’s evidence is relevant to the overall siege of Sarajevo and the pattern of crimes in VRS occupied territories.⁶ The Defence objects to the Motion on this ground arguing that most of the tendered material is outside the scope of the Indictment.⁷ The Chamber recalls its previous ruling that it “does not strictly prohibit the Prosecution from presenting evidence on incidents it has proposed to remove, if it considers this necessary to prove an element of a

¹ Prosecution 35th Motion to Admit Evidence Pursuant to Rule 92*bis*: Eset Muračević (RM146), 29 August 2013. For details of the Prosecution’s submissions the Chamber refers to the Motion.

² Defence Motion to Enlarge Time to Respond to Prosecution 35th Motion to Admit Evidence Pursuant to Rule 92*bis*, 11 September 2013; T. 16748-16749; Defence Response to Prosecution 35th Motion to Admit Evidence Pursuant to Rule 92*bis*, 3 October 2013. For details of the Defence’s submissions the Chamber refers to the Response.

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

⁴ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13. See also T. 5601-5604; Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

⁵ Motion, para. 2.

⁶ Ibid.

⁷ Response, paras 14-17.

charged count”.⁸ Accordingly, the Chamber finds the tendered material relevant to the charges in Counts 3-10 of the Indictment in this wider sense.

4. The Chamber finds that the tendered material appears to be internally consistent and presented in a coherent manner. In relation to the Defence’s objections that the witness provides expert-like or speculative testimony in violation of Rule 94 *bis* of the Rules, the Chamber considers that the Defence objections do not bar admission of the tendered material but go to its weight.⁹ With regard to the Defence’s objection that the witness provides hearsay evidence, 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.¹⁰ In relation to the identified portions, the Chamber does not consider that they affect the overall reliability of the evidence. The Chamber observes however that paragraph 96 of the witness’s statement contains many assertions and legal connotations about the alleged siege and campaign of terror in Sarajevo. Furthermore, it is unclear whether these conclusions are based on the witness’s own observations. Under these circumstances, the Chamber deems the tendered material, with the exception of paragraph 96, to have probative value. The standard for admission under Rule 89 (C) of the Rules has been met for the remainder of the material.

ii. Admissibility Pursuant to Rule 92 bis of the Rules

5. The statement of the witness has no corresponding attestation or declaration as required by Rule 92 *bis* (B) of the Rules. The witness did, however, attest to the statement’s truth and accuracy in the *Karadžić* case.¹¹ 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.¹²

6. The Defence has not argued and the Chamber does not find that the tendered material relates to the acts and conduct of the Accused. Instead, it mainly focuses on crime-base evidence. Furthermore, the Defence does not dispute and the Chamber finds that the witness’s evidence is cumulative to other oral evidence received, as submitted by the Prosecution.¹³ The Chamber further considers that there are no other factors which make it appropriate for the witness to appear for

⁸ Decision Pursuant to Rule 73 *bis* (D), 2 December 2011, para. 12.

⁹ See 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 *Prosecutor v. Aleksovski*, Case No. IT-95-14/I-AR73 Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

¹¹ *Prosecutor v. Karadžić*, Case No. IT-95-5-18-T, Transcript of 1 March 2011, T. 12646.

¹² Decision on Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Hostage Witnesses, 19 October 2012, para. 7.

¹³ See Motion, para. 9 and references cited therein.

cross-examination. Considering all of the above, the Chamber is satisfied that the tendered material is admissible under Rule 92 *bis* of the Rules.

iii. Associated Exhibits

7. The Defence submits that the Prosecution tenders a total of 51 associated exhibits.¹⁴ This is incorrect. The Motion makes clear that 29 associated exhibits are tendered.¹⁵ The Chamber clarifies that simply because a document is referred to in a statement does not automatically mean that it is tendered as an associated exhibit. The Chamber notes that the inclusion of a table discussing various documents within a statement is unusual. Nevertheless, the table is clearly part of the witness's statement. The Chamber is satisfied that the following Rule 65 *ter* numbers were discussed with the witness to the extent that they form an inseparable and indispensable part of the witness's statement: 14703a, 14703b, 3696, 11092, 3745, 3750, 19803, 3753, 13836, 13827, 3761, 3762, 13861, 3767, 3768, 3613, 3769, 13848, 3778, 7986, 13860, and 13859. For many of the remaining documents, the witness's comments are vague or general, thus not satisfying the standard for admission as associated exhibits.

iv. Guidance

8. The number of tendered associated exhibits for the witness, totalling 29, is very high. However, considering the concise nature and uncomplicated nature of the exhibits, as well as their brevity, between one and two pages, the Chamber will on this occasion permit this deviation from its guidance.¹⁶

IV. DISPOSITION

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

GRANTS the Motion **IN PART**;

ADMITS into evidence

- (i) the redacted witness statement of Eset Muračević dated 24 February 2011, with the exception of paragraph 96;

¹⁴ Response, para. 27.

¹⁵ Motion, paras 1, 12, Annex A.

¹⁶ T. 137, 194, 315-325, 525-532.

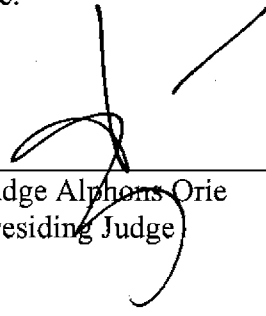
- (ii) the associated exhibits bearing Rule 65 *ter* numbers 14703a, 14703b, 3696, 11092, 3745, 3750, 19803, 3753, 13836, 13827, 3761, 3762, 13861, 3767, 3768, 3613, 3769, 13848, 3778, 7986, 13860, and 13859;

DENIES admission into evidence of Rule 65 *ter* numbers 7982, 3731, 3733, 3738, 3739, 3755, and 3751;

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 December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]