

IT-09-92-T
D75509 - D75500
20 December 2013

IT-09-92-T p.75509

Me

**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: 20 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: 20 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION TWENTY-FIFTH 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 April 2013, the Prosecution filed a motion pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking admission of evidence from seven witnesses: Stefanie Frease, Jugoslav Gavrić, Milanko Jovičić, Dean Manning, Mira Mihajlović, Zoran Petrović-Piroćanac, and Witness RM-504 ("Motion").¹ On 16 April 2013, the Defence filed a request for an additional 90 days within which to file its response to the Motion ("Defence Request").² On 19 April 2013, the Chamber granted the Defence Request, setting the response deadline to 16 July 2013.³ On 11 June 2013, the Prosecution sought to tender Dean Manning's evidence under Rule 92 *ter* of the Rules, and accordingly withdrew his evidence for consideration under Rule 92 *bis* through the Motion.⁴ Dean Manning testified before the Chamber on 10 and 11 July 2013.⁵
2. On 16 July 2013, the Defence filed its Response to the Motion ("Response"), objecting to the admission of the evidence of three witnesses: Stefanie Frease, Jugoslav Gavrić and Zoran Petrović-Piroćanac.⁶ The Defence does not oppose the Motion in relation to Milanko Jovičić, Mira Mihajlović and Witness RM-504.⁷
3. On 28 October 2013, the Prosecution filed a corrigendum ("Corrigendum") amending the Rule 92 *bis* summary chart for Zoran Petrović-Piroćanac.⁸

¹ Prosecution 25th Motion to Admit Evidence pursuant to Rule 92 *bis*: Srebrenica (Various), 3 April 2013 (Confidential with Confidential Annexes A and B). Please see the submissions in the Motion.

² Defence Motion to Enlarge Time to Respond to Prosecution 24th Motion to Admit Evidence pursuant to Rule 92 *bis*, and Prosecution's Twenty Fifth Motion to Admit Evidence pursuant to Rule 92 *bis*: Srebrenica (Various), 16 April 2013 (Confidential), para. 7.

³ T. 10094-10095.

⁴ Prosecution Rule 92 *ter* Motion: Dean Manning (RM295), 11 June 2013 ("Manning 92 *ter* Motion"), paras 1, 6.

⁵ T. 14148-14303.

⁶ Defence Response to Prosecution 25th Motion to Admit Evidence pursuant to Rule 92 *bis*, 16 July 2013 (Confidential), paras 10-24. Please see the submissions in the Response.

⁷ Response, para. 3.

⁸ Prosecution Motion to Amend the Trial Chamber's Decisions on Prosecution's 10th, 11th and 16th Rule 92 *bis* Motions and Corrigendum to the Prosecution's 21st and 25th 92 *bis* Motions, 28 October 2013, paras 1, 6. See also Corrigendum to the Prosecution Motion to Amend the Trial Chamber's Decisions on Prosecution's 10th, 11th and 16th Rule 92 *bis* Motions and Corrigendum to the Prosecution's 21st and 25th 92 *bis* Motions, 29 October 2013. The Chamber notes that the Corrigendum corrects one typographical error in the summary chart for this witness and does not alter the evidence of the witness tendered through the Motion.

II. 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 well as that governing amendments to the Rule 65 *ter* exhibit list, as set out in previous decisions.⁹ The Chamber further incorporates by reference its approach to the admission of exhibits associated with the written statements of witnesses and/or transcripts of their prior testimony.¹⁰

III. DISCUSSION

(a) Preliminary Matters

5. Considering that the Motion covers seven witnesses, the Chamber grants the Prosecution request to exceed the word limit in its Motion.¹¹

(b) Additions to the Rule 65 *ter* Exhibit List

6. The Chamber recalls that Dean Manning, one of the witnesses subject of the Motion, was withdrawn as a Rule 92 *bis* witness, and instead testified before the Chamber on 10 and 11 July 2013 as a Rule 92 *ter* witness. The Chamber notes that while the Motion includes a request to add an exhibit bearing provisional Rule 65 *ter* number 28766 associated with Dean Manning's evidence to its Rule 65 *ter* exhibit list, this document was neither among those tendered under Rule 92 *ter* of the Rules nor among those tendered during his testimony.¹² The Chamber therefore deems the Motion moot in relation to the Prosecution request to add the associated exhibit to its Rule 65 *ter* exhibit list.¹³

7. The Chamber further notes that the document with provisional Rule 65 *ter* number 28765 associated with the evidence of Stefanie Frease has already been admitted as exhibit P1177, and considers the request to add this to the Prosecution's Rule 65 *ter* exhibit list to be moot. The Prosecution also requests the addition of the document with provisional Rule 65 *ter* number 23386a associated with the evidence of Stefanie Frease to its Rule 65 *ter* exhibit list, which the Prosecution

⁹ Decision on Prosecution Third Motion to Admit Evidence pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8; Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

¹⁰ 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.

¹¹ Motion, para. 5.

¹² Manning 92 *ter* Motion, Annex B.

¹³ Motion, paras 37-38.

contends is integral to understanding her conclusion that the intercept collection is reliable.¹⁴ The Prosecution further points out that this exhibit was admitted in the *Tolimir* case and disclosed to the Defence in 2011, which the Defence does not dispute. The Chamber considers that the Defence would not be unduly prejudiced by such addition, that the requirements for its addition to the Rule 65 *ter* exhibit list have been met, and that the request can be granted.

(c) Declaration and Verification under Rule 92 *bis* (B) of the Rules

8. The Chamber notes that the evidence of Milanko Jovičić, Zoran Petrović-Piroćanac, and Witness RM-504 are all transcripts of prior testimony before this Tribunal, and recalls that Rule 92 *bis* (B) of the Rules only applies to written statements. The Chamber notes, on the other hand, that the amalgamated statement of Stefanie Frease was admitted in the *Karadžić* case, the ICTY statement of Jugoslav Gavrić, which incorporates the information report by reference, was admitted in the *Popović et al.* and *Tolimir* cases, while the amalgamated statement of Mira Mihajlović was admitted in the *Karadžić* case, all under Rule 92 *ter* of the Rules.¹⁵ These witnesses were required to attest to their statements when they appeared in court pursuant to Rule 92 *ter*, and this in-court attestation satisfies the requirements of Rule 92 *bis* (B).

(d) Relevance and Probative Value pursuant to Rule 89(C) of the Rules

9. The Chamber considers that the evidence of Stefanie Frease is relevant and probative insofar as it relates to the chain of custody of various intercepts of the Army of Bosnia-Herzegovina. The Chamber notes that the Defence does not object to her evidence insofar as it identifies the provenance of certain documents, but instead opposes any opinions she offers concerning the authenticity and reliability of certain exhibits.¹⁶ The Defence is willing to accept the admission of her statement, subject to the redaction of paragraphs 20 to 24 thereof, but opposes the admission of the transcript of her prior testimony.¹⁷ The Defence further submits that her testimony is comprised of Prosecution arguments rather than evidence, and that her conclusions encroach upon the purview of the Chamber.¹⁸ In relation to any opinions or conclusions expressed by Frease in her evidence as to the authenticity and reliability of the intercepts, the Chamber recalls the approach it has taken to

¹⁴ Motion, para. 37.

¹⁵ Motion, para. 10.

¹⁶ Response, para. 14.

¹⁷ Response, paras 18-19.

¹⁸ Response, para. 10.

opinions or conclusions found in the evidence of fact witnesses, which neither prevents the admission of such evidence nor requires any redactions thereto.¹⁹

10. The Chamber further finds the evidence of Yugoslav Gavrić and Zoran Petrović-Piroćanac relevant to and probative of the allegations in the Indictment regarding the deportation, murder, inhumane treatment and persecution of Bosnian Muslims in Srebrenica in July 1995. In addition, the Chamber finds the evidence of Milanko Jovičić to be relevant to this case, being probative of certain operations of the Zvornik Brigade, particularly those recorded in its Duty Officer logbook, which is already in evidence. As for Mira Mihajlović, the Chamber finds her evidence to be relevant and probative as it pertains to the system of appointments she employed in maintaining Karadžić's diary.²⁰ The Chamber also considers the evidence of Witness RM-504 to be relevant and probative as it deals with the apparent lack of prosecutions within the VRS judicial system for crimes committed in Srebrenica in July 1995. The Chamber finds that the proposed evidence of the six witnesses appears to be internally consistent and presented in a coherent manner and concludes that it has met the requirements of Rule 89 (C) of the Rules.

(e) Admissibility pursuant to Rule 92 bis of the Rules

11. The Chamber finds that the evidence of the six witnesses does not relate to the acts or conduct of the Accused. The Chamber further notes that the Defence does not oppose the admission of the evidence of Milanko Jovičić, Mira Mihajlović and Witness RM-504 pursuant to Rule 92 bis of the Rules.²¹

12. The Chamber has addressed the Defence objections to the evidence of Stefanie Frease above in the context of the general requirements for admissibility under Rule 89(C) of the Rules. The Chamber further finds her evidence to be admissible under Rule 92 bis.

13. In relation to Yugoslav Gavrić, the Defence objects to the admission of an information report as his statement, as it was prepared by the Prosecution, was not in his own words, and was neither signed nor attested to by the witness.²² The Chamber notes, however, that the information report is incorporated by reference in Gavrić's ICTY witness statement, which he signed and attested as accurate subject to corrections specified in the statement.²³ The witness also attested to his statement

¹⁹ Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

²⁰ See, for example, ERNs 0681-6279, 0681-6281 to 0681-6282.

²¹ Response, para. 3.

²² Response, paras 20-22.

²³ ERN 0607-2937 to 0607-2938.

in court during his testimony in the *Popović et al.* case.²⁴ The Chamber thus considers that the information report, as part of Gavrić's statement, is admissible under Rule 92 *bis* of the Rules.

14. As regards Zoran Petrović-Piroćanac, the Defence argues that the significance of his testimony requires his *viva voce* testimony as "significant questions" have been raised in relation to the video he took.²⁵ The Defence, however, does not specify what these questions are, and as to whether these questions could not have been raised with Tomasz Blaszczyk, the witness through whom the videos were tendered, or if so raised, what issues were not addressed to the Defence's satisfaction. The Chamber therefore rejects the Defence request that the Motion be denied in relation to Petrović-Piroćanac, and that he be required to testify *viva voce*.

15. The Chamber notes that the evidence of the six witnesses is cumulative to other oral testimony previously given in this case.²⁶ In line with the above discussion, the Chamber sees no need to require these witnesses to appear for cross-examination. The Chamber therefore admits the evidence of Stefanie Frease, Yugoslav Gavrić, Milanko Jovičić, Mira Mihajlović, Zoran Petrović-Piroćanac, and Witness RM-504 under Rule 92 *bis* of the Rules.

(f) Associated Exhibits

16. The Prosecution seeks the admission of various exhibits associated with the evidence of the six witnesses. The Chamber notes, however, that many of these have already been admitted into evidence: the documents bearing Rule 65 *ter* numbers 4348, 4712, 4713, 4715, 4716, 4719, 5136, 5748, 5759, 5761, 5762, 6289, 22362, 22422, 22342, 23318, 25115, 25118, 25118a, 25052, 25055, 25533, and 28765. Accordingly, the Chamber considers the Motion moot in relation to the request to admit these associated exhibits into evidence.

17. As regards Stefanie Frease, the Chamber notes that while the document bearing Rule 65 *ter* number 4718 is 107 pages long, it is divided into 12 sections referred to as tabs, with each tab containing two summaries: (1) a summary of one or more intercepts; and (2) a summary of

²⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88/2-T, Transcript of 21 March 2007, T. 9112.

²⁵ Response, paras 23-24.

²⁶ Stefanie Frease's evidence appears to be cumulative to the evidence of, *inter alia*: Witnesses RM-506 in relation to communications intercepted by the Croatian military (HVO); Witnesses RM-279 and RM-316 in relation to ABH and State Security Service intercepts; and Richard Butler, as regards the reliability of the intercepted communications. Yugoslav Gavrić's evidence appears to be cumulative to the evidence of Witness RM-322 and Richard Butler. Milanko Jovičić's evidence appears to be cumulative to the evidence of: Witness RM-322 and Richard Butler; and Kathryn Barr as regards her handwriting analysis of the Zvornik Brigade Duty Officer Logbook. Zoran Petrović-Piroćanac's evidence appears to be cumulative to the evidence of Petar Skrbić. Mira Mihajlović's evidence appears to be cumulative to the evidence of: Witnesses RM-256 and RM-306; Dean Manning and Dusan Janč, regarding the killings and mass burials of Muslims at the Kravica warehouse; Milenko Pepić regarding the detention of Muslim prisoners in a field near Sandići; and Tomasz Blaszczyk. Witness RM-504's evidence appears to be cumulative to the evidence of Witness RM-513.

corroborating material.²⁷ The Chamber instructs the Prosecution to upload the intercept summaries and corroborating materials separately, with each of the tabs assigned a separate Rule 65 *ter* number. The Chamber considers that given the subject matter of Frease's statement,²⁸ a large number of associated exhibits which would otherwise be in contravention of the Chamber's previous guidance is acceptable under the circumstances. As for Mira Mihajlović, the Chamber notes that the appointment diary bearing Rule 65 *ter* number 6344 is 127 pages long (original BCS document is 156 pages long), and it is often unclear in her statement which pages of the appointment diary she discusses. The Chamber instructs the Prosecution to select the pages of the appointment diary discussed by the witness in her statement and to upload this selection into eCourt.

18. In line with its previous guidance on the matter, the Chamber considers that the remaining associated exhibits form an inseparable and indispensable part of the relevant witnesses' testimony. The Chamber therefore admits the remaining associated exhibits into evidence.

IV. DISPOSITION

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

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

FINDS the Motion moot **IN PART**, with respect to

- 1) The request to add the document with Rule 65 *ter* number 28765 to its Rule 65 *ter* exhibit list;
- 2) The request for admission of the documents bearing Rule 65 *ter* numbers 4348, 4712, 4713, 4715, 4716, 4719, 5136, 5748, 5759, 5761, 5762, 6289, 22362, 22422, 22342, 23318, 25115, 25118, 25118a, 25052, 25055, 25533, and 28765;

GRANTS the Motion **IN PART**

²⁷ ICTY amalgamated witness statement of Stefanie Frease, 19 March 2012, para. 26.

²⁸ The Chamber understands that the exhibits and documents bearing Rule 65 *ter* numbers in other cases before the Tribunal referred to in Stephanie Frease's statement correspond to the documents bearing the Rule 65 *ter* numbers in the present case listed in the summary chart attached as Confidential Annex A to the Motion. See Motion, Confidential Annex A, pp. i-v.

With respect to

1) Witness Stefanie Frease

GRANTS the request to add the document with Rule 65 *ter* number 23386a to the Prosecution's Rule 65 *ter* exhibit list;

INSTRUCTS the Prosecution to separate the intercept binder bearing Rule 65 *ter* number 4718 into the constituent tabs, and to upload these into eCourt with unique Rule 65 *ter* numbers;

DENIES admission into evidence of the document bearing Rule 65 *ter* number 4718;

ADMITS into evidence **UNDER SEAL**

- a) ICTY statement dated 19 March 2012 of the witness, with ERNs 0681-7977 to 0681-7984; and
- b) Documents bearing Rule 65 *ter* numbers 25532 and 23386;

ADMITS into evidence

- a) Excerpts of her testimony on 7-8 September 2010 in *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, T. 5019:10-T. 5020:19; T. 5024:10-T. 5025:21; T. 5102:15-T. 5117:22; T. 5120:11-T. 5130:17; and T. 5131:1-T. 5134:22;
- b) Documents bearing Rule 65 *ter* numbers 20034, 25579, 5304, 5303, 4717, 23266, 26129, 25526, 25527, 25603, 25053, 25146, and 23386a; and
- c) The component tabs of the document bearing Rule 65 *ter* number 4718, once uploaded by the Prosecution into eCourt under separate Rule 65 *ter* numbers;

2) Witness Jugoslav Gavrić

ADMITS into evidence **UNDER SEAL** the document bearing Rule 65 *ter* number 5138; and

ADMITS into evidence

- a) The ICTY statement of the witness dated 20 March 2003, with ERNs 0607-2936 to 0607-2940;
- b) The ICTY information report dated 30 January 2003, with ERNs R110-2284 to R110-2286;

- c) The excerpts of the witness's testimony on 21 March 2007 in *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 9111:17-T. 9112:20; T. 9114:17-T. 9116:10; T. 9118:12-T. 9119:10; and T. 9123:4-T. 9124:4; and
- d) The excerpts of the witness's testimony on 2 December 2012 in *Prosecutor v. Tolimir.*, Case No. IT-05-88/2-T, T. 8397:4-T. 8398:15; T. 8399:2-T. 8400:1; T. 8400:13-T. 8401:1; T. 8404:4-12; T. 8405:23-T. 8407:15; T. 8410:1-2; T. 8410:22-T. 8412:24; T. 8413:4-18; T. 8414:21-T. 8415:4; and T. 8416:5-T. 8417:25;

3) *Witness Milanko Jovičić*

ADMITS into evidence the excerpts of the witness's testimony on 14-15 May 2007 in *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 11479:3-T. 11490:11; and T. 11492:22-T. 11494:24;

4) *Witness Mira Mihajlović*

ADMITS into evidence

- a) The ICTY statement dated 6 February 2012 of the witness, with ERNs 0681-6275 to 0681-6291;
- b) The excerpts of the witness's testimony on 8 February 2012 in *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, T. 24304:11-T. 24307:16; and
- c) The document bearing Rule 65 *ter* number 5705;

INSTRUCTS the Prosecution to select the pages of the document bearing Rule 65 *ter* number 6344 discussed by the witness in her statement and to upload the selection into eCourt; and

DENIES admission into evidence of the document bearing Rule 65 *ter* number 6344;

5) *Witness Zoran Petrović-Piroćanac*

ADMITS into evidence **UNDER SEAL**

- a) The excerpts of the witness's testimony on 4-6 December 2007 in *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 18737:15-T. 18748:22; T. 18753:8-T. 18786:5, T. 18787:14-T. 18824:1; T. 18825:3-T. 18833:14; and T. 18847:7-19; and

- b) The excerpts of the witness's testimony on 23-24 May 2011 in *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, T. 14543:9-T. 14547:2; T. 14548:20-T. 14549:1; T. 14555:5-T. 14567:3; T. 14568:16-T. 14572:15; and T. 14574:14-T. 14581:20;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 5254 and 26017;

6) *Witness* RM-504

ADMITS into evidence **UNDER SEAL** the document bearing Rule 65 *ter* number 4488;

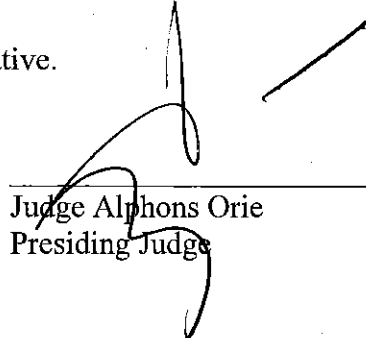
ADMITS into evidence

- a) The excerpts of the witness's testimony in another case before this Tribunal as described in Confidential Annex A to the Motion; and
- b) Documents bearing Rule 65 *ter* numbers 4017, 4018, 4383, and 4388;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within three weeks of the date 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 assigned.

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



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]