

**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: 22 September 2015
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 22 September 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF ILIJA MIŠČEVIĆ PURSUANT TO RULE 92BIS**

Office of the Prosecutor

Mr Peter McCloskey

Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić

Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 20 July 2015, the Defence 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 the written statement of Ilija Mišćević and an associated exhibit, a map of Hrasnica marked by the witness.¹ It submits that the statement and the exhibit are reliable, probative, and do not address the acts or conduct of the Accused.² The Defence further submits that the statement and the exhibit are relevant to Counts 9 and 10 of the Indictment.³

2. On 3 August, the Prosecution filed its response to the Motion, stating that it does not oppose the Motion, provided that excerpts from the testimony of Mišćević in the case of *Prosecutor v. Radovan Karadžić* (“*Karadžić case*”) and an associated exhibit to that testimony are also admitted into evidence.⁴ It submits that the admission of the transcript excerpts and the associated exhibit is necessary for the proper understanding of Mišćević’s evidence.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, as set out in a previous decision.⁶ With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to one of its previous decisions dealing with this matter.⁷

III. DISCUSSION

A. Attestation and Declaration

4. Mišćević’s statement was tendered with the corresponding attestation and declaration, taken prior to the witness’s testimony in the *Karadžić case*.

¹ Defense Motion to Admit the Evidence of Ilija Miscevic Pursuant to Rule 92*bis* [sic], 20 July 2015.

² Motion, paras 2, 27, 31-32.

³ Motion, paras 2, 14.

⁴ Prosecution Response to Defence Motion to Admit the Evidence of Ilija Mišćević Pursuant to Rule 92*bis*, 3 August 2015 (“Response”), paras 1, 3, 6-7.

⁵ Response, paras 3, 5.

⁶ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92*bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

⁷ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13.

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

5. The witness's statement and the associated exhibit tendered by the Defence relate to potential military activity in Hrasnica, the impact of a bomb that hit Hrasnica, and more generally to Counts 5-6, and 9-10 of the Indictment. Based on the foregoing, the Chamber therefore finds that the evidence is relevant pursuant to Rule 89 (C) of the Rules.

6. The Prosecution does not object to the admission of the statement and the exhibit, and the Chamber finds the witness's evidence to be of probative value. The Chamber therefore concludes that the statement and exhibit meet the requirements of Rule 89 (C) of the Rules.

C. Admissibility Pursuant to Rule 92 bis of the Rules

7. The Chamber, having reviewed the witness's statement, does not find, and the Prosecution does not argue, that it relates to the acts and conduct of the Accused.

8. With regard to the factors weighing in favour of admitting evidence in a written form, the Chamber especially considers that the witness's statement contains a description of the ethnic composition of the population in a place to which the Indictment relates, and is cumulative to evidence of other witnesses who have already provided testimony in this case.⁸ The Chamber finds these factors, which are relevant pursuant to Rule 92 bis (A)(i) of the Rules, to weigh in favour of admission. There are no factors under Rule 92 bis (A)(ii) weighing against admitting the evidence in written form. In light of the above, the Chamber finds that Mišćević's evidence is admissible pursuant to Rule 92 bis of the Rules.

D. Transcript Portions and Exhibit Tendered by the Prosecution

9. The Prosecution tenders portions of the transcript from the *Karadžić* case, as well as an associated exhibit used during that testimony. The Chamber recalls its guidance that the responding party can, in order to contextualise or clarify a witness statement, tender transcript portions from previous cases, and, if appropriate, associated exhibits used during that testimony.⁹

10. The Chamber considers the proffered transcript portions to be central to the understanding of the witness's evidence as a whole, and finds that the transcript pages are admissible pursuant to Rule 92 bis of the Rules. Concerning the admission of the associated exhibit tendered by the

⁸ Mišćević's evidence is cumulative to the admitted Rule 92 ter evidence from Nikola Mijatović, Thorbjorn Overgard, and Vladimir Radojčić.

⁹ Decision on Defence Motion to Admit the Evidence of Željka Malinović Pursuant to Rule 92bis, 8 September 2015, para. 9.

Prosecution, the Chamber finds that the map is an inseparable and indispensable part of Mišćević's evidence. Without the map, the transcript would be incomprehensible and therefore of lesser probative value. In light of this, the Chamber finds that the requirements for admission have been met with respect to the associated exhibit.

IV. DISPOSITION

11. For the foregoing reasons, pursuant to Rules 73, 89, and 92 *bis* of the Rules, the Chamber hereby

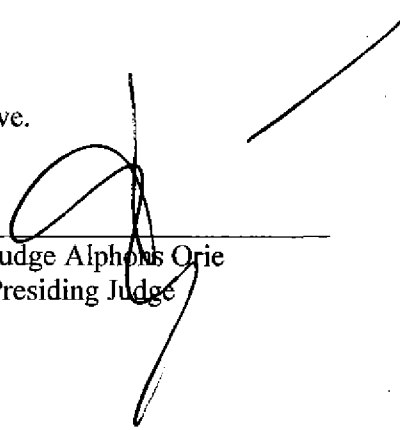
GRANTS the Motion;

ADMITS into evidence

- a) the statement of Ilija Mišćević, dated 26 April 2012, bearing Rule 65 *ter* no. 1D04143;
- b) the excerpts of the testimony of Ilija Mišćević, dated 17 January 2013, in the *Karadžić* case, bearing Rule 65 *ter* no. 32840;
- c) the maps bearing Rule 65 *ter* nos 1D05325 and 32841;

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 Orie
Presiding Judge

Dated this twenty-second day of September 2015
At The Hague
The Netherlands

[Seal of the Tribunal]