



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: 21 October 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 21 October 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF RADOSLAV DANIČIĆ
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 7 November 2014, the Defence filed a motion pursuant to Rule 92 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules") requesting the admission into evidence of the witness statement of Radoslav Daničić.¹ On 25 August 2015, the Defence instead filed a motion ("Motion") requesting the provisional admission into evidence of the written statement of Radoslav Daničić pursuant to Rule 92 *bis* of the Rules.² The Defence submits that the statement is reliable, probative, and relevant to issues in the proceedings before the Chamber, and that it does not address the acts or conduct of the Accused.³ It further submits that the statement *inter alia* provides valuable insight into the historical, political and military background of events in Sanski Most and that it is cumulative to the statements of a number of other witnesses.⁴ The Defence submits that the admission of the proposed evidence will prevent the unnecessary re-appearance of the witness, avoid unnecessary expense, and reduce the length of the trial.⁵

2. On 8 September 2015, the Prosecution filed its response ("Response"), not opposing the provisional admission of the statement pending the attachment of a declaration from the witness in compliance with Rule 92 *bis* (B).⁶

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.⁷

III. DISCUSSION

A. Attestation and Declaration

4. The witness's statement has no corresponding attestation and declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have previously been conditionally

¹ Defense Motion to Admit the Evidence of Radoslav Daničić Pursuant to Rule 92BIS, 25 August 2015 (confidential), para. 1.

² Motion, para. 1.

³ Motion, paras 3, 14-15, 26, 28-32.

⁴ Motion, paras 18-19.

⁵ Motion, paras 24-25.

⁶ Prosecution Response to Defence Motion to Admit the Testimony of Radoslav Daničić Pursuant to Rule 92BIS, 8 September 2015, para. 1.

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

admitted by this Chamber pending a formal attestation.⁸ In line with this practice, provided that all other admissibility requirements are met, the Chamber will conditionally admit the unattested statement pending the filing of the required attestation and declaration.

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

5. The proposed evidence relates to the military and political situation in Sanski Most during the relevant period of the Indictment, and generally to Counts 1, and 3-8 of the Indictment. More specifically, the witness statement concerns inter-ethnic intolerance, the military activities of Muslims, and the role of the army in Sanski Most, especially in Hrustovo and Vhrpolje. Therefore, the Chamber 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 witness's statement, and the Chamber finds the witness's evidence to have probative value. In relation to any opinions or conclusions expressed by Daničić in his statement, the Chamber recalls the approach it has taken in relation to opinions or conclusions found in the evidence of fact witnesses.⁹ Based on the foregoing, the Chamber finds that the proposed evidence meets 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. With regard to the factors weighing in favour of admitting evidence in form of a written statement, the Chamber considers that the witness's statement concerns relevant political and military background information, that it contains a description of the ethnic composition of the population in a place relevant to the Indictment, and that it is cumulative with the statements of other witnesses.¹⁰ 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 other factors under Rule 92 bis (A)(ii) weighing against admitting the evidence in written form. In light of the above, the Chamber finds that Daničić's evidence is admissible pursuant to Rule 92 bis of the Rules.

IV. DISPOSITION

8. For the foregoing reasons, pursuant to Rules 89 (C), and 92 bis of the Rules, the Chamber

⁸ Decision on Third 92 bis Motion, para. 27 and references cited therein.

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

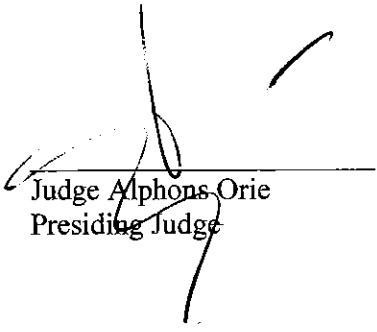
¹⁰ Daničić's evidence is e.g. cumulative to the admitted Rule 92ter evidence from Duško Čorokalo and Vinko Nikolić.

GRANTS the Motion;

CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules, the written witness statement of Radoslav Daničić, dated 19 June 2014, bearing Rule 65 *ter* number 1D01678;

INSTRUCTS the Defence to file the corresponding attestation and declaration to the statement of Radoslav Daničić within six weeks of the filing of this decision; and

REQUESTS the Registry to assign an exhibit number to the document admitted into evidence and inform the parties and the Chamber of the number so assigned.



Judge Alphons Orie
Presiding Judge

Dated this twenty-first day of October 2015
At The Hague
The Netherlands

[Seal of the Tribunal]