



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: 29 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: 29 October 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF DUŠAN ĐENADIJA PURSUANT TO
RULE 92 *BIS***

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

1. On 25 August 2015, the Defence filed a motion (“Motion”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) seeking the provisional admission into evidence of the written statement of Dušan Đenadija dated 21 July 2014.¹ It submits that the statement is relevant and of probative value, in particular as it relates to Counts 1 to 3 of the Indictment.² The Defence further submits that the statement is admissible under Rule 92 *bis* of the Rules as it contains supporting evidence pertaining to circumstances preceding the war in Prijedor Municipality, thereby adding context to acts charged in the Indictment, none of which go to proof of the acts and conduct of the Accused.³

2. On 8 September 2015, the Prosecution filed its Response, opposing the Motion.⁴ The Prosecution submits that the Motion seeks admission of evidence that is not cumulative with other evidence and contains both internal contradictions and inconsistencies with the trial record with respect to various matters, including live and important issues.⁵ The Prosecution argues that such inconsistencies call into question the reliability of the statement and submits that the statement should not be admitted without being tested through cross-examination.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 statement has no corresponding attestation or declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have previously been conditionally admitted by this Chamber pending formal attestation.⁸ In line with this practice, provided that all other admissibility

¹ Defence Motion to Admit the Evidence of Dušan Đenadija Pursuant to Rule 92 *bis*, 25 August 2015, paras 3, 27-28.

² Motion, paras 2, 13, 20.

³ Motion, paras 17, 20-21, 25-26.

⁴ Prosecution Response to Defence Motion to Admit the Evidence of Dušan Đenadija Pursuant to Rule 92 *bis* (“Response”), 8 September 2015.

⁵ Response, paras 1-5.

⁶ Response, paras 1, 6.

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

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

requirements are satisfied, 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 Chamber understands that the proposed material relates to the military and political situation in Prijedor during 1992. It focuses in particular on (i) the multi-ethnic composition of the TO units in Prijedor; (ii) the activity of TO units and the VRS 43rd Motorised Brigade until August 1992; and (iii) violence in Hambarine, Prijedor, Borik, and Trnopolje. The Chamber notes that the Prosecution does not dispute the relevance of the statement.

6. With regard to the Prosecution's objection that the statement's reliability is called into question as it presents inconsistencies with the trial record and contains internal contradictions, the Chamber finds that such inconsistencies and internal contradictions go to the weight to be attributed to Đenadija's evidence in the final assessment of the overall evidence.

7. The Trial Chamber therefore finds the statement to be relevant and of probative value in relation to the crimes as charged under Counts 1 and 3 of the Indictment. In relation to any opinions or conclusions expressed by Đenadija, the Chamber recalls the approach it has taken with opinions or conclusions in the evidence of fact witnesses.⁹ Based on the foregoing, the Chamber concludes that the statement has met the requirements of Rule 89 (C) of the Rules.

C. Admissibility Pursuant to Rule 92 bis of the Rules

8. The Chamber does not find, and the Prosecution does not argue that the statement relates to the acts and conduct of the Accused. The Chamber considers that the statement relates to relevant historical and political background as it contains a description of the ethnic composition of TO units and VRS brigades in places within the geographical scope of the Indictment. The Chamber finds these factors weigh in favour of admission pursuant to Rule 92 bis (A)(i) of the Rules.

9. With regard to the Prosecution's objection that the statement pertains to, *inter alia*, live and important issues, the Chamber notes that the Prosecution does not specify what it considers in this statement to constitute live and important issues. Therefore, the Trial Chamber cannot consider this argument further in favour of denying the Motion.

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. The Chamber considers that the Prosecution's objection that the statement contains several internal contradictions and inconsistencies with the trial record does not constitute a factor weighing against admission of the statement pursuant to Rule 92 *bis*. The Chamber further notes that its 18 July 2013 decision, which forms the basis of this objection, concerned a case of "substantial discrepancy" between the written statement of a witness and his prior testimony in a previous case rather than internal discrepancies within a written statement or inconsistencies with other evidence.¹⁰

11. Furthermore, the Chamber has considered the Prosecution's objection that the Defence has not identified any evidence cumulative to Đenadija's characterisation of operations in the Brdo area in 23 July 1992 as "combat". Although the cumulative nature of evidence tendered pursuant to Rule 92 *bis* can constitute a factor weighing in favour of its admission, it is not a prerequisite to admission and the Chamber does not consider its absence to be a factor against admission. In this instance, the Chamber further notes that it received evidence about the presence of a battalion of the 43rd motorised brigade in Prijedor in August 1992.¹¹

12. For the above reasons, the Chamber concludes that Dušan Đenadija's statement is admissible pursuant to Rule 92 *bis* of the Rules.

IV. DISPOSITION

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

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 statement of witness Dušan Đenadija, dated 21 July 2014, bearing Rule 65 *ter* number 1D01680;

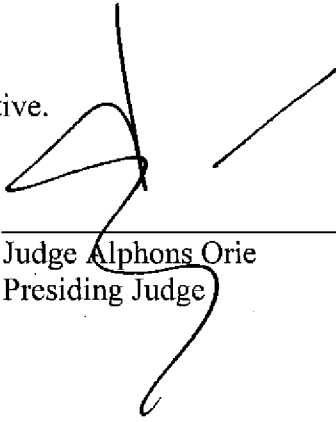
INSTRUCTS the Defence to file the corresponding attestation and declaration to the statement of Dušan Đenadija within six weeks of the filing of this decision; and

¹⁰ Response, para. 3; Decision on Prosecution's Ninth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 18 July 2013, paras. 9-10.

¹¹ D1041 (Draško Vujić, witness statement, 24 January 2014), para. 9; P7365 (Statement of Rasim Džafić including photographs of destroyed Puharska Mosque, 5 September 1997), p. 2.

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

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



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]