



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 November 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: 18 November 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF MIROSLAV HOMA
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 OF THE PARTIES

1. On 14 September 2015, the Defence filed a motion (“Motion”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requesting the provisional admission into evidence of the redacted written statement of Miroslav Homa dated 23 June 2014, together with one associated exhibit, pending the attestation process under the Rule.¹ It submits that the proffered evidence is relevant and of probative value, in particular as it relates to Counts 1 to 8 of the Indictment.² The Defence further submits that the statement is suitable for admission under Rule 92 *bis* as it is largely descriptive and contains supporting evidence pertaining to the circumstances surrounding the acts charged in the Indictment, more specifically concerning the structure and authority of the military police battalion and military police services, and, moreover, does not address the acts and conduct of the Accused.³

2. On 28 September 2015, the Prosecution filed its response, not opposing the provisional admission of the witness’s statement and the associated exhibit pending the attachment of a declaration from the witness in accordance with Rule 92 *bis*.⁴

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.⁵ 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.⁶

III. DISCUSSION

A. Attestation and Declaration

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

¹ Defense Motion Pursuant to Admit [*sic*] the Evidence of Miroslav Homa Pursuant to Rule 92*BIS*, 14 September 2015, Annex A and paras 1, 4.

² Motion, paras 3, 14.

³ Motion, paras 21-22, 26-27.

⁴ Prosecution Response to Defence Motion to Admit the Evidence of Miroslav Homa Pursuant to Rule 92*bis*, 28 September 2015 (“Response”), para. 1.

⁵ 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 5-8.

⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13.

admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.⁷ 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 witness's statement relates to Counts 1 to 8 of the Indictment, in particular the military and political situation in Banja Luka during the relevant period. Specifically, it touches upon the military background, structure and chain of command of the Yugoslav People's Army's Military Police Battalion, the activities of the Military Police Services Platoon, and the work of the Military Police, including its relationship with the Military Court and the Office of the Military Prosecutor in Banja Luka. Furthermore, the Chamber notes that the statement was signed by the witness and the witness acknowledged its truthfulness. Based on the foregoing, the Chamber concludes that the witness's statement is relevant and probative for the purposes of admission into evidence pursuant to Rule 89 (C) of the Rules.

C. Admissibility Pursuant to Rule 92 *bis* of the Rules

6. 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.

7. With regard to factors weighing in favour of admitting evidence in the form of a written statement, the Chamber especially considers that the witness's statement provides a historical, political, and military background to the conflict. The Chamber finds this factor to weigh in favour of admission in accordance with Rule 92 *bis* (A) (i) of the Rules. Furthermore, the Chamber finds that there are no factors under Rule 92 *bis* (A) (ii) weighing against admitting the evidence in written form. In light of the above, and noting that the Prosecution does not object to its admission, the Chamber finds that the statement is admissible pursuant to Rule 92 *bis* of the Rules.

D. Associated Exhibit

8. In relation to the one associate exhibit, the document bearing Rule 65 *ter* number 1D02795, which is purportedly linked to paragraph 41 of the statement, the Chamber considers that the statement is perfectly comprehensible without it. The Chamber therefore finds that the document does not form an inseparable and indispensable part of the witness's statement and that the statement will not become incomprehensible or of lesser probative value should this document not

⁷ Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

be admitted into evidence. Consequently, the Chamber will deny the admission into evidence of the associated exhibit.

IV. DISPOSITION

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

GRANTS the Motion IN PART;

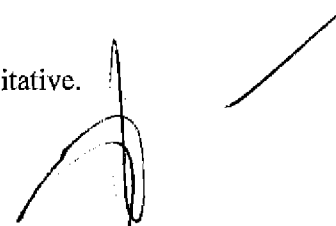
CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules, the redacted witness statement of Miroslav Homa, dated 23 June 2014, bearing Rule 65 *ter* number 1D01689;

DENIES the admission into evidence of the document bearing Rule 65 *ter* number 1D02795;

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

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

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



Judge Alphons Orie
Presiding Judge

Dated this eighteenth day of November 2015
At The Hague
The Netherlands

[Seal of the Tribunal]