



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: 14 December 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:** 14 December 2015

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON DEFENCE MOTION FOR ADMISSION OF  
LJUBISAV SIMIĆ'S WRITTEN STATEMENT PURSUANT TO  
RULE 92BIS**

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**Office of the Prosecutor**

Mr Peter McCloskey  
Mr Alan Tieger

**Counsel for Ratko Mladić**

Mr Branko Lukić  
Mr Miodrag Stojanović

## I. PROCEDURAL HISTORY

1. On 2 December 2014, the Defence filed a motion for the admission of the evidence of Ljubisav Simić pursuant to Rule 92*ter* of the Tribunal's Rules of Procedure and Evidence ("Rules").<sup>1</sup> On 25 March 2015, the Defence filed a motion to amend its Rule 65*ter* witness list, announcing that it was not presenting the evidence of the witness.<sup>2</sup> On 28 July 2015, the Defence filed a motion requesting the admission of the witness's statement pursuant to Rule 92*bis* of the Rules.<sup>3</sup> On 18 August 2015, the Defence again filed a motion requesting the admission of the witness's written statement into evidence pursuant to Rule 92*bis* of the Rules ("Motion of 18 August").<sup>4</sup> On 1 September 2015, the Prosecution filed a response to the Motion of 18 August ("Response").<sup>5</sup> On 15 September 2015, having further redacted the statement in light of the Response, the Defence re-filed the Motion of 18 August ("Motion of 15 September").<sup>6</sup> On 23 September 2015, the Prosecution stated that it generally maintained the position set out in the Response.<sup>7</sup>

## II. SUBMISSIONS OF THE PARTIES

2. The Defence seeks provisional admission into evidence of the redacted written statement of the witness as well as four associated exhibits.<sup>8</sup> It submits that the statement and the associated exhibits are reliable, have probative value, and do not address the acts or conduct of the Accused.<sup>9</sup> The Defence further submits that the statement and the associated exhibits are relevant to Counts 1 to 8 of the Indictment.<sup>10</sup> It states that they relate to the relevant historical, political and military

<sup>1</sup> Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Simic Ljubisav, 2 December 2014, para. 1.

<sup>2</sup> Defence Motion to Amend 65*ter* List to Add Witnesses Not Previously on the List and Notice of Intent to Not Adduce Evidence of Certain Witnesses and Modify the Mode of Others, 25 March 2015 (Confidential), para. 4, Annex A.

<sup>3</sup> Defence Motion Pursuant [*sic*] to Admit the Evidence of Ljubisav Simić Pursuant to Rule 92*bis*, 28 July 2015 (Confidential), paras 2-3. The Chamber notes that this filing, as well as subsequent filings, are confidential. The Chamber finds that the current decision does not require confidentiality since the reason for confidentiality of these filings is not at issue here. See Defence Submissions to Change Status of Filings, 31 August 2015 (Confidential); T. 37992-37993.

<sup>4</sup> Defence Motion for the Addition of Witness Ljubisav Simic to the Defense's List of 65*ter* Witness and the Admission of Witness Simic's Evidence Pursuant to Rule 92*bis*, 18 August 2015 (Confidential), para. 4.

<sup>5</sup> Prosecution Response to Defence Motion to Admit the Evidence of Ljubisav Simić Pursuant to Rule 92*bis*, 1 September 2015 (Confidential), para. 1.

<sup>6</sup> Re-filed Defence Motion to Admit the Evidence of Ljubisav Simić Pursuant to Rule 92*bis*, 15 September 2015 (Confidential), paras 1, 3.  
T. 39272.

<sup>8</sup> Motion of 15 September, paras 1, 5. The Chamber notes that the Defence is tendering five documents, one of which has already been admitted as number P3540.

<sup>9</sup> Motion of 15 September, paras 4, 16-17, 20, 24, 27-30.

<sup>10</sup> Motion of 15 September, para. 16.

background, and supports evidence pertaining to circumstances surrounding acts charged in the indictment.<sup>11</sup>

3. The Prosecution does not oppose the Motion of 15 September, provided that two brief portions of the witness's evidence given in the *Karadžić* case are also admitted.<sup>12</sup> The Prosecution further requests the admission of six contextual documents.<sup>13</sup>

### III. 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 set out in a previous decision.<sup>14</sup> 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.<sup>15</sup>

### IV. DISCUSSION

#### A. Preliminary Matter

5. The Defence filed several motions before the Chamber regarding the witness, none of which have been formally withdrawn by the Defence. However, the Chamber considers all motions relating to the witness filed prior to the Motion of 15 September to be implicitly withdrawn.<sup>16</sup>

#### B. Attestation and Declaration

6. The statement has no corresponding attestation or declaration as required by Rule 92*bis* (B) of the Rules. However, the Chamber notes that unattested witness statements have previously been conditionally admitted by this Chamber pending formal attestation, provided all other admissibility requirements are satisfied.<sup>17</sup>

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

<sup>11</sup> Motion of 15 September, para. 20.

<sup>12</sup> Response, paras 4-6; T. 39272.

<sup>13</sup> Response, paras 7-8; T.39272.

<sup>14</sup> Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92*bis*: Sarajevo Witnesses ("Decision on Third 92*bis* Motion"), 19 October 2012, paras 5-7.

<sup>15</sup> Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13.

<sup>16</sup> In the Motion of 18 August, the Defence requested that the witness be re-added to the Defence's Rule 65*ter* witness list. The Chamber does not consider the Defence's announcement of 25 March 2015, that it no longer wished to adduce the evidence of the witness, as a removal from the witness list. It amounted merely to an indication that, at that point in time, it was not planning on calling the witness.

<sup>17</sup> Decision on Third 92*bis* Motion, para. 27.

7. The statement and the associated exhibits relate to the events in Potočari and Bratunac in July 1995, as well as events related to the municipalities component of the case in 1992. The evidence is, therefore, relevant to Counts 1 to 8 of the Indictment. The Chamber notes that the witness signed the statement and there are no obvious internal inconsistencies in the statement. Based on the foregoing, the Chamber finds that the statement and the associated exhibits are relevant and of probative value for the purposes of admission pursuant to Rule 89 (C) of the Rules.

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

8. The Chamber does not find, and the Prosecution does not argue, that the witness's evidence relates to the acts and conduct of the Accused. It finds the witness's evidence cumulative to the oral testimony of other witnesses in relation to the events in Srebrenica in 1995, such as Evert Rave, Momir Nikolić, and Mladen Blagojević. This factor weighs in favour of admission of the witness's evidence in written form.

9. With regard to factors weighing against admission of the evidence in written form, the Chamber considered the following: From the outbreak of the war in 1992 until the post-war elections in 1995, the witness was the President of the Municipal Assembly in Bratunac.<sup>18</sup> The witness states that he was present in Bratunac from 11 July 1995 onwards and that he was invited to come to the Bratunac Brigade Command on 12 July.<sup>19</sup> The Chamber observes that the events from 11 July in Bratunac Municipality relate to critical elements of the Srebrenica component of the case. For example, the witness describes the arrival of 'buses with the Muslims from Konjević Polje, Kasaba and Milići' in Bratunac on the night of 11 to 12 July, and gives his observations in relation to a meeting at the Fontana Hotel on 12 July; a meeting at which the Prosecution alleges Mladić was present and which appears to be central to its case.<sup>20</sup> The witness states with regard to this meeting that, 'I can well say there was no coercion, because their [Muslim] representatives at the meeting at the Fontana hotel on 12 July 1995 themselves asked for transport to be provided so that they could go to Kladanj.'<sup>21</sup>

10. Under these circumstances, pursuant to Rule 92bis (A) (ii) (c), the Chamber finds it more appropriate that the witness's evidence is adduced orally and that he is made available for cross-examination. The Chamber therefore finds that the statement is not suitable for admission pursuant to Rule 92bis of the Rules.

<sup>18</sup> Motion of 15 September, Annex A para. 3.

<sup>19</sup> Motion of 15 September, Annex A, para. 71.

<sup>20</sup> Motion of 15 September, Annex A, paras 77, 80.

<sup>21</sup> Motion of 15 September, Annex A, para. 80.

## V. DISPOSITION

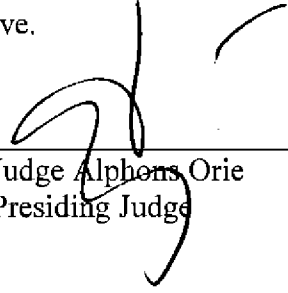
11. For the foregoing reasons, pursuant to Rules 89 and 92*bis* of the Rules, the Chamber

**DENIES** the Motion of 15 September;

**DENIES** admission of the documents tendered by the Prosecution in the Response; and

**INVITES** the Defence to indicate, within one week of the filing of this decision, whether it seeks the reinstatement of its Rule 92*ter* Motion of 2 December 2014.

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



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Judge Alphons Orie  
Presiding Judge

Dated this **fourteenth** day of December 2015  
At The Hague  
The Netherlands

[Seal of the Tribunal]