



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-95-5/18-T

Date: 18 March 2010

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IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 18 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL ANNEX A

**DECISION ON PROSECUTION'S SECOND MOTION FOR ADMISSION OF
STATEMENTS AND TRANSCRIPTS OF EVIDENCE IN LIEU OF *VIVA VOCE*
TESTIMONY PURSUANT TO RULE 92 *BIS*
(WITNESSES ARK MUNICIPALITIES)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the 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 (“Tribunal”) is seized of the “Prosecution’s Second Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses ARK Municipalities)”, filed on 29 May 2009 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of transcripts and written statements of 46 witnesses: KDZ014, KDZ024, KDZ038, KDZ040, KDZ048, KDZ050, KDZ054, KDZ056, KDZ058, KDZ074, KDZ075, KDZ080, KDZ081, KDZ089, KDZ092, KDZ093, KDZ094, KDZ097, KDZ098, Hasan Alić (KDZ109), KDZ111, KDZ116, KDZ149, Jusuf Arifagić (KDZ206), KDZ236, Kerim Mešanović (KDZ273), Senija Elkasović (KDZ288), KDZ294, Nermin Karagić (KDZ295), Amir Džonlić (KDZ301), KDZ302, Emsud Garibović (KDZ303), KDZ306, Charles McLeod (KDZ316), Rajif Begić (KDZ332), Safet Tači (KDZ367), Nicolas Sébire (KDZ387), KDZ392, KDZ393, Nusret Sivac (KDZ414), KDZ419, KDZ437, KDZ448, Elvedin Nasić (KDZ466), Sakib Muhić (KDZ484), and KDZ488, pursuant to 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. The Prosecution submits that the proposed evidence is relevant to Counts 1 and 3–8 of the Third Amended Indictment (“Indictment”).² It also submits that the proposed evidence has probative value to the issues in this case, and that the testimony and statements “are consistent and corroborated by other evidence,” and is, therefore, reliable.³ The Prosecution further submits that the proposed evidence is suitable for admission in written form as it is crime-base evidence and does not go to the acts and conduct of the Accused,⁴ and that, given the nature of the proposed evidence, “the right to cross-examination is outweighed by the interest in efficient and expeditious trial proceedings.”⁵ In addition, the Prosecution asserts that admission of this evidence through Rule 92 *bis* will substantially expedite these proceedings and not cause unfair prejudice to the Accused.⁶

¹ Motion, paras. 1, 33, Confidential Appendix A.

² Motion, paras. 2, 16.

³ Motion, paras. 2, 17.

⁴ Motion, paras. 2, 8, 12, 14.

⁵ Motion, para. 28.

⁶ Motion, para. 2.

3. At the Pre-trial Conference, the Trial Chamber accepted the Prosecution's proposals for the reduction of its case, which had been set out in the "Prosecution Submission Pursuant to Rule 73 *bis*(D)", filed on 31 August 2009, and the "Prosecution Second Submission Pursuant to Rule 73 *bis*(D)", filed on 18 September 2009, and ordered, pursuant to Rule 73 *bis*(D) of the Rules, that the Prosecution may not present evidence in respect of the crime sites and incidents that it had identified.⁷ As a consequence of this decision, the Chamber now need only determine if the evidence of 29 of the 46 witnesses included in the Motion, i.e. KDZ014, KDZ024, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, KDZ074, KDZ075, KDZ080, KDZ092, KDZ093, KDZ094, KDZ097, KDZ392, Hasan Alić, Jusuf Arifagić, Kerim Mešanović, Senija Elkasović, Nermin Karagić, Amir Džonlić, Emsud Garibović, Charles McLeod, Rajif Begić, Safet Tači, Nicolas Sébire, Nusret Sivac, Elvedin Nasić, and Sakib Muhić, is admissible pursuant to Rule 92 *bis*.

4. Among the 29 witnesses, all witnesses except for Hasan Alić have previously testified in proceedings before the Tribunal. Specifically, KDZ014 testified in the *Stakić* case on 8 July 2002, and in the *Brđanin* case on 12 October 2002; KDZ038 testified in the *Stakić* case on 26–27 August 2002; KDZ048 testified in the *Stakić* case on 22–24 May 2002; KDZ050 testified in the *Sikirica et al.* case on 1 May 2001; KDZ056 testified in the *Brđanin* case on 8 October 2002; KDZ074 testified in the *Stakić* case on 26 April and 1 May 2002; KDZ075 testified in the *Brđanin* case on 26–27 August 2002, and in the *Krajišnik* case on 30 July 2004; KDZ080 testified in the *Kvočka et al.* case on 5–7 September 2000, and in the *Brđanin* case on 27–28 January 2003; Jusuf Arifagić testified in the *Stakić* case on 28–29 August 2002; Kerim Mešanović testified in the *Kvočka et al.* case on 11–12 September 2000, and in the *Brđanin* case on 30–31 October 2002; Senija Elkasović testified in the *Tadić* case on 1 August 1996; Nermin Karagić testified in the *Stakić* case on 26–27 June 2002; Amir Džonlić testified in the *Brđanin & Talić* case on 26–28 February and 1, 4, and 6 March 2002; Emsud Garibović testified in the *Kvočka et al.* case on 27 September 2000, and in the *Brđanin* case on 6 December 2002; Charles McLeod testified in the *Brđanin* case on 21 and 24 June 2002; Rajif Begić testified in the *Krajišnik* case on 26–27 May 2004; Safet Tači testified in the *Kvočka et al.* case on 7 July 2000; Nicolas Sébire testified in the *Stakić* case on 3 and 27 September 2002, and in the *Brđanin* on 30 May, and 10 and 12 June 2003; Nusret Sivac testified in the *Stakić* case on 29–31 July and 1 August 2002, and 13 January 2003, and in the *Brđanin* case on 13–14 January 2003; Elvedin Nasić testified in the *Brđanin* case on 12 December 2002; and Sakib Muhić testified in the *Brđanin* case on 8 July 2002. With regard to KDZ024, KDZ092, KDZ093, KDZ094, KDZ097,

⁷ Pre-trial Conference, T. 467–468 (6 October 2009). See also the Decision on Application of Rule 73 *bis*, which was filed on 8 October 2009, following the Pre-trial Conference.

and KDZ392, who have testified in closed session in previous cases, the names of their previous cases are listed in the Confidential Annex A to this Decision.

5. Eight of the 29 witnesses, namely KDZ054, KDZ074, KDZ097, Hasan Alić, Emsud Garibović, Rajif Begić, Elvedin Nasić, and Sakib Muhić have given witness statements, which have attestations in accordance with Rule 92 *bis*(B) of the Rules.

6. In addition to transcripts of prior testimony and written witness statements, the Prosecution seeks admission into evidence of the documents accompanying the statements and/or transcripts of the testimony of 27 of the 29 witnesses.⁸

7. Following the Accused's request for an extension of time to respond to the Motion, the Chamber granted him two extensions of time, and ordered him to respond on or before 31 August 2009.⁹ However, on 8 July 2009, the Accused filed his "Omnibus Response" to all Rule 92 *bis* Motions, opposing the Rule 92 *bis* applications for every witness, requesting to cross-examine each witness.¹⁰ At the Status Conference held on 23 July 2009, the Pre-trial Judge indicated to the Accused that the decisions on the Rule 92 *bis* motions would be made by the Trial Chamber, but that the Accused could respond to each respective motion anytime before the decisions had been made.¹¹ During the Pre-trial Conference held on 6 October 2009, the Pre-trial Judge informed the Accused that, should the Chamber admit the evidence of a witness under Rule 92 *bis*, whose evidence the Accused would wish to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.¹²

8. On 16 December 2009, the Accused filed a "Partial Response to Prosecution's Second Motion for Admission of Statements and Transcripts: ARK Municipalities [Witness KDZ097]" ("Partial Response"). In the Partial Response, the Accused asserts that on 8 December 2009 one of his "pro bono legal associates" interviewed KDZ097, who provided the supplemental information contained in Annex A to the Partial Response. The Accused argues that such information is relevant to the case, and that it should be included as part of KDZ097's evidence if the witness's written evidence is admitted by the Chamber.¹³ In the alternative, if the supplemental information is not admitted by the Chamber, the Accused requests the Chamber to

⁸ See Motion, para. 30.

⁹ Motion for Extension of Time to Respond to Rule 92 *bis* Motions, 8 June 2009, para. 5; Order Following Upon Rule 65 *ter* Meeting and Decision on Motions for Extension of Time, 18 June 2009, paras. 4, 18(b); Decision on the Accused's Application for Certification to Appeal Decision on Extension for Time, 8 July 2009, para. 18.

¹⁰ Omnibus Response to Rule 92 *bis* Motions, para. 3.

¹¹ Status Conference, T. 370 (23 July 2009).

¹² Pre-trial Conference, T. 489-490 (6 October 2009).

¹³ Partial Response, paras. 2-3.

call KDZ097 for cross-examination.¹⁴ The Accused adds that the Registry should be directed to obtain the necessary attestation from the witness.¹⁵ The Chamber notes that the Prosecution has not sought leave to reply to the Accused's Partial Response.

II. Discussion

9. On 15 October 2009, the Trial Chamber issued its "Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)" ("Decision on Third Motion"), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Motion when necessary.¹⁶

10. The evidence of each of the 29 witnesses in the Motion is summarised and examined below. With regard to KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392, who have testified in closed session in previous cases, the summaries of their proposed evidence are set out in Confidential Annex A to this Decision. Due to the large number of witnesses, the Chamber has forgone providing individual summaries for all of the witnesses in this Decision. Instead, the Chamber has grouped the witnesses into three categories and nine sub-categories, based on its analysis of their proposed evidence.

A. Proposed Witness Summaries

i. Takeover of municipalities

a) Prijedor municipality

11. 14 witnesses, namely, KDZ014, KDZ038, KDZ048, KDZ050, KDZ054, KDZ074, KDZ080, Jusuf Arifagić, Kerim Mešanović, Senija Elkasović, Nermin Karagić, Emsud Garibović, Nusret Sivac, and Elvedin Nasić testified about the events leading up to the takeover of villages in Prijedor municipality, and the takeover itself. Specifically, KDZ048, KDZ054, Jusuf Arifagić, and Senija Elkasović testified in relation to the village of Kozarac; KDZ080, Kerim Mešanović, and Nusret Sivac testified in relation to Prijedor town; KDZ038, KDZ050, KDZ074, Nermin Karagić, and Elvedin Nasić testified in relation to the village of Hambarine; and KDZ014, KDZ038, KDZ054, Nermin Karagić, and Emsud Garibović testified in relation to the villages of Čarakovo, Biščani, Kamičani, Rizvanovići, and Garibi, respectively.

¹⁴ Partial Response, para. 4.

¹⁵ Partial Response, para. 3.

¹⁶ Decision on Third Motion, paras. 4–11.

12. In particular, KDZ014, KDZ048, and KDZ054 testified about the mistreatment and/or killing of villagers and destruction of houses and/or mosques by Serb forces in Čarakovo, Kozarac, and Kamičani, respectively. KDZ048 discussed the expulsion of the population from Kozarac. Senija Elkasović described how armed soldiers took her husband, brother, and brother-in-law away from her house in Kozarac, and they never returned, and her observation of dead bodies in the village after this incident. KDZ038 testified about the killing of villagers in Bišćani, the separation of men and women, and the looting of houses in the village by Serb soldiers. KDZ074 testified that his brothers were killed in Bišćani.

13. With regard to what took place in Prijedor town, Kerim Mešanović described the destruction of religious buildings in August 1992, and Nusret Sivac discussed the destruction of houses and mosques, the broadcasting of hostile non-Serb propaganda, and the actions of paramilitary groups.

14. KDZ014, KDZ048, KDZ074, KDZ080, and Kerim Mešanović described the various discriminatory measures imposed on non-Serbs, including the dismissal of non-Serbs from their jobs, the restriction of their movement, and the confiscation of their property. Kerim Mešanović also provided background information on the military structures and activities in the Prijedor town, including information in relation to the mobilisation procedure.

b) Ključ municipality

15. KDZ056 and KDZ075 testified respectively about the events surrounding the lead up to, and the takeover of, the villages of Prhovo and Biljani in Ključ municipality. KDZ056 discussed the destruction of Prhovo village, the separation of the men from the women and children in the village, and the subsequent killing of three men while on the way to Peći and of approximately 18 men at a field near Peći. In addition to his evidence about the takeover itself, KDZ075 testified that Bosnian Muslim men were used as human shields during the attack on the village of Biljani.

c) Sanski Most municipality

16. Rajif Begić and Sakib Muhić testified about the events leading up to the takeover of villages in Sanski Most municipality. Rajif Begić described the attack on Hrustovo and Vrhpolje, the subsequent expulsion of the population there, the killings of Bosnian Muslim men at, and on the way to, Vrhpolje bridge, and the destruction of mosques in Hrustovo and Tomina. Sakib Muhić discussed the events surrounding the attack on and takeover of Sanski Most town.

d) Bosanski Novi and Banja Luka municipalities

17. Hasan Alić testified about the events surrounding the takeover of Blagaj in Bosanski Novi municipality, including the killing of townspeople and livestock there, and the destruction of the town. Amir Džonlić testified about the political situation in Banja Luka from 1990 to early 1993, various measures imposed by the Serb authorities on the non-Serb population, such as dismissals of non-Serbs from their jobs, confiscation of property and weapons from non-Serbs (which culminated in the expulsion of non-Serbs from Banja Luka), and the destruction of mosques in Banja Luka.

ii. Detention facilities

a) Manjača camp

18. Six witnesses testified about Manjača camp, namely KDZ048, KDZ074, Rajif Begić, Sakib Muhić, Amir Džonlić, and Charles McLeod. More specifically, Amir Džonlić, Rajif Begić, and Sakib Muhić testified about the daily beatings, unhygienic conditions the detainees were subjected to, and lack of sufficient food; Rajif Begić and Sakib Muhić were detainees at the camp and were themselves beaten. Sakib Muhić also testified that upon his arrival with other Muslim men, six men were beaten to death, and that, during his detention, two men from Ključ municipality were killed. KDZ074 witnessed several detainees being taken away, who never returned. Charles McLeod, who visited the camp, also testified about the “miserable” conditions he witnessed there.

b) Omarska camp

19. Six witnesses, namely KDZ048, KDZ074, KDZ080, Jusuf Arifagić, Kerim Mešanović, and Nusret Sivac, testified about their detention at Omarska camp. KDZ048, KDZ074, KDZ080, Kerim Mešanović, and Nusret Sivac were subjected to beatings themselves and witnessed the mistreatment and killing and/or dead bodies of other detainees. Nusret Sivac further testified that the injured and killed included Bosnian Muslim intellectuals and political leaders. KDZ074 and Kerim Mešanović described the unhygienic conditions in the camp, and KDZ074 and Nusret Sivac testified about the lack of food and water provided to the detainees. KDZ080 was also subject to serious sexual assault.

c) Keraterm camp

20. Four witnesses, namely KDZ050, KDZ074, Jusuf Arifagić, and Safet Tači, testified about their detention in Keraterm camp. KDZ074, Jusuf Arifagić, and Safet Tači were themselves beaten, and Jusuf Arifagić was injured as a result of being beaten. KDZ050, Jusuf Arifagić, and Safet Tači testified about the killings of prisoners in Keraterm camp, including the

massacre of detainees in Room 3 of the camp. KDZ050 also testified that he was kept in Room 3 in unhygienic conditions.

d) Trnopolje camp

21. KDZ014, KDZ038, KDZ048, KDZ050, KDZ054, KDZ080, Jusuf Arifagić, Kerim Mešanović, Senija Elkasović, Emsud Garibović, Safet Tači, and Nusret Sivac testified about their detention at Trnopolje camp. KDZ048, KDZ054, and Emsud Garibović described the conditions of detention. KDZ050 and KDZ054 witnessed detainees being taken away and hearing rounds of gunfire, following which the detainees never returned. KDZ054 also witnessed detainees being beaten. KDZ038 and Emsud Garibović further testified about the execution of a number of detainees from the camp at Korićani Stijene on Mount Vlašić. KDZ014 and Senija Elkasović testified that following their detention they were transported to Travnik, and that during the journey their property was confiscated. Charles McLeod described his visit to the camp.

e) Other detention facilities

22. Nermin Karagić and Elvedin Nasić testified about their detention at Miška Glava Dom (where detainees, including the witnesses, were beaten and there was not sufficient food) and the Ljubija football stadium (where detainees, including the witnesses, were severely beaten and some were killed), and the subsequent execution of detainees at Kipe mine. After surviving the execution, Nermin Karagić and Elvedin Nasić were part of a convoy to Travnik in which Elvedin Nasić witnessed Bosnian Serb guards confiscating property from passengers.

23. KDZ056 testified about his detention at the Dom in Peći, Nikola Mačkić elementary school, and a school in Sitnica. KDZ075 testified about his detention, the confiscation of the property, and killing of Bosnian Muslim men, at an elementary school in Biljani. Hasan Alić testified about the transportation of the men from Blagaj to, and their detention at, the Mlakve football stadium, where he was detained for 45 days without sufficient food. Rajif Begić and Sakib Muhić testified about their detention at Krings Hall and Hasan Kikić school sport hall, respectively.

iii. Other witnesses

24. In addition to the evidence Charles McLeod provided regarding what he saw at Manjača and Trnopolje camps, he testified about the aims of the European Community Monitoring Mission ("ECMM"), of which he was a member in late 1992, and numerous meetings he had with representatives of Serb civilian and military authorities to further those aims.

25. Nicolas Sébire, who worked as an investigator for the Prosecution testified about the exhumation of bodies in the municipalities of Ključ, Prijedor, Sanski Most, Bosanska Krupa, Kevljani, Kotor Varoš, and Teslić.

B. Analysis Pursuant to Rule 92 bis(A) and (B)

26. As a preliminary matter, the Chamber notes that while, in the Motion, the Prosecution requests the admission of a total of 163 pages of KDZ024's testimony in a previous case,¹⁷ in addition to the witness's testimony from another case, it did not provide 12 pages of that testimony to the Chamber. However, it appears that these 12 pages do not, in fact, contain KDZ024's testimony,¹⁸ and thus the Chamber does not need to consider their admission. Therefore, the Chamber will deny the Prosecution's request for the admission of KDZ024's evidence as it relates to those 12 pages and it will only analyse the transcript pages which have been tendered.

27. With regard to Nermin Karagić's proposed evidence, the Chamber notes that the Prosecution has sought the admission of transcript pages T. 5202–5278 from the witness's 26 June 2002 testimony in the *Stakić* case. It has also tendered transcript pages T. 5302–5310 from his 27 June 2002 testimony, which are not related to the witness's testimony, but record proceedings that took place after the witness had withdrawn from the court. The Chamber will deny the Prosecution's request for admission of Nermin Karagić's evidence insofar as it relates to transcript pages T. 5302–5310, but it considers below the admissibility of Nermin Karagić's proposed evidence, as contained in the transcript of 26 June 2002.¹⁹

28. The Trial Chamber is satisfied that the proposed evidence of all 29 witnesses except for KDZ056 and Hasan Alić is relevant to a number of charges against the Accused, namely genocide (Count 1), persecutions (Count 3), extermination (Count 4), murder (Counts 5 and 6), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it specifically relates to the takeovers of a number of municipalities, the killing of Bosnian Muslims, the causing of serious bodily or mental harm to Bosnian Muslims, the imposition and maintenance of restrictive and discriminatory measures against the Bosnian Muslim population in those municipalities, the unlawful detention of Bosnian Muslims at detention facilities (such as in

¹⁷ Transcript pages T. 9095–9257 from KDZ024's previous testimony.

¹⁸ Transcript pages T. 9173–9184 (29 August 2009) records the proceedings that took place after KDZ024 had withdrawn from the courtroom and before KDZ024 entered the court on the following day.

¹⁹ The Trial Chamber notes that the Prosecution has not sought the admission of transcript pages T. 5287–5296 from Nermin Karagić's 27 June 2002 testimony which is still a part of his direct examination and contains more detailed information about the attack on Hambarine, and the "ethnic cleansing" which took place in Rizvanovići in the context of the takeover.

Manjača, Omarska, Keraterm and Trnopolje camps, Velagići school, Miška Glava Dom, Ljubija football stadium, Prijedor barracks, Hasan Kikić school sports hall, and Krings Hall), the establishment and perpetuation of inhumane living conditions in detention facilities, and killings related to the detention facilities.

29. Furthermore, the Chamber considers that KDZ056's proposed evidence is relevant to the charges of genocide (Count 1), persecutions (Count 3), extermination (Count 4), and murder (Counts 5 and 6), as it pertains to the killing of Bosnian Muslims during and after the takeover of Prhovo village and the unlawful detention at detention facilities, including the Nikola Mačkić elementary school. The Chamber also considers that the proposed evidence of Hasan Alić is relevant to the charges of persecutions (Count 3), extermination (Count 4), murder (Counts 5 and 6), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it relates to the killing of Bosnian Muslims in connection with the takeover of Blagaj, and the unlawful detention of Bosnian Muslims at the Mlakve football stadium.

30. The Chamber notes that the transcripts of previous testimony of which the Prosecution seeks admission into evidence are from the *Brđanin & Talić*, *Brđanin*, *Slobodan Milošević*, *Krajišnik*, *Stakić*, *Kvočka et al.*, *Tadić*, and *Sikirica et al.* cases, and that the witness statements that were given to the Prosecution have met the requirements under Rule 92 bis(B). The Chamber is thus satisfied of the probative value of the transcripts and witness statements of these 29 witnesses. The Chamber is also satisfied of the relevance and probative value of KDZ097's supplemental statement.

31. With respect to the admissibility of other evidence of which the Prosecution requests admission in the Motion, the Chamber is satisfied that the evidence of all the witnesses except for the evidence of KDZ074 and Charles McLeod does not pertain to the acts and conduct of the Accused, or any acts or conduct which goes to establish that the Accused participated in a joint criminal enterprise ("JCE"), as charged in the Indictment, or shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes.²⁰

²⁰ The Chamber notes that Rajif Begić's witness statement makes a reference to having seen the Accused speaking on television. The Chamber is satisfied, however, that this very minor and generalised reference has no bearing on the Accused's acts and conduct as charged in the Indictment, or could be said to be a factor against admission of this evidence pursuant to Rule 92 bis. The Chamber also notes that in response to a question about Emsud Garibović's knowledge of people who were responsible for the massacre on Mount Vlašić, Emsud Garibović testified that he learned from Mevludin Sejmenović's witness statement, the content of which was transmitted on television when the trial of the *Tadić* case was broadcast, that the Accused said he did not want to hear anything more about what happened on Mount Vlašić. The Chamber is satisfied, however, that this reference has no bearing on the Accused's acts and conduct as charged in the Indictment, or could be said to be a factor against admission of this evidence pursuant to Rule 92 bis.

32. The Chamber notes, however, that small portions of KDZ074 and Charles McLeod's evidence relate to the acts and conduct of the Accused: (i) KDZ074 testified that the Accused and Radko Mladić, who is named in the Indictment as a member of all of the JCEs with which the Accused is charged, were the highest civilian and military authorities to which the Omarska and Keraterm camp commanders were responsible; and (ii) Charles McLeod testified that during a meeting he had at Manjača camp, he was told by the Serbian Minister of Health that he was ready to sign an order to close down all camps, and that several month later such an order was signed by the Accused. The Chamber considers that, in light of the nature of this evidence going to the acts and conduct of the Accused, it is inadmissible under Rule 92 *bis*(A). However, it further finds that redacting those portions of the witnesses' testimony, namely, (i) lines 3 to 18 on page T. 2393 of KDZ074's 1 May 2002 testimony in the *Stakić* case; and (ii) lines 4 to 11 on page T. 7403 of Charles McLeod's 24 June 2002 testimony in the *Brđanin* case would not make the remaining evidence incomprehensible or unreliable. Therefore, it will continue to analyse the remainder of KDZ074 and Charles McLeod's evidence on the basis of the requirements of Rule 92 *bis*.

33. The Chamber has further considered the factors that weigh in favour of admitting written evidence pursuant to Rule 92 *bis*. With regard to the factors that have most bearing on the issues raised by the Motion, first, the Chamber is satisfied that the evidence of the 29 witnesses who remain subject to the Motion is crime-base evidence. All the witnesses, with the exception of Charles McLeod and Nicolas Sébire, recall their experiences and what they witnessed, of the events that took place around the takeover of the municipalities in which they resided. Charles McLeod described what he saw during his visit to Manjača and Trnopolje camps, and Nicolas Sébire recounted his experience of investigating the exhumation sites in relation to the crimes committed in those municipalities. Furthermore, all witnesses, except for Amir Džonlić, Charles McLeod, and Nicolas Sébire, described the impact of crimes committed against them.

34. Secondly, the Chamber has reviewed the cumulateness of the witnesses' evidence. Although the Chamber is not in a position at this stage to fully assess every aspect of the cumulateness between the witnesses, the Chamber has reviewed every witness's evidence and the Prosecution's Rule 65 *ter* witness list and Rule 65 *ter* exhibit list. The Chamber notes that as the Prosecution made no attempt in its Motion to demonstrate for each witness how that witness's evidence was cumulative of the evidence of other witnesses or exhibits save generally listing other witnesses and Rule 65 *ter* exhibit numbers, the Chamber has not discussed below every way in which a witness's evidence is cumulative of other witnesses' evidence or exhibits

but has mostly focused on the incidents listed in the Schedules of the Indictment. The following illustrates the cumulative nature of this evidence:

- (i) KDZ074, Rajif Begić, and Sakib Muhić's evidence about their detention at Manjača camp is cumulative, as well as being cumulative of the evidence of Amir Džonlić and Charles McLeod. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely KDZ026, KDZ163, KDZ214, KDZ225, KDZ258, KDZ263, KDZ327, KDZ353, KDZ398, KDZ474, and KDZ492. Furthermore, their evidence is cumulative of a number of documents listed in the Prosecution's Rule 65 *ter* exhibit list. For example, documents with Rule 65 *ter* numbers 00257, 00836, 00889, 05567, 05580, 05777, and 05779 (Daily reports of the Manjača camp operational team to the 1st Krajina Corps Command Security and Intelligence Department), 05622 (1st Krajina Corps Command transcription of a decision of the Republika Srpska Presidency), 05775 (Daily report to the 1st Krajina Corps Command), 05614 (Memo from Charles McLeod to the Political Advisor on CSCE Rapporteur Mission to Banja Luka), 05574 (Reuters Article), and 05670 (ICRC Press Release).
- (ii) KDZ048, KDZ074, KDZ080, Jusuf Arifagić, Kerim Mešanović, and Nusret Sivac's evidence about their detention at Omarska camp is cumulative. The evidence of these witnesses is also cumulative of the evidence of witnesses who are not subject to the Motion, namely, KDZ026, KDZ123, KDZ198, KDZ406, KDZ459, and KDZ523. Furthermore, the evidence of Kerim Mešanović and KDZ080 about the killings committed at Omarska camp is cumulative.
- (iii) KDZ050, KDZ074, Jusuf Arifagić, Safet Tači, and Nusret Sivac's evidence about their detention at Keraterm camp is cumulative, as well as being cumulative of the evidence of KDZ523, who is not subject to the Motion. The evidence of KDZ050, Jusuf Arifagić, and Safet Tači's evidence, in which they described the massacre at Room 3 in Keraterm camp, is also cumulative.
- (iv) KDZ014, KDZ038, KDZ048, KDZ050, KDZ054, KDZ080, Jusuf Arifagić, Kerim Mešanović, Senija Elkasović, Emsud Garibović, Safet Tači, and Nusret Sivac's evidence about their detention at Trnopolje camp is cumulative, as well as being cumulative of the evidence of Charles McLeod. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely, KDZ123, KDZ406, KDZ452, and KDZ523.

- (v) With regard to other detention facilities, Hasan Alić's evidence regarding the detention at the Mlakve football stadium is cumulative of that of KDZ011, who is not subject to the Motion. The evidence of KDZ056 concerning the detention at Nikola Mačkić elementary school is cumulative of the evidence of KDZ225, who is not subject to the Motion. Sakib Muhić's evidence about the detention at Hasan Kikić school sports hall is cumulative of the evidence of KDZ214, KDZ263, and KDZ490, who are not subject to the Motion. Rajif Begić's evidence concerning detention at Krings hall is cumulative of the evidence of KDZ052, KDZ353, and KDZ490, who are not subject to the Motion.
- (vi) KDZ048, Jusuf Arifagić, and Senija Elkasović's evidence regarding the takeover of Kozarac is cumulative, as well as being cumulative of the evidence of KDZ452 and KDZ523, who are not subject to the Motion. The evidence of KDZ048, KDZ452, KDZ523, and Jusuf Arifagić pertaining to the killings committed in Kozarac is also cumulative.
- (vii) With regard to the takeover of Hambarine, KDZ014, KDZ038, KDZ050, KDZ074, and Elvedin Nasić's evidence is cumulative. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely KDZ026, KDZ123, KDZ338, KDZ401, and KDZ452.
- (viii) KDZ075's evidence regarding the takeover of Biljani is cumulative of the documents with Rule 65 *ter* numbers 00838 (Order of Ključ Military Post 2207 Command), and 00840 (Official Note of Public Security Station Ključ).
- (ix) KDZ038 and KDZ074's evidence regarding the killing of men in Bišćani is cumulative. Their evidence is also cumulative of the evidence of KDZ523, who is not subject to the Motion.
- (x) Nermin Karagić and Elvedin Nasić's evidence with regard to their detention at Miška Glava Dom and Ljubija football stadium, and the killings at Ljubija football stadium and Kipe mine, is cumulative. Their evidence is also cumulative of the evidence of KDZ092 in relation to the killings at Ljubija football stadium.
- (xi) The evidence of KDZ038 and Emsud Garibović relating to the execution at Korićani Stijene on Mount Vlašić is cumulative, as well as being cumulative of the evidence of witnesses who are not subject to the Motion, namely KDZ223, KDZ523, KDZ526, KDZ528, KDZ529, KDZ530, and KDZ532.

(xii) Nicolas Sébire's evidence in relation to killing incidents in Ključ, Prijedor and Sanski Most municipalities is cumulative of KDZ050, KDZ080, Jusuf Arifagić, Kerim Mešanović, Safet Tači, and Nusret Sivac, as well as being cumulative of the evidence of KDZ123, KDZ398, and KDZ452, who are not subject to the Motion.

(xiii) With regard to the destruction of mosques in the Autonomous Region of Krajina ("ARK"), the evidence of KDZ014, KDZ048, KDZ054, Kerim Mešanović, Amir Džonlić, Rajif Begić, and Nusret Sivac is cumulative, as well as being cumulative of the evidence of KDZ047, KDZ338, KDZ490, and KDZ545, who are not subject to the Motion.

35. Further, in relation to cumulativeness of the proposed evidence, the Chamber notes that it has assessed the evidence of KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392, who previously testified in closed session, and it is satisfied that their evidence is cumulative of that of other Prosecution witnesses, who are both subject and not subject to the Motion.

36. With regard to the factors that weigh against admitting the proposed evidence pursuant to Rule 92 *bis*, the Chamber notes that after its review of the evidence of the following witnesses and the Prosecution's Rule 65 *ter* witness list, it considered that the following parts of the evidence of KDZ054, KDZ056, KDZ075, and Senija Elkasović and a certain part of the evidence of KDZ094, described in Confidential Annex A to this Decision, are not cumulative of other evidence: (i) KDZ054's evidence on the killing of a number of people in Kamičani; (ii) KDZ056's evidence regarding the takeover of Prhovo village, and the killing of men in Prhovo and on the way to Peći; (iii) KDZ075's evidence concerning the killing of men in Biljani; (iv) Senija Elkasović's evidence in relation to the killing of men in Jaskići. However, it does not consider this lack of cumulativeness sufficient to deny the admission of the evidence of these witnesses.

37. Furthermore, the Chamber notes that: (i) KDZ038, KDZ056, KDZ075, Senija Elkasović, Amir Džonlić and Rajif Begić testified about the activities of a number of people who held various positions in the Bosnian Serb political and military organs; (ii) KDZ080, Kerim Mešanović and Nusret Sivac described the visit of a delegation led by Radoslav Brđanin to Omarska camp; and (iii) KDZ050, KDZ080, KDZ092, KDZ093, KDZ392, Emsud Garibović, Kerim Mešanović, Elvedin Nasić and Sakib Muhić testified about the guards, shift commanders or camp commanders at Manjača, Omarska, Keraterm, and Trnopolje camps. A more detailed description of the witnesses' evidence on these issues is contained in paragraphs 44–46 below and the Confidential Annex A to this Decision. Having considered the evidence of these

witnesses, the Chamber is satisfied that this evidence neither indicates that the Accused participated in the alleged overarching JCE, nor that he shared the intent of any of the individuals named above to commit the crimes as described by the witnesses. Thus, the Chamber does not consider that the references to the actions of these individuals render the evidence inadmissible. There are no other factors that weigh against the admission of the proposed written evidence pursuant to Rule 92 *bis*.

38. Thus, the Chamber considers that there are factors in favour of admitting into evidence the written statements and/or transcripts of previous testimony of all the witnesses subject to the Motion, with the exception of the following: (i) lines 3 to 18 on page T. 2393 of KDZ074's 1 May 2002 testimony in the *Stakić* case; and (ii) lines 4 to 11 on page T. 7403 of Charles McLeod's 24 June 2002 testimony in the *Brđanin* case.

39. The formal requirements set out in Rule 92 *bis*(B) are only applicable to KDZ054, KDZ074, KDZ097, Hasan Alić, Emsud Garibović, Rajif Begić, Elvedin Nasić, and Sakib Muhić, in relation to which the Prosecution seeks admission of their written statements. All of their written statements meet the requirements. However, the Chamber notes that the supplemental statement of KDZ097, of which the Accused seeks admission along with the written evidence of KDZ097 tendered by the Prosecution, does not have the required Rule 92 *bis*(B) attestation.

40. In conclusion, on the basis of the reasons provided above, the Chamber considers the evidence of KDZ014, KDZ024, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, KDZ074, KDZ075, KDZ080, KDZ092, KDZ093, KDZ094, KDZ392, Hasan Alić, Jusuf Arifagić, Kerim Mešanović, Senija Elkasović, Nermin Karagić, Amir Džonlić, Emsud Garibović, Charles McLeod, Rajif Begić, Safet Tači, Nicolas Sébire, Nusret Sivac, Elvedin Nasić, and Sakib Muhić, with the exception of the parts mentioned in paragraph 38 above, is admissible pursuant to Rule 92 *bis*(A) subject to the following consideration pursuant to Rule 92 *bis* (C). With regard to the evidence of KDZ097, the Chamber will admit the written evidence tendered by the Prosecution and provisionally admit the supplemental statement tendered by the Accused, subject to the Accused obtaining the required attestation in compliance with Rule 92 *bis*(B).

D. Analysis Pursuant to Rule 92 *bis*(C)

41. The Chamber once again recalls that, with regard to written evidence that is admissible pursuant to Rule 92 *bis*, the Chamber has discretion to require witnesses to appear for cross-examination; if it does so decide, the provisions of Rule 92 *ter* shall apply. In making this assessment, the Chamber has taken into account the criteria pertaining to Rule 92 *bis*(C)

established in the case-law of the Tribunal, and described in detail in the Decision on Third Motion.²¹ In particular, the Chamber has considered whether the evidence: (i) is cumulative; (ii) is crime-base; (iii) touches upon a “live and important issue between the parties”; and (iv) describes the acts and conduct of a person for whose acts and conduct the Accused is charged with responsibility, and how proximate the acts and conduct of this person are to the Accused.

42. The Chamber is satisfied that the evidence of KDZ014, KDZ024, KDZ048, KDZ054, KDZ074, KDZ094, KDZ097, Jusuf Arifagić, Charles McLeod, Safet Tači, and Nicolas Sébire constitutes crime-base evidence, and that none of these witnesses’ evidence bears upon the Accused’s responsibility as alleged in the Indictment or touches upon a live or important issue between the Prosecution and the Accused. The Chamber shall, therefore, not require these witnesses to appear for cross-examination.

43. The Chamber now turns to the rest of the witnesses. First, the Chamber notes that Hasan Alić and Nermin Karagić have never been cross-examined, and that the cross-examination of KDZ075 and KDZ093 was limited. KDZ075 was cross-examined only in relation to the establishment of checkpoints, military helicopters landing in a Serb hamlet, and the militarisation of Bosnian Muslims in Brkici, but he was not cross-examined on significant aspects of his testimony, namely the takeover of Biljani or the detention and killings of Bosnian Muslim men at Biljani. The issues on which KDZ093 was cross-examined are described in Confidential Annex A to this Decision. Secondly, the Chamber notes that, again as stated above, aspects of the proposed evidence of certain witnesses is not cumulative of other evidence, and, in some cases, these aspects formed a substantial part of their testimony. However, the Chamber does not consider the lack of, or only limited, cross-examination or the lack of cumulativeness alone is sufficient to require those witnesses to appear for cross-examination.

44. Thirdly, the Chamber is satisfied that none of the evidence listed in paragraphs 40 bears directly upon the Accused’s responsibility as alleged in the Indictment or touches upon a live or important issue between the Prosecution and the Accused. However, the Trial Chamber notes that several witnesses provided evidence describing the activities of a number of people who held various positions in the Bosnian Serb political and military organs, namely: (i) KDZ038 testified that Drago Mrdja ordered the transportation and the execution of prisoners at Korićani Stijene; (ii) KDZ056 testified that Marko Adamović ordered the burning of, and killing of everyone in, Prhovo village; (iii) KDZ075 testified that Marko Samardžija (Captain of the reserve forces of the Yugoslav People’s Army) ordered Bosnian Muslim men in Biljani to go an elementary school where Mile Tomić (Commander of the police in Sanica) was present; (iv)

²¹ Decision on Third Motion, para. 10.

Senija Elkasović testified about the presence of Duško Tadić (President of the local board of Serb Democratic Party (“SDS”) in Kozarac) in Jaskići when men were being taken away on 14 June 1992; (v) Amir Džonlić testified that during speeches which were reported in the media, Radoslav Brđanin (President of the ARK Crisis Staff) called Muslims “Balijas” and Croats “Ustashas”, and announced that only a small percentage of non-Serbs could remain in Banja Luka and Radislav Vukić (President of the SDS Main Board for Banja Luka) proclaimed that Bosnian women would never be able to give birth again in local hospitals; he also testified about the meeting he had with Momir Talić (Commander of the 1st Krajina Corps of the Army of Republika Srpska (“VRS”)) and some members of the 1st Krajina Corps of the VRS, where he was told about the treatment of the prisoners in Manjača camp, and his visit to the Manjača camp which was authorised by Momir Talić after numerous requests; and (vi) Rajif Begić testified about Branko Basara who was the Commander of the 6th Krajina Brigade, which participated in the takeover of Kljevci village, and a man who visited Manjača camp, who he heard from other prisoners was Momir Talić.

45. Similarly, the Chamber notes that KDZ080, Kerim Mešanović, and Nusret Sivac described the visit of a delegation to Omarska camp during which the detainees were lined up and forced to sing Serbian songs, chant Serbian slogans, and make Serbian hand signals. The delegation was headed by Radoslav Brđanin and included several high-ranking politicians and military personnel who may have been aware of the unlawful detention of prisoners at Omarska camp (including the inhumane conditions and beatings committed therein). In this regard: (i) KDZ080 testified about the people who were present, namely, Momir Talić, Radislav Vukić, Stojan Župljanin (Chief of the Regional Security Service Centre of Banja Luka and member of ARK Crisis Staff), Vojo Kuprešanin (President of the ARK Assembly and member of the ARK Crisis Staff), and Simo Drljača (Chief of the Prijedor Public Security Station), the route they walked around, and the conditions of the inmates who were lined up to greet them (KDZ080 described them as “living skeletons”); (ii) Kerim Mešanović testified that Simo Drljača, Milomir Stakić (President of the National Defence Council), and Milan Kovačević (President of the Executive Committee of the Municipal Assembly of Prijedor) were present, and that a few days after the visit, a journalist wrote an article about the Omarska camp which exposed the camp to the world; and (iii) Nusret Sivac testified about the people composing the delegation, namely, Simo Drljača, Radoslav Vukić, Predrag Radić (President of the Banja Luka Municipal Assembly and the Banja Luka Crisis Staff, and member of ARK Crisis Staff), Milan Kovačević, Milomir Stakić, Srdo Srdić (member of the Serb Assembly, with whom the Accused often stayed when he came to Prijedor), Simo Misković (President of the SDS), Milan Andžić (financed and organised Omarska camp), and Radmilo Zeljaja (Commander of a Serbian Brigade), the route

they walked around, and the conditions of the detainees who were taken out of the detention facilities and lined up to greet them (Nusret Sivac testified that the detainees looked “miserable”, that a number of them had marks from torture and ill treatment, that they had no foot wear or were naked waist up, and that many of them were wearing bandages on their body parts.). He also testified that the members of the delegation laughed when they saw the detainees chant Serbian slogans and make Serbian hand signals.

46. The Trial Chamber also notes that the following witnesses provided evidence regarding the guards, shift commanders or camp commanders at Manjača, Omarska, Keraterm and Trnopolje camps: (i) KDZ050 testified about beatings and killings committed by Nenad Banović (aka “Čupo”) at Keraterm camp; (ii) KDZ080 testified about Nedeljko Grabovac (aka “Kapitan”) and Mlađo Radić (aka “Krkan”), who sexually assaulted her, and Miroslav Kvočka, Dragoljub Prcać, Milojica Kos (aka “Krle”), Zoran Žigić, and Željko Meakić, who were present at Omarska camp; (iii) Emsud Garibović testified about the presence of Slobodan Kuruzović at Trnopolje camp (iv) Kerim Mešanović testified about the presence of Mlađo Radić, Milojica Kos, Miroslav Kvočka, Dragoljub Prcać, and Ckalja at Omarska camp; (v) Elvedin Nasić testified that a policeman called “Stiven” killed the witness’s cousin at the Ljubija football stadium; and (vi) Sakib Muhić testified about the presence of Božidar Popović at Manjača camp. The relevant aspects of KDZ092, KDZ093, and KDZ392’s testimony in this regard are described in Confidential Annex A to this Decision.

47. The Chamber considers that some of these witnesses’ evidence, which goes to the acts and conduct of the alleged members of the overarching JCE, is sufficiently proximate to the Accused to require those witnesses to appear for cross-examination. The evidence concerned is: (i) Amir Džonlić’s evidence concerning Radoslav Brđanin, Radislav Vukić, and Momir Talić; and (ii) KDZ080, Kerim Mešanović, and Nusret Sivac’s evidence about the visit of the delegation to Omarska camp. However, the Chamber considers that the evidence KDZ038, KDZ050, KDZ056, KDZ075, KDZ092, KDZ093, KDZ392, Senija Elkasović, Emsud Garibović, Rajif Begić,²² Elvedin Nasić, and Sakib Muhić, which the Chamber has identified above as going to the acts and conduct of persons for whose acts and conduct the Accused is charged with responsibility or about individuals who may be responsible for the commission of the crimes, is not sufficiently linked to the Accused to require the appearance of these witnesses for cross-examination.

²² The Trial Chamber notes that Rajif Begić testified about a man who visited Manjača camp who he heard from other prisoners to be Momir Talić. However, given that Rajif Begić does not provide any further details about this man, the Chamber does not consider this part of the evidence to be highly probative or sufficiently proximate to the Accused to warrant the Chamber to call Rajif Begić for cross-examination.

48. Nevertheless, the Chamber considers it appropriate to exercise its discretion to call KDZ075 for cross-examination because his evidence concerning the killing of men in Biljani (Scheduled Killing Incident A 7.3), which was a substantial part of his prior testimony, is not cumulative of any other evidence, and it was not addressed in his cross-examination in the previous case.

49. Thus, on the basis of these factors the Trial Chamber will exercise its discretion to call KDZ075, KDZ080, Kerim Mešanović, Amir Džonlić, and Nusret Sivac for cross-examination. It will postpone the determination of the admission of the evidence of these witnesses until such time as they are brought to give the evidence before the Chamber. Having considered the evidence of KDZ014, KDZ024, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, KDZ074, KDZ092, KDZ093, KDZ094, KDZ097, KDZ392, Hasan Alić, Jusuf Arifagić, Senija Elkasović, Emsud Garibović, Charles McLeod, Rajif Begić, Safet Tači, Nicolas Sébire, Nermin Karagić, Elvedin Nasić, and Sakib Muhić, the Chamber is satisfied that these witnesses do not need to appear for cross-examination, and the evidence of these witnesses, except for the parts mentioned in paragraph 38 above, will be admitted pursuant to Rule 92 *bis*.

50. The Chamber notes that the Prosecution did not request the admission under seal of the transcripts of prior testimony and/or witness statements of the witnesses who testified in closed session in previous cases, namely, KDZ024, KDZ092, KDZ093, KDZ094, KDZ097, and KDZ392. However, as this evidence may reveal the witnesses' identity, these documents will be admitted into evidence under seal pending confirmation of their status by the Prosecution.

E. Associated Exhibits

51. The Trial Chamber need only evaluate the associated exhibits, if any, for witnesses KDZ014, KDZ024, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, KDZ074, KDZ092, KDZ093, KDZ094, KDZ097, KDZ392, Hasan Alić, Jusuf Arifagić, Senija Elkasović, Emsud Garibović, Charles McLeod, Rajif Begić, Safet Tači, Nicolas Sébire, Nermin Karagić, Elvedin Nasić, and Sakib Muhić. In total, the Prosecution requests the admission of 248²³ associated exhibits for these witnesses.

52. As set out in the Decision on Third Motion, only those associated exhibits that “form an inseparable and indispensable part of the testimony” may be admitted. To fall into this category, the witness must have discussed the associated exhibit in the transcript of his or her prior

²³ The number 248 includes the associated exhibit with Rule 65 *ter* number 14963, which is the same exhibit with Rule 65 *ter* number 00484.

evidence or written statement, and that transcript or written statement would become incomprehensible or of less probative value if the exhibit is not admitted.²⁴

53. As a preliminary matter, the Chamber notes that the transcripts of prior testimony with Rule 65 *ter* numbers 08937, 13769, 13771, 13889, 13916, 13927, 18889, and 18890 have been tendered by the Prosecution both as the written evidence of witnesses and as associated exhibits. The Chamber has determined above that these transcripts will be admitted as the witnesses' written evidence, and, therefore, will not consider their admission into evidence as associated exhibits.

54. The Prosecution has tendered the pseudonym sheets for witnesses KDZ014 (Rule 65 *ter* numbers 13879, 14917), KDZ038 (Rule 65 *ter* number 14184), KDZ050 (Rule 65 *ter* number 13710), KDZ056 (Rule 65 *ter* number 20023), KDZ074 (Rule 65 *ter* number 13921), KDZ092 (Rule 65 *ter* number 13770), KDZ094 (Rule 65 *ter* number 13926), and KDZ097 (Rule 65 *ter* number 14743), which were admitted in previous cases where the witnesses had protective measures. The Chamber considers that the pseudonym sheets are necessary for the identification of these witnesses and that they form an inseparable and indispensable part of the witnesses' testimony. These associated exhibits will be admitted into evidence under seal.²⁵

55. The Prosecution has also requested the admission into evidence of the following exhibits:

- (i) Maps related to the testimony of KDZ038, KDZ048, KDZ056, KDZ074, KDZ092, KDZ094, KDZ097, KDZ392, Jusuf Arifagić, Rajif Begić, Nermin Karagić, Nicolas Sébire, and Elvedin Nasić: Rule 65 *ter* numbers 04824, 13531,²⁶ 13579, 13756,²⁷ 13941, 13943, 13945, 13986, 14103, 14441, 14442 14738, 14892, 18934, and 20024;
- (ii) Photographs related to the testimony of KDZ024, KDZ038, KDZ048, KDZ074, KDZ092, KDZ093, KDZ094, Jusuf Arifagić, Senija Elkasović, Emsud Garibović, Charles McLeod and KDZ392: Rule 65 *ter* numbers 08926,²⁸ 08931,²⁹ 10973,³⁰

²⁴ Decision on Third Motion, para. 11.

²⁵ The Prosecution did not request the associated exhibits with Rule 65 *ter* numbers 13710 and 14743 to be admitted under seal. However, given that the associated exhibit with Rule 65 *ter* number 13710 may reveal the identity of KDZ050 and the associated exhibit with Rule 65 *ter* number 14743 was admitted under seal during KDZ097's testimony in the *Brđanin* case, the Trial Chamber will admit these exhibits under seal.

²⁶ The Prosecution requested the admission of this associated exhibit in relation to KDZ038 and Nermin Karagić.

²⁷ The Prosecution requested the admission of this associated exhibit in relation to KDZ014, KDZ074, KDZ092, Jusuf Arifagić, and Elvedin Nasić.

²⁸ Admitted under seal in the *Brđanin* case.

²⁹ Admitted under seal in the *Brđanin* case.

10976,³¹ 10982,³² 10983,³³ 10984,³⁴ 10985,³⁵ 10986,³⁶ 10987,³⁷ 10989,³⁸ 10990,
 11003,³⁹ 11004,⁴⁰ 11005,⁴¹ 11006,⁴² 11007,⁴³ 11008,⁴⁴ 11013, 11014, 11015,⁴⁵
 11016,⁴⁶ 13444, 13446, 13448, 13462, 13642, 13670, 13673, 13676, 13679, 13900,
 13901, 13902, 13906, 13907, 13908, 13909, 13911, 13914, 13918, 13922, 13924,
 13946, 13947, 13948, 13950, 13952, 13953, 13955, 13956,⁴⁷ 13957,⁴⁸ 13958, 14139,
 14173, 14424,⁴⁹ 14425,⁵⁰ 14427,⁵¹ 14428,⁵² 14444, 14445, 14728, 14734, 14745,⁵³
 14755, 14842,⁵⁴ 14860,⁵⁵ 14861,⁵⁶ 14863,⁵⁷ 14864,⁵⁸ 14865,⁵⁹ 14866, 14868, 14877,
 14981,⁶⁰ 14970,⁶¹ 14983,⁶² 15903, 15909, 15911, 15913, 15914, 15915, 15916, and
 19870;

³⁰ The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ092.

³¹ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

³² The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ092.

³³ The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ092.

³⁴ The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ092.

³⁵ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

³⁶ The Prosecution requested the admission of this associated exhibit in relation to KDZ074 and Jusuf Arifagić.

³⁷ The Prosecution requested the admission of this associated exhibit in relation to KDZ074 and Jusuf Arifagić.

³⁸ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

³⁹ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁴⁰ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁴¹ The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ392.

⁴² The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁴³ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁴⁴ The Prosecution requested the admission of this associated exhibit in relation to KDZ048, KDZ074, and KDZ392.

⁴⁵ The Prosecution requested the admission of this associated exhibit in relation to KDZ074 and KDZ092.

⁴⁶ The Prosecution requested the admission of this associated exhibit in relation to KDZ074 and KDZ092.

⁴⁷ Admitted under seal in the *Stakić* case.

⁴⁸ Admitted under seal in the *Stakić* case.

⁴⁹ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁵⁰ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁵¹ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁵² The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁵³ In the Motion, the Prosecution did not request this exhibit to be admitted under seal. However, as it may reveal the identity of KDZ097, the Trial Chamber will admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁵⁴ The Trial Chamber will admit this exhibit under seal as it may reveal the identity of KDZ092.

⁵⁵ Admitted under seal in the *Brđanin* case.

⁵⁶ Admitted under seal in the *Brđanin* case.

⁵⁷ Admitted under seal in the *Brđanin* case.

⁵⁸ Admitted under seal in the *Brđanin* case.

⁵⁹ Admitted under seal in the *Brđanin* case.

⁶⁰ The Trial Chamber will admit this exhibit under seal as it may reveal the identity of KDZ092.

⁶¹ Admitted under seal in the *Brđanin* case.

- (iii) Stills from videos related to the testimony of KDZ092: Rule 65 *ter* numbers 13773 and 13774;
- (iv) Sketches and diagrams related to the testimony of KDZ092, KDZ093, KDZ392, Jusuf Arifagić, and Nicolas Sébire: Rule 65 *ter* numbers 13792, 14446, 14447, 14448, 14986,⁶³ 14990,⁶⁴ 18938, 18939, 18941, and 18842;
- (v) Lists of persons related to the testimony of KDZ056, KDZ094, Senija Elkasović, Nicolas Sébire, and Sakib Muhić: Rule 65 *ter* numbers 00907, 13813, 13942, 18813, and 18935;
- (vi) A letter related to the testimony of KDZ024 with Rule 65 *ter* number 14968,⁶⁵ and an article related to testimony of KDZ392 with Rule 65 *ter* number 14440;
- (vii) Reports, certificates, investigation records, and statement related to the testimony of KDZ024, KDZ050, KDZ056, Charles McLeod, and Nicolas Sébire: Rule 65 *ter* numbers 00825,⁶⁶ 05551, 05614, 12865, 12866, 13119 13329,⁶⁷ 14906, 14908, 15892, 16984, 16985, 16986, 16987, and 16988;

56. Having reviewed the proposed evidence, the Chamber notes that the exhibits above were all discussed or marked by at least one of the witnesses mentioned in the subparagraphs above, during that witness's testimony.⁶⁸ As such, the Chamber considers that those exhibits form an

⁶² Admitted under seal in the *Brđanin* case.

⁶³ The Trial Chamber will admit this exhibit under seal as it may reveal the identity of KDZ092.

⁶⁴ In the Motion, the Prosecution did not request this exhibit to be admitted under seal. However, as it may reveal the identity of KDZ092, the Trial Chamber will admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁶⁵ The Trial Chamber notes that the Prosecution has tendered associated exhibit with Rule 65 *ter* number 14968 twice in relation to KDZ024. In order to prevent repetition, the Chamber will only admit this associated exhibit once. Furthermore, in KDZ024's testimony in the *Brđanin* case, this exhibit was admitted under seal, but the Prosecution did not request it to be admitted under seal in the Motion. The Trial Chamber will therefore admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁶⁶ In KDZ024's testimony in the *Brđanin* case, this exhibit was admitted under seal, but the Prosecution did not request it to be admitted under seal in the Motion. The Trial Chamber will therefore admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁶⁷ In the Motion, the Prosecution did not request this exhibit to be admitted under seal. However, as it may reveal the identity of KDZ050, the Trial Chamber will admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁶⁸ The Trial Chamber notes that although the associated exhibit with Rule 65 *ter* number 13756 was not discussed in KDZ014's previous testimony, it will be admitted under one of the four witnesses who have discussed the exhibit, namely, KDZ074, KDZ092, Jusuf Arifagić, or Elvedin Nasic. Similarly, although the associated exhibits with Rule 65 *ter* numbers 10973, 10976, 10982, 10983, 10984, 10985, 10986, 10989, 11003, 11004, 11005, 11006, 11007, 11008, 11015, 11016, 14424, 14425, 14427, and 14428 were not discussed in KDZ074's previous testimony, associated exhibits with Rule 65 *ter* numbers 10976, 10985, 10989, 11003, 11004, 11006, 11007, 14424, 14425, 14427, and 14428 will be admitted under KDZ048; associated exhibits with Rule 65 *ter* numbers 10973, 10982, 10983, and 10984 will be admitted under either KDZ048 or KDZ092; associated exhibit with Rule 65 *ter* number 10986 will be admitted under Jusuf Arifagić; associated exhibits with Rule 65 *ter* numbers 11015 and 11016 will be admitted under KDZ092; and, associated exhibits with Rule 65 *ter* numbers 11005 and 11008

inseparable and indispensable part of the witness's testimony, and failure to admit them would make said testimony incomprehensible or lesser of probative value. The Trial Chamber will therefore admit these exhibits into evidence.

57. The Chamber notes that the Prosecution has tendered several associated exhibits with Nicolas Sébire's evidence, which are very large, but only small parts of which were discussed by the witness. The Chamber considers that only the parts discussed by Nicolas Sébire form an inseparable and indispensable part of his previous testimony, and in order to minimise the admission of irrelevant material, it will only admit those parts actually discussed by him. In this regard, the associated exhibit with Rule 65 *ter* number 18944 is 440 pages of photographs from Jakarina Kosa exhumation site, but only photographs bearing ERN numbers 0212-2976, 0212-9871, 0212-9882, 0212-9883, 0212-9889, 0212-9892, 0212-9893, 0212-9963, 0212-9965, 0212-9968, 0213-0067, 0213-0100, and 0213-0298 were discussed, and thus only those 13 photographs will be admitted. The associated exhibit with Rule 65 *ter* number 18936 is 1,212 pages of photographs from Jakarina Kosa exhumation site. However, only photographs with ERN numbers X009-4702 and X009-4862 were discussed, and therefore only those two photographs will be admitted. Likewise, the associated exhibit with Rule 65 *ter* number 18928 consists of 13 pages of indexes and 2,080 pages of photographs, but only photographs with ERN numbers 0100-6970-33A, 0100-6963-03, and 0100-6966-24A were discussed, and thus only those three photographs will be admitted. Similarly, the associated exhibit with Rule 65 *ter* number 18933 is a 17-page report, but Nicolas Sébire was only questioned about some parts of it. While other relevant parts of this report were read directly into record during his testimony, and therefore do not need to be admitted into evidence again, paragraphs II. 3 to II. 6 found on pages 8–10⁶⁹ were not, but they were discussed by the witness. Therefore, the Trial Chamber will only admit those three pages.

58. The Prosecution also seeks the admission of associated exhibit with Rule 65 *ter* number 18891 in conjunction with Nicolas Sébire's evidence, which consists of a report and various attachments. The Chamber notes that there was no substantive discussion by Nicolas Sébire about one of the attachments, a chart.⁷⁰ Therefore, the Chamber will admit the associated exhibit with Rule 65 *ter* number 18891 with the exception of the chart.⁷¹ The Chamber also notes that associated exhibits with Rule 65 *ter* numbers 18892, 18912, 18840, and 18841 are

will be admitted under either KDZ048 or KDZ392. In addition, the Chamber notes that Rule 65 *ter* number 13531 will be admitted under either KDZ038 or Nermin Karagić. As such, in order to prevent repetition, associated exhibits which are tendered under multiple witnesses will only be admitted once.

⁶⁹ These correspond to ERN numbers 02090495 (R1095470) to 02090497 (R1095472).

⁷⁰ See *Prosecutor v. Stakić*, Case No. IT-97-24-T, Hearing, T. 8859 (27 September 2002).

⁷¹ The chart corresponds to ERN numbers 01847970 to 01848134.

some of the documents which are already included in the associated exhibit Rule *ter* number 18891. In order to avoid repetition, the Trial Chamber will deny the admission of these four associated exhibits.

59. The Prosecution also requests the admission into evidence of a number of associated exhibits which, following their analysis together with the witnesses' written evidence, the Trial Chamber has determined do not form an inseparable and indispensable part of the previous testimony or written statements of KDZ024, KDZ038, KDZ048, KDZ074, KDZ092, KDZ094, Charles McLeod, Nicolas Sébire, and/or KDZ392. The exhibits with Rule 65 *ter* numbers 00484,⁷² 00506, 04248, 10974, 10975, 10977, 10981, 10988, 10991, 10992, 10993, 10994, 10998, 10999, 11000, 11001, 11002,⁷³ 11011, 11012, 12722, 13442, 13453, 13913, 13915, 13925, 14060, 14061, 14062, 14063, 14069, 14070, 14071, 14072, 14074, 14085, 14157, 14159, 14060, 14161, 14165, 14166, 14167, 14168, 14169, 14172, 14177, 14181, 14423, 14426,⁷⁴ 14443, 15912, 19027, 19029, and 19030 are not discussed by the relevant witness in his or her written evidence, or were so briefly referred to that the Chamber considers that they do not form an inseparable and indispensable part of that witness's evidence, and that the evidence will not become incomprehensible or of lesser probative value if the corresponding associated exhibit is not admitted into evidence.⁷⁵

60. The Prosecution further seeks the admission of associated exhibits with Rule 65 *ter* numbers 04786, 05545, 05566, 07430, 07980, 13100, 14893, 14897, 15882, 15883, and 16989. However, the relevant portions of these associated exhibits were already read directly into record during the witness's testimony. Thus, the Chamber considers that the written evidence of KDZ024, KDZ048, KDZ056, Charles McLeod, Rajif Begić, and Sakib Muhić will not become incomprehensible or of lesser probative value without the associated exhibits, and that these associated exhibits do not form an inseparable and indispensable part of that witness's evidence. The Prosecution's request to admit these associated exhibits will be denied.

61. Furthermore, the Chamber has been unable to analyse the contents of several proposed associated exhibits for the following reasons:

⁷² The Trial Chamber notes that the Prosecution has listed two Rule 65 *ter* numbers for this exhibit (00484 and 14963). For the purpose of this decision, the Trial Chamber will only refer to Rule 65 *ter* number 00484.

⁷³ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁷⁴ The Prosecution requested the admission of this associated exhibit in relation to KDZ048 and KDZ074.

⁷⁵ The Trial Chamber notes, however, that associated exhibit with Rule 65 *ter* number 13756 was not discussed in KDZ014's previous testimony and associated exhibits with Rule 65 *ter* numbers 10973, 10976, 10982, 10983, 10984, 10985, 10986, 10989, 11003, 11004, 11005, 11006, 11007, 11008, 11015, 11016, 14424, 14425, 14427, and 14428 were not discussed in KDZ074's previous testimony. However, as stated above, they will be admitted through other witnesses, in whose testimony they were discussed.

- (i) There is no English translation uploaded in ecourt for Rule 65 *ter* number 14954 and thus the Chamber cannot review this document;
- (ii) Rule 65 *ter* numbers 08936, 13778, 18812, 18834, 18814, and 40085 do not appear to have been uploaded in ecourt, and thus the Chamber cannot review them;
- (iii) Rule 65 *ter* numbers 10997 which is listed in the Motion under KDZ048, KDZ074, and KDZ392 as a “Photograph of Kozarac”, and Rule 65 *ter* number 04790 which is listed in the Motion under Nicolas Sébire as “Addendum to the report on exhumation and proof of death”, are either not the exhibits discussed by KDZ048, KDZ392, and Nicolas Sébire during their testimony or the photograph in ecourt does not correspond with the description of the associated exhibit provided by the Prosecution under KDZ074 in the Motion;
- (iv) Rule 65 *ter* numbers 07392, 08315, 13903, 13910, 13920, 13923, 13928, 13944, 13949, 13951, 13954, and 14960, which are described in the Motion as maps and photographs annotated or marked by witnesses, are not the marked versions of the associated exhibits that the Prosecution seeks the admission into evidence;
- (v) The English version of Rule 65 *ter* number 14966 does not correspond to the BCS version.

62. The Prosecution’s request for the admission into evidence of these associated exhibits is denied without prejudice. The Prosecution may reapply for their admission after it uploads the correct exhibits into ecourt and provides the videos to the Chamber so that it can verify whether they meet the requirements for admission.

III. Disposition

63. Accordingly, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Trial Chamber hereby:

A. **GRANTS** the Motion **IN PART** and **ORDERS** that:

- a) The written statements and/or transcripts of prior testimony of KDZ014, KDZ038, KDZ048, KDZ050, KDZ054, KDZ056, Hasan Alić, Jusuf Arifagić, Senija Elkasović, Rajif Begić, Safet Tači, Nicolas Sébire, Elvedin Nasić, Emsud Garibović, and Sakib Muhić are admitted into evidence without requiring the witnesses to appear for cross-examination;

- b) The transcripts of prior testimony of KDZ092, KDZ093, KDZ094, and KDZ392 are admitted into evidence under seal without requiring the witnesses to appear for cross-examination pending confirmation of their status by the Prosecution;
- c) The written statements and/or transcripts of the prior testimony of KDZ074 and Charles McLeod are admitted into evidence, without requiring the witnesses to appear for cross-examination, with the exception of the following portions of their written evidence, which shall be redacted by the Prosecution: (i) KDZ074 - lines 3 to 18 on page T. 2393 of the transcript dated 1 May 2002 from the *Stakić* case; and (ii) Charles McLeod - lines 4 to 11 on page T. 7403 of the transcript dated 24 June 2002 from the *Brđanin* case;
- d) The transcripts of the prior testimony of KDZ024 are admitted into evidence under seal, pending confirmation of its status by the Prosecution, without requiring the witness to appear for cross-examination, with the exception of pages T. 9173–9184 of the transcript of KDZ024's previously testimony provided on 29 August 2002, which shall be redacted by the Prosecution;
- e) The transcripts of the prior testimony of Nermin Karagić are admitted into evidence without requiring the witness to appear for cross-examination, with the exception of pages T. 5302–5310 of the transcript of Nermin Karagić's prior testimony provided on 27 June 2002 in the *Stakić* case, which shall be redacted by the Prosecution;
- f) KDZ097's transcripts of prior testimony and witness statements are admitted into evidence without requiring the witness to appear for cross-examination, and the supplemental statement tendered by the Accused is provisionally admitted subject to the Accused obtaining the required Rule 92 *bis*(B) attestation. These transcripts and witness statements shall be admitted under seal pending confirmation of their status by the Prosecution;
- g) The Prosecution shall, as soon as possible, provide the Registry with a confidential version of the transcripts and/or witness statements admitted into evidence, as well as a public, redacted version of the same, ensuring

the redaction of both the testimony given in private session and any redactions ordered by the Trial Chambers in the *Brđanin, Stakić, Slobodan Milošević, Sikirica et al., Krajišnik, and Kvočka et al.* cases;

- h) KDZ075, KDZ080, Kerim Mešanović, Amir Džonlić, and Nusret Sivac shall appear for cross-examination and their evidence shall be presented in accordance with Rule 92 *ter*;
- i) The confidential associated exhibits with Rule 65 *ter* numbers 08926, 08931, 13770, 13879, 13921, 13926, 13956, 13957, 14184, 14842, 14860, 14861, 14863, 14864, 14865, 14917, 14970, 14981, 14983, 14986 and 20023 are admitted into evidence under seal;
- j) The associated exhibits with Rule 65 *ter* numbers 00825, 13329, 13710, 14743, 14745, 14968, and 14990 are admitted under seal pending confirmation from the Prosecution whether or not the exhibits should be admitted under seal;
- k) The associated exhibits with Rule 65 *ter* numbers 00907, 04824, 05551, 05614, 10973, 10976, 10982, 10983, 10984, 10985, 10986, 10987, 10989, 10990, 11003, 11004, 11005, 11006, 11007, 11008, 11013, 11014, 11015, 11016, 12865, 12866, 13119, 13444, 13446, 13448, 13462, 13531, 13579, 13642, 13670, 13673, 13676, 13679, 13756, 13773, 13774, 13792, 13813, 13900, 13901, 13902, 13906, 13907, 13908, 13909, 13911, 13914, 13918, 13922, 13924, 13941, 13942, 13943, 13945, 13946, 13947, 13948, 13950, 13952, 13953, 13955, 13958, 13986, 14103, 14139, 14173, 14424, 14425, 14427, 14428, 14440, 14441, 14442, 14444, 14445, 14446, 14447, 14448, 14728, 14734, 14738, 14755, 14866, 14868, 14877, 14892, 14906, 14908, 15892, 15903, 15909, 15911, 15913, 15914, 15915, 15916, 16984, 16985, 16986, 16987, 16988, 18813, 18934, 18935, 18938, 18939, 18941, 18842, 19870 and 20024 are admitted into evidence;
- l) The specified pages of the following associated exhibits shall be admitted: Rule 65 *ter* numbers 18891 (only pages with ERN numbers 01843960–01844012, 01844013–01844285, 01847968–01847969 and 01848865), 18928 (only the photographs with ERN numbers 0100-6970-33A, 0100-6963-03 and 0100-6966-24A), 18933 (only the sections II.3–II.6 on pages with ERN numbers R1095470 to R1095472), 18936 (only the

photographs with ERN numbers X009-4702 and X009-4862), and 18944 (only the photographs with ERN numbers 0212-2976, 0212-9871, 0212-9882, 0212-9883, 0212-9889, 0212-9892, 0212-9893, 0212-9963, 0212-9965, 0212-9968, 0213-0067, 0213-0100, and 0213-0298);

- C. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence;
- D. **POSTPONES** the determination of the admission into evidence of the previous transcripts and associated exhibits of KDZ075, KDZ080, Kerim Mešanović, Amir Džonlić, and Nusret Sivac until such time as the witnesses are brought to give evidence before the Chamber; and
- E. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]