UNITED
NATIONS

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: 6 March 2012

Original: English

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**

Order of: **6 March 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

PUBLIC REDACTED VERSION OF "ORDER IN RELATION TO OUTSTANDING EXHIBIT ISSUES" ISSUED ON 18 OCTOBER 2010

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby 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), *proprio motu*, hereby issues this Order in relation to certain outstanding matters concerning the admission of documentary evidence.

1. On 29 May 2009, the Office of the Prosecutor ("Prosecution") filed motions seeking to admit a large number of witness statements and associated exhibits pursuant to Rules 92 *bis* and 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules"), in connection to which the Trial Chamber issued several decisions, including the following:

(i) On 2 November 2009, the Trial Chamber issued its "Decision on Prosecution's Sixth Motion for Admission of Statements in lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis*: Hostage Witnesses", provisionally admitting the witness statements of Michael Cornish (as P52), Griffiths Evans (as P51), Joseph Gelissen (as P56), and Hugh Nightingale (as P50) subject to the Prosecution providing the documents in a form which fully complies with Rule 92 *bis*(B).

(ii) On 10 November 2009, the Trial Chamber issued its "Decision on Prosecution's First Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities)", provisionally admitting the witness statement of Safeta Hamzić (as P71), and the witness statement and associated photograph of Jusuf Avdispahić (as P70 and P105) subject to the Prosecution providing the witness statements in a form which fully complies with Rule 92 *bis*(B).

(iii) On 21 December 2009, the Trial Chamber issued its "Decision on Prosecution's Fifth Motion for Admission of Statements in lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis* (Srebrenica Witnesses)", provisionally admitting a number of written statements of Desimir Đukanović (as P406, P407, and P408), [REDACTED] (as P409, P410, and P411), and Slobodan Stojković (as P412 and P413), subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation.

(iv) On 9 February 2010, the Trial Chamber issued its "Further Decision on Prosecution's First Rule 92 *bis* Motion (Witnesses for Eleven Municipalities)", changing the status of Sakib Husrefović's written statement and three associated exhibits to provisionally admitted (as P58, P81, P82, and P83), again subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation.

(v) On 5 March 2010, the Trial Chamber issued its "Decision on Prosecution's Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis* – Sarajevo Witnesses", provisionally admitting the written statement of KDZ289 under seal (as P486), subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation.

2. Even though it has been over six months since the above mentioned decisions were issued, the Chamber has received no formal notice from the Prosecution that the witness statements and corresponding associated exhibits listed above have been attested to. Accordingly, they remain provisionally admitted.

3. The Chamber also notes that the Accused tendered supplemental witness statements for Prosecution witnesses Vincentius Egbers (as D1),[1] Šefik Bešlić (as D3),[2] and KDZ097 (as D4)[3] which the Chamber admitted provisionally on the basis that they were not attested to in line with Rule 92 *bis*(B). To date, these statements also remain provisionally admitted without the required Rule 92 *bis*(B) attestations.

4. In addition to the issues surrounding the attestation of Rule 92 *bis* witness statements, the Chamber also recalls that when it issued its decisions pursuant to Rule 92 *bis* and 92 *quater*, it admitted a substantial number of witness statements and transcripts under seal, but then ordered the Prosecution to file public redacted versions of the same. To date, some three months have passed since the last such order was made, but the public redacted versions of the following witness statements and transcripts have not been filed by the Prosecution: P66, P68, P107, P109, P111, P113, P525, P651, P684, P706, P707, P713, and P714. In addition, the Chamber notes that in relation to witness KDZ070, the transcripts of his prior testimony were admitted as P340

[1] Decision on Prosecution's Fifth Motion for Admission of Statements in lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis* (Srebrenica Witnesses), 21 December 2009.

[2] Decision on Prosecution Motion to Formally Admit the Certified Rule 92 *bis* Statements of Sarajevo Witnesses, 9 July 2010.

[3] 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), 18 March 2010.

(under seal) but it appears that the private session portion located on page T. 3485 is missing. Accordingly, the complete transcript, including the private session portion on page T. 3485, should be provided by the Prosecution.

5. Finally, the Chamber recalls its "Decision on Prosecution's Motion for Admission of the Evidence of KDZ172 (Milan Babić) pursuant to Rule 92 *quater* " of 13 April 2010 ("Babić Decision") whereby it admitted only those portions of Milan Babić's prior testimony in the *Slobodan Milošević, Momčilo Krajišnik,* and *Milan Martić* cases it deemed relevant to the present case. The Chamber ordered the Prosecution to upload into e-court the revised transcripts containing only those relevant portions, while redacting the rest.[4] To date, these portions of Babić's testimony have not been uploaded into e-court by the Prosecution.

6. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby,

(a) **ORDERS** the Prosecution, by 3 December 2010, to:

i. complete the attestation procedure for the witnesses whose statements and associated exhibits still remain provisionally admitted, as outlined above in paragraphs 1 and 2;

ii. provide the public redacted versions of exhibits P66, P68, P107, P109, P111, P113, P525, P651, P684, P706, P707, P713, and P714 to the Registry;

iii. upload into e-court the complete version of exhibit P340;

iv. upload into e-court the relevant portions of the transcripts of Milan Babić's testimony, as ordered in the Babić Decision; and

v. file a notice informing the Chamber that (i), (ii), (iii), and (iv) have been completed.

b. **ORDERS** the Accused, by 3 December 2010, to:

i. complete the attestation procedure for Vincentius Egbers, Šefik Bešlić, and KDZ097 whose supplemental witness statements remain provisionally admitted; and

[4] Babić Decision, para. 91.

ii. file a notice informing the Chamber that this has been completed.

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

Judge O-Gon Kwon
Presiding

Dated this sixth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]