

IT-09-92-T  
D688JK - D688KT  
06 September 2013

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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: 6 September 2013  
Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Bakone Justice Moloto  
Judge Christoph Flügge

**Registrar:** Mr. John Hocking

**Decision of:** 6 September 2013

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION ELEVENTH MOTION TO  
ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS***

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**Office of the Prosecutor**

Mr Dermot Groome

Mr Peter McCloskey

**Counsel for Ratko Mladić**

Mr Branko Lukić

Mr Miodrag Stojanović

## I. PROCEDURAL HISTORY

1. On 24 December 2012, the Prosecution filed a motion (“Motion”) tendering the evidence of Witnesses Jevto Bogdanović (RM-217), RM-219, RM-247, RM-281, RM-298, RM-300, and RM-336 (“Witnesses”) in written form pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>1</sup> On 2 January 2013, the Defence filed a motion seeking an extension of 30 days to respond, and on that same day, the Prosecution informed the Chamber through an informal communication that it had no objections to the Defence request for an extension.<sup>2</sup> On 7 January 2013, the Chamber granted this extension and informed the parties accordingly through an informal communication. On 4 February 2013, the Defence filed its response to the Motion (“Response”).<sup>3</sup> On 11 February 2013, the Prosecution filed a request for leave to reply (“Request”) to the Response, attaching its reply.<sup>4</sup> On 27 August 2013, the Prosecution indicated, by means of an informal communication which is now put on record, that it no longer requested admission of Witness Jevto Bogdanović’s evidence pursuant to Rule 92 *bis*. The Chamber notes that it will not address Witness Bogdanović’s evidence any further in the present decision.

## II. SUBMISSIONS OF THE PARTIES

2. The Prosecution requests that it be permitted to exceed the usual word limit for motions considering that the Motion addresses the evidence of seven Rule 92 *bis* witnesses.<sup>5</sup> The Prosecution also submits that a departure from the Chamber’s guidance in the form of tendering several witness statements as well as transcript evidence rather than witness statements, and the tendering of a non-ICTY statement is appropriate for Witnesses RM-219, RM-247, RM-281, and RM-336.<sup>6</sup> The Prosecution submits that the tendered material of all Witnesses is relevant and probative of issues in the instant case as it goes to proof of the crime-base, in particular the allegations of genocide, persecution, extermination, murder and inhumane acts charged in Counts 2 through 8 of the Indictment, that it is reliable, and that it does not relate to the acts or conduct of the Accused.<sup>7</sup> The Prosecution also argues that the evidence is relevant to the political and military context of the charges.<sup>8</sup> The Prosecution submits that the admission of the evidence pursuant to

<sup>1</sup> Prosecution Eleventh Motion to Admit Evidence Pursuant to Rule 92*bis*: Srebrenica Survivors, Participants and Other Witnesses, 24 December 2012 (Confidential).

<sup>2</sup> Defence Motion to Enlarge Time to Respond to Prosecution 11<sup>th</sup> Motion to Admit Evidence Pursuant to Rule 92*bis*, 2 January 2013 (Confidential).

<sup>3</sup> Defence Response to Prosecution Eleventh Motion to Admit Evidence Pursuant to Rule 92*bis*, 4 February 2013 (Confidential). The paragraph numbers in the Response are incorrect, however, for reference purposes the Chamber will refer to the paragraph numbers as reflected in the Response.

<sup>4</sup> Prosecution Request for Leave to Reply to Defence Responses to Prosecution Tenth and Eleventh Motions to Admit Evidence Pursuant to Rule 92*bis*, 11 February 2013 (Confidential) (“Request”).

<sup>5</sup> Motion, paras 7, 56.

<sup>6</sup> Motion, paras 2, 11-17.

<sup>7</sup> Motion, paras 10, 18-19.

<sup>8</sup> Motion, para. 10.

Rule 92 *bis* of the Rules will expedite the proceedings, prevent unnecessary appearance or re-appearance of witnesses, and will not cause prejudice against the Accused.<sup>9</sup> The Prosecution further submits that although the material corresponds to certain adjudicated facts, it nevertheless provides greater detail necessary to understand the witnesses' narrative and consequently, no redactions were made.<sup>10</sup> As to the tendered associated exhibits, the Prosecution contends that they are an inseparable and indispensable part of the tendered material.<sup>11</sup> The Prosecution seeks leave to add to its Rule 65 *ter* exhibit list two associated exhibits, namely, two sketches for Witness RM-298.<sup>12</sup> Lastly, the Prosecution submits that it may file a motion requesting protective measures for Witness RM-219, RM-298, and RM-300, and therefore requests their material to be treated as confidential.<sup>13</sup>

3. With regard to Witness RM-219, the Prosecution seeks admission of a statement provided to the Agency for Information and Documentation ("AID") in Bosnia and Herzegovina.<sup>14</sup> For Witness RM-247, the Prosecution tenders an ICTY statement, excerpts of the witness's testimony in the *Popović et al.* case, and three photographs.<sup>15</sup> For Witness RM-281, the Prosecution seeks the admission of excerpts of the witness's testimony in the *Tolimir* case.<sup>16</sup> With regard to Witness RM-298, the Prosecution tenders a prior ICTY statement and two sketches as associated exhibits.<sup>17</sup> For Witness RM-300, the Prosecution tenders a prior ICTY statement.<sup>18</sup> Lastly, for Witness RM-336, the Prosecution seeks the admission of excerpts of the witness's testimony in the *Popović et al.* case, and three associated exhibits.<sup>19</sup>

4. The Defence opposes the Motion on six grounds. First, the Defence submits that the nature of the cross-examination of the Witnesses in other cases lacks value as it fails to examine the Witnesses on points that may be relevant for the defendant in this case.<sup>20</sup> Second, the Defence submits that the Chamber should consider the special character of insider witnesses when deciding whether they should be called for cross-examination, arguing that there will be no unnecessary suffering for the Witnesses if called to testify, and that there may be an "incentive to cover up their own actions by blaming third persons or lying about their own actions".<sup>21</sup> Third, the Defence argues

<sup>9</sup> Motion, para. 4.

<sup>10</sup> Motion, para. 6.

<sup>11</sup> Motion, para. 22.

<sup>12</sup> Motion, paras 8, 56. In para. 8, the Prosecution incorrectly states that it seeks leave to add four associated exhibits to its Rule 65 *ter* Exhibit List. The relief requested and Annex A reflect that it only seeks leave to add two associated exhibits.

<sup>13</sup> Motion, paras 30, 45, 50.

<sup>14</sup> Motion, paras 2, 27-30.

<sup>15</sup> Motion, paras 2, 31-36.

<sup>16</sup> Motion, paras 2, 37-40.

<sup>17</sup> Motion, paras 2-3, 41-42.

<sup>18</sup> Motion, paras 2, 46.

<sup>19</sup> Motion, paras 2, 51-52.

<sup>20</sup> Response, paras 13-14.

<sup>21</sup> Response, para. 15.

that the evidence of several of the witnesses goes to critical and live issues of the case.<sup>22</sup> Fourth, the Defence submits that the AID has a reputation for providing unreliable statements and that the tendering of the AID statement of Witness RM-219 is improper and should be denied, as Rule 92 *bis* of the Rules applies to statements taken for ICTY proceedings, not to statements prepared for other legal proceedings.<sup>23</sup> Fifth, the Defence submits that five statements have not been certified as required by Rule 92 *bis* of the Rules and that the tendering of statements without an attestation is premature and unreliable, and should therefore be denied.<sup>24</sup> Lastly, the Defence submits that the statement of Witness RM-247 contains hearsay.<sup>25</sup> The Defence submits that in light of this, the Chamber should dismiss the Motion for not meeting the standards of Rules 89 or 92 *bis* of the Rules, and allow the Defence to cross-examine the Witnesses.<sup>26</sup>

### III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing additions to the Rule 65 *ter* exhibit list, as set out in a previous decision.<sup>27</sup> The Chamber further recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis*, as set out in a previous decision.<sup>28</sup> The Chamber also recalls that while Rule 89 (C) is the *lex generalis* allowing a Chamber to admit relevant evidence which it deems to have probative value, Rule 92 *bis* is the *lex specialis* for out-of-court statements prepared for the purpose of legal proceedings and tendered *in lieu* of oral testimony before the Tribunal.<sup>29</sup> With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to a previous decision on the matter.<sup>30</sup>

### IV. DISCUSSION

#### (a) Additions to the Rule 65 *ter* Exhibit List

6. The Chamber has reviewed the two sketches bearing ERNs 0042-3113-0042-3114 for which the Prosecution seeks leave to add to its Rule 65 *ter* exhibit list and notes that the Prosecution has not shown good cause for their addition at such an advanced stage of the proceedings. The Chamber finds, however, that their addition to the exhibit list at this stage of the proceedings does

<sup>22</sup> Response, paras 17-18.

<sup>23</sup> Response, para. 11.

<sup>24</sup> Response, paras 12, 20.

<sup>25</sup> Response, paras 21, 23.

<sup>26</sup> Response, para. 26.

<sup>27</sup> Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

<sup>28</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.

<sup>29</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C) (“*Galić* Decision”), 7 June 2002, para. 31; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.4, Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the form of Written Statements, 30 September 2003, paras 9-10, 18.

<sup>30</sup> Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

not additionally burden the Defence or prejudice the Accused and is, on balance, consistent with the interests of justice.

(b) Preliminary matters

7. As a preliminary matter, the Chamber grants the Prosecution's request to exceed the word limit in the Motion considering the number of witnesses concerned.

8. The Chamber denies leave to reply to the Response on the basis that the Response does not raise new issues that could not have reasonably been anticipated at the time the Motion was filed.

9. The Chamber will refer to Witnesses RM-219, RM-298, and RM-300 by using their pseudonym as the Prosecution has submitted that it may file a motion requesting protective measures for these witnesses. Unless the Prosecution files a request for protective measures, the Chamber will instruct the Registry to change the status of the relevant documents into public.

10. With regard to tendered material corresponding to adjudicated facts which the Prosecution deems necessary not to redact in the interest of a coherent narrative, the Chamber emphasizes the interest in not having unnecessary duplication of evidence.<sup>31</sup> In light of this, the Chamber instructs the Prosecution to inform the Chamber within two weeks whether further redactions are necessary.

11. The AID statement which is tendered for Witness RM-219 does not appear to be taken for legal proceedings, so normally Rule 89 (C) of the Rules would be applicable. However, there is no bar for the Prosecution to request admission under a stricter rule, thus adding to the statement's reliability. Accordingly, the Chamber will consider it under Rule 92 *bis* of the Rules.

12. The Prosecution tenders limited portions of the transcripts of previous testimony of Witness RM-247 in addition to a witness statement and limited portions of the previous testimony of Witnesses RM-281 and RM-336 without a written statement from these witnesses. Under these circumstances and considering that the excerpts are sufficiently focused, the Chamber is satisfied that they comply with the Chamber's guidance.<sup>32</sup>

(c) The Witnesses

i. Attestations and Declarations

13. The statements of Witnesses RM-219, RM-247, RM-298, and RM-300 have no corresponding Attestations or Declarations as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been conditionally admitted by this Chamber pending their formal

<sup>31</sup> Decision in Relation to Prosecution's Rule 92 *ter* Motion for Witness RM-114, 16 August 2012, para. 9.

<sup>32</sup> T. 106-110, 137-138, 194, 315-325, 525-532.

attestation pursuant to Rule 92 *bis* (B) of the Rules.<sup>33</sup> In line with this practice, the Chamber will conditionally admit the unattested witness statements of the witnesses listed above, pending the filing of the required Attestations and Declarations, provided that all other admissibility requirements are met.

ii. Relevance and Probative Value

14. The evidence of the Witnesses concerns the allegations of genocide, extermination, murder, and inhumane acts, and is therefore relevant to Counts 2 through 8 of the Indictment.

15. With regard to probative value, the Defence has made a number of specific objections which the Chamber will address in turn. As for the Defence's submission that the cross-examination in previous cases was inadequate, the Chamber notes that the Defence has not substantiated this general claim, has not indicated on what particular issues it wishes to cross-examine the Witnesses and has not demonstrated in any way that the nature or source of the proffered evidence renders it unreliable or that its prejudicial effect outweighs its probative value.

16. Concerning the Defence objection that the Statement of Witness RM-247 contains hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal and that the weight to be attributed to such evidence will be assessed in light of all the evidence.<sup>34</sup> The Defence has not shown, nor does the Chamber find, that the presence of hearsay evidence renders the tendered material unreliable or that its prejudicial effect outweighs its probative value.

17. With respect to the Defence objection that the tendered material of Witnesses RM-247, RM-281, and RM-336 is inherently unreliable because insider witnesses might have an incentive to cover up their own actions, the Chamber finds that the Defence has not demonstrated in which manner the proffered evidence is deficient. The Chamber is not satisfied that because the Witnesses are insiders, hence their testimony "might" be unreliable, is a sufficient reason to deny admission of the evidence.

18. Lastly, regarding the Defence's general concerns about statements given to the AID, the Defence has provided no support for such claims and the Chamber is not aware of a general pattern of questionable practice that would *prima facie* render such statements unreliable. The Chamber notes that the AID statement is internally consistent, is signed by the witness, and is, in part, cumulative with the evidence of other witnesses. In light of the foregoing, the Chamber is not satisfied that such claims affect the reliability of the entirety of the evidence given by this witness.

<sup>33</sup> Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

<sup>34</sup> See *Prosecutor v. Aleksovski*, Case No. IT-95-14/I-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

19. In light of the above, the Chamber finds that the tendered materials of the Witnesses are relevant and probative in accordance with Rule 89 (C) of the Rules.

iii. Admissibility Pursuant to Rule 92 bis

20. The tendered material does not relate to the acts and conduct of the Accused. Concerning the Defence's argument that the tendered material of Witnesses RM-219, RM-247, RM-281, RM-298, and RM-336 concerns critical and live issues of the case, the Chamber notes that much of the evidence goes to the crime-base of the case and also considers that, to a large extent, the evidence is cumulative with other oral evidence the Chamber has received or anticipates to receive.<sup>35</sup>

21. Having taken all of the above factors into consideration, the Chamber finds that the proffered evidence is admissible pursuant to Rule 92 bis of the Rules, pending the submission of all missing Attestations and Declarations.

iv. Associated Exhibits

22. The Chamber is of the view that the associated exhibits which are part of the Rule 92 bis packages of Witnesses RM-247, RM-298, and RM-336 are an inseparable and indispensable part of the witnesses' testimony or statement. The Chamber further notes that the document with Rule 65 *ter* number 05333, tendered through Witness RM-247, has already been admitted as P1534. As such, the request for admission of this exhibit is moot. In light of the above, the Chamber will admit the remaining eight associated exhibits into evidence.

## V. DISPOSITION

23. For the foregoing reasons, pursuant to Rules 73, 89, and 92 bis of the Rules, the Chamber

**GRANTS** the Prosecution request to exceed the word limit in its Motion;

**DENIES** the Request for leave to reply;

**GRANTS** the Motion **IN PART**;

With respect to

<sup>35</sup> The proffered evidence of Witness RM-219 is cumulative with oral evidence received from Witnesses Haglund, Ruez, RM-254, and Keserović as well as the anticipated evidence of Witness Baraybar. The proffered evidence of Witness RM-247 is cumulative with oral evidence received from Witnesses RM-269, RM-322, and RM-313. The proffered evidence of Witness RM-281 is cumulative with oral evidence received from Witnesses Aćimović and RM-269. The proffered evidence of Witness RM-300 is cumulative with oral evidence received from Witnesses RM-254, RM-256, Haglund, and Pepić. Finally, the proffered evidence of Witness RM-336 is cumulative with oral evidence received from Witness RM-318.

(i) Witness RM-219

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL**, the statement of Witness RM-219 from the AID dated 13 July 1999 bearing ERNs ET 0100-7528-0100-7259, pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

(ii) Witness RM-247

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL**, the ICTY statement of Witness RM-247 dated 26 November 2005 bearing ERNs 0465-2992-0465-3001, pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

**ADMITS** into evidence, **UNDER SEAL**, the excerpts of the testimony of Witness RM-247 dated 22 and 23 February 2007 in the *Popović et al.* case, Case No. IT-05-88-T, T. 7551:16-7551:18, 7561:23-7561:25, 7578:4-7579:8, 7579:11-7579:15, 7590:15-7591:3, 7596:17-7596:24, 7674:8-7678:12, 7679:3-7679:5, 7679:16-7680:1, 7684:7-7684:9;

**ADMITS** into evidence,

- a) a photograph of Orahovac school marked by Witness RM-247, bearing Rule 65 *ter* no. 13671;
- b) a photograph of Orahovac school marked by Witness RM-247, bearing Rule 65 *ter* no. 25778;

**DECLARES MOOT** the request for admission of the photograph bearing Rule 65 *ter* no. 05333;

(iii) Witness RM-281

**ADMITS** into evidence, **UNDER SEAL**, the excerpts of the testimony of Witness RM-281 dated 13 December 2010 in the *Tolimir* case, Case No. IT-05-88/2-T, T. 8783:11-8784:1, 8785:16-8786:17, 8787:5-8787:11, 8788:16-8788:19, 8788:25-8805:24, 8806:11-8806:23, 8807:9-8812:8, 8812:18-8813:19;

(iv) Witness RM-298



**GRANTS LEAVE** to add two sketches drawn by Witness RM-298 bearing ERNs 0042-3113-0042-3114 to the Prosecution's Rule 65 *ter* exhibit list.

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL**,

- a) the ICTY statement of Witness RM-298 dated 16 August 1996 bearing ERNs 0042-3108-0042-3112, 0042-3115, pending the submission of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;
- b) a sketch drawn by Witness RM-298, bearing ERNs 0042-3113;
- c) a sketch drawn by Witness RM-298, bearing ERNs 0042-3114;

(v) Witness RM-300

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL**, the ICTY statement of Witness RM-300 dated 21 April 1999 bearing the ERNs 0075-2805-0075-2813, pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

(vi) Witness RM-336

**ADMITS** into evidence, **UNDER SEAL**,

- a) the excerpts of the testimony of Witness RM-336 dated 16-17, and 20 November 2006 in the *Popović et al.* case, Case No. IT.05-88-T, T. 4074:21-4075:14, 4076:18-4080:16, 4080:24-4081:23, 4082:7-4082:10, 4083:2-4084:17, 4087:10-4093:24, 4094:8-4095:10, 4096:24-4098:4, 4099:1-4100-11, 4101:12-4104:24, 4106:1-4107:3, 4107:15-4109:2, 4109:10, 4109:16-4109:18, 4109:23-4112:16, 4113:2-4116:7, 4117:1-4119:23, 4120:6-4122:3, 4122:21-4146:4, 4146:24-4151:6, 4163:5-4164:2;
- b) a list of police officers who were on assignment on the Zvornik Public Security Centre on 13 and 14 July 1995, bearing Rule 65 *ter* no. 05288;
- c) the Statement of Witness RM-336 given to the Bijeljina Public Security Centre, dated 29 September 2004, bearing Rule 65 *ter* no. 25688;

d) the statement of Witness RM-336 given to the Bijeljina Public Security Centre, dated 23 September 2004, bearing Rule 65 *ter* no. 25689;

**INSTRUCTS** the Prosecution to inform the Chamber of any potential further redactions of the admitted documents within 14 days of the filing of this decision;


**INSTRUCTS** the Registry to change the status of the evidence identified in paragraphs *ii*, *v a-c*, and *vi* above into public, unless the Prosecution files a request for protective measures for Witnesses RM-219, RM-298, and RM-300 within 14 days of the filing of this decision;

**INSTRUCTS** the Prosecution to file the corresponding attestations and declarations to the statements of Witnesses RM-219, RM-247, RM-298, and RM-300 within four weeks of the filing of this decision;

**INSTRUCTS** the Prosecution to upload into eCourt all of the above documents within 14 days of the filing of this decision; and

**REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie  
Presiding Judge

Dated this sixth day of September 2013  
At The Hague  
The Netherlands

[Seal of the Tribunal]