IT-09-92-T
D73965 - D73963
08 November 2013

73965 KB

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-09-92-T
		Date:	8 November 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: **8 November 2013**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON PROSECUTION MOTION TO ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS*: ZIJO HADŽIĆ

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 6 December 2012, the Prosecution filed a motion ("Ninth Motion") to admit into evidence materials relating to Zijo Hadžić ("Witness") pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules").[1] The Defence filed its response to the Ninth Motion on 28 December 2012.[2] On 18 July 2013, the Chamber denied the Ninth Motion ("Ninth Motion Decision") with respect to the Witness and invited the Prosecution to resubmit the evidence with additional information related to certain adjudicated facts.[3] On 29 July 2013, the Prosecution re-submitted its motion ("Motion"), tendering two witness statements pursuant to Rule 92 *bis*.[4] The Defence filed its response on 12 August 2013 ("Response"), requesting that the Chamber deny the Motion.[5]

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.[6]

III. DISCUSSION

3. As a preliminary matter, the Chamber notes that it granted the Prosecution's request with regard to witness RM-021 and, therefore, that issue is now moot.

4. The Chamber recalls its previous findings that the evidence of the Witness meets the requirements of Rule 89 (C) and is admissible pursuant to Rule 92 *bis* of the Rules.[7] The Defence's arguments in the Response do not give any reason to reconsider those findings.

5. With regard to the overlap with adjudicated facts referred to in the Ninth Motion Decision, the Chamber notes that the Prosecution has further redacted certain portions of the witness

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1 Prosecution Ninth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 6 December 2012 (Confidential).
2 Defence Response to Prosecution Ninth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 28 December 2012 (Confidential).
3 Decision on Prosecution Ninth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 18 July 2013 (Confidential).
4 Prosecution Motion to Admit Evidence Pursuant to Rule 92 *bis*: Zijo Hadžić (RM035) and Submission on RM021, 29 July 2013 (Confidential). The Motion also contained a submission on protective measures for witness RM-021.
5 Defence Response to Prosecution Motion to Admit Evidence Pursuant to Rule 92 *bis*: Zijo Hadžić (RM035) and Submission on RM021, 12 August 2013 (Confidential). The Chamber refers to the parties' filings for their submissions.
6 Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.
7 Ninth Motion Decision, paras 7-8, 11-15.

statements, and has declined to redact other portions.[8] With reference to the Prosecution's argument regarding paragraph 1 of page 6 of the Witness's 1999 statement, the Chamber finds the relevant content necessary to ensure that the paragraph is comprehensible, and that additional probative information is proffered in the relevant sentence.[9] With regard to the Prosecution's submissions concerning paragraphs 5 through 7 on page 6 of the Witness statement, the Chamber notes that while adjudicated facts 739 and 742 provide general information, the evidence described by the Witness provides information additional to these facts.[10] Accordingly, the Chamber finds that the evidence proffered by the Prosecution is different and additional to the adjudicated facts referred to in the Ninth Motion Decision.

IV. DISPOSITION

6. For the foregoing reasons, pursuant to Rules 54, 89 (C), and 92 *bis* of the Rules, the Chamber

GRANTS the motion to admit the documents into evidence;

ADMITS into evidence the proffered testimony bearing ERN numbers 0229-9847-0229-9868 and 0306-1593-0306-1595;

INSTRUCTS the Prosecution to upload into eCourt complete redacted versions of the statements bearing the relevant ERN numbers within one week of the date of issue 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 eighth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

8 Ninth Motion Decision, paras. 16, 19.
9 Motion, paras 11, 12.
10 Motion, para. 12.