

**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-05-88/2-T
Date: 2 April 2012
Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 2 April 2012

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION PURSUANT
TO RULE 92 *BIS* OF EXHIBITS ASSOCIATED WITH PW-031**

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

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”);

BEING SEISED OF the “Prosecution’s Submissions Regarding the Status of Exhibits Associated with Witness PW-031”, filed on 1 March 2012 (“Motion”), in which the Prosecution requests the admission of certain documents associated with the prior testimony of Witness PW-031 (“Associated Exhibits”)¹ pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

NOTING that the Associated Exhibits had not been properly identified in the original “Prosecution’s Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*”, filed on 13 February 2009 (“13 February Motion”),² and were therefore not considered in the Chamber’s “Decision on Prosecution’s Motion for Admission of Written Evidence Pursuant to Rules 92 *bis* And 94 *bis*”, filed on 7 July 2010 (“7 July Decision”), in which the Chamber admitted the previous testimony of PW-031 pursuant to Rule 92 *bis*;³

NOTING that the Prosecution submits that due to an oversight the Associated Exhibits were not listed in Appendix B of its 13 February Motion, but were included elsewhere in that motion, thereby demonstrating the Prosecution’s intent to tender the Associated Exhibits and providing sufficient notice to Zdravko Tolimir (“Accused”), who will not, therefore, suffer prejudice as a result of admission at this stage in the proceedings;⁴

NOTING the Prosecution submission that the Associated Exhibits should be admitted because they are relevant, probative, and form an inseparable and indispensable part of the prior testimony of PW-031, which is similar to other intercept operators’ evidence that has previously been admitted, and that some of the Associated Exhibits have been used with other witnesses during trial;⁵

NOTING that the Accused did not file a response;

¹ Motion, paras. 1, 12. After withdrawing P01545, P01546, P01547, and P01548, the Prosecution tenders the following Associated Exhibits: P01537a, P01537b, P01537c, P01538a, P01538b, P01538c, P01538f, P015838g, P01539a, P01539b, P01539c, P01540a, P01540b, P01540c, P01541a, P01541b, P01541c, P01542a, P01542b, P01542c, P01542d, P01543a, P01543b, P01543c, P01544b, P01544c, and P01562. *See Ibid.*, n. 12.

² *See* 13 February Motion, Appendix B, entry for Witness 65 *ter* Number 97.

³ 7 July Decision, para. 43, p. 47. The Chamber also notes that due to an administrative error the Associated Exhibits were marked for identification (“MFI”) and then admitted into evidence. However, the Chamber corrected this error, ordering the status of the Associated Exhibits changed back to MFI. *See* Further Order on the Admission of 92 *bis* Associated Exhibits, filed on 3 October 2011.

⁴ Motion, paras. 1, 3, 10.

⁵ *Ibid.*, para. 9.

NOTING and recalling the applicable law governing the admission of evidence *in lieu* of oral testimony pursuant to Rule 92 *bis* as set out in detail by this Chamber in its 7 July Decision, which allows a chamber to admit into evidence associated exhibits forming an inseparable and indispensable part of a witness's previous testimony to the extent that such testimony would become incomprehensible or lose probative value without the associated exhibits;⁶

CONSIDERING that since the Associated Exhibits were admitted through PW-031 during the previous testimony and used with PW-031 to such an extent that this testimony, having been admitted into evidence in the present case, would lose probative value without the respective exhibits, the Chamber finds the Associated Exhibits to be an indispensable and inseparable part of the previous testimony;

CONSIDERING that the intention of the Prosecution to tender the Associated Exhibits has been sufficiently clear so as to provide notice to the Accused, and considering that the Accused has had an opportunity to respond, the Chamber finds that the Accused will not be prejudiced by the admission of the Associated Exhibits into evidence;

PURSUANT TO Rules 54 and 92 *bis* of the Rules,

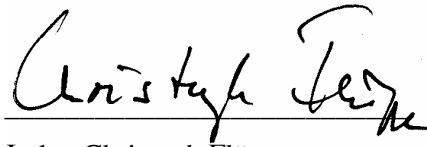
HEREBY ORDERS as follows:

1. The Motion is granted.
2. The following exhibits shall be admitted into evidence, having their status changed from MFI to EXH: P01537a, P01537b, P01537c, P01538a, P01538b, P01538e, P01538f, P015838g, P01539a, P01539b, P01539c, P01540a, P01540b, P01540c, P01541a, P01541b, P01541c, P01542a, P01542b, P01542c, P01542d, P01543a, P01543b, P01543c, P01544b, P01544c, and P01562.

⁶ 7 July Decision, paras. 26–35, 42.

3. The following exhibits, having been withdrawn by the Prosecution, shall have their status changed from MFI to marked not admitted (MNA): P01545, P01546, P01547, and P01548.

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



Judge Christoph Flügge

Presiding Judge

Dated this second day of April 2012
At The Hague
The Netherlands

[Seal of the Tribunal]