



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: 25 March 2010

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

Decision of: 25 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION AND SUBMISSION CONCERNING
DECISION ON PROSECUTION MOTION FOR ADMISSION OF TESTIMONY
OF SIXTEEN WITNESSES AND ASSOCIATED EXHIBITS
PURSUANT TO RULE 92 *QUATER***

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 seised of the “Prosecution Motion and Submission concerning Decision on Prosecution Motion for Admission of Testimony of Sixteen Witness and Associated Exhibits pursuant to Rule 92 *quater*”, filed on 18 February 2010 (“Motion”), and hereby renders its decision thereon.

I. Procedural background and Applicable Law

1. On 30 November 2009, the Trial Chamber issued its “Decision on Prosecution Motion for Admission of Testimony of Sixteen Witness and Associated Exhibits pursuant to Rule 92 *quater*” (“Decision on Sixteen Witnesses”), admitting transcripts of testimony and written statements from 13 witnesses, and associated exhibits, pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).

2. In the Decision on Sixteen Witnesses, the Chamber denied the admission into evidence of several of the associated exhibits that had been proffered by the Office of the Prosecutor (“Prosecution”), including the documents with Rule 65 *ter* numbers 13163, 13244, parts of 13246, and a document that had no Rule 65 *ter* number, on the basis that they were not available in court, or not available in English, or both. The Chamber also ordered the Prosecution *inter alia* to prepare public redacted versions of admitted oral testimony and written statements given by witness KDZ044.

3. In the Motion, the Prosecution seeks the admission of associated exhibits that had previously been unavailable to the Chamber through court, and reports on the steps it has taken to comply with the Chamber’s orders in the Decision on Sixteen Witnesses. The Accused has filed no response to the Motion.

4. It is unnecessary for the Chamber to repeat here the requirements for the admission of evidence pursuant to Rule 92 *quater* of the Rules. However, it reiterates that exhibits associated with witness evidence admitted pursuant to Rule 92 *quater* can also be admitted under the same Rule when those exhibits form an “inseparable and indispensable part” of the testimony, meaning that they should not merely have been mentioned during the course of that testimony, but rather have been used and explained by the witness.¹ Such exhibits should also satisfy the requirements of relevance and probative value contained in Rule 89(C) of the Rules, and their

¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on the Prosecution Motion for Admission of Evidence pursuant to Rule 92 *quater*, 21 April 2008, para. 65.

probative value must not be substantially outweighed by the need to ensure a fair trial, as provided for in Rule 89(D).

II. Discussion

5. The item with Rule 65 *ter* number 13163, which was tendered as an exhibit associated with the evidence of Faik Bišćević, was denied admission in the Decision on Sixteen Witnesses as it was not available to the Chamber through the e-court system. In the Motion, the Prosecution states that this item is a duplicate of the document with Rule 65 *ter* number 04867, which is now available on e-court, and it seeks the admission of that document. Having reviewed the document with Rule 65 *ter* number 04867, the Chamber is satisfied that it is one of a series of photographs of the interior of Sanski Most prison referred to by Faik Bišćević during his testimony in the *Krajišnik* case.² The Chamber is also satisfied as to the relevance and probative value of this photograph, and that its probative value is not substantially outweighed by the need to ensure a fair trial. It will therefore be admitted in this case, with an exhibit number to be assigned by the Registry.

6. In the Decision on Sixteen Witnesses, the Chamber denied admission of two pages of a statement given by an individual named Borislav Stankov, which the Prosecution stated were referred to by Zlatko Međedović, one of the 13 witnesses whose evidence was admitted, in his witness statement of 20 November 1995, on the basis that this document had no Rule 65 *ter* number and could not be found in e-court. In the Motion, the Prosecution explains that the document did not appear on its Rule 65 *ter* exhibit list, and thus had no Rule 65 *ter* number, but that it had subsequently applied to add it, as Rule 65 *ter* number 21249, in its Motion for Leave to Supplement its Rule 65 *ter* Exhibit List, filed on 14 December 2009. The Trial Chamber notes that, in its Decision on the Prosecution's Motion for Leave to file a Supplemental Rule 65 *ter* Exhibit List, issued on 18 March 2010, the Prosecution was granted leave to add the document with Rule 65 *ter* number 21249, to its exhibit list.

7. The Chamber has reviewed the document with Rule 65 *ter* number 21249, and is satisfied that page 8 (in the English version) is referred to by Zlatko Međedović in his 1995 witness statement, which has been admitted in the present case as P129. The Chamber considers that this page constitutes an inseparable and indispensable part of Međedović's statement, and that it is relevant and of probative value. It is also satisfied that the probative value of this page of the document is not substantially outweighed by the need to ensure a fair trial. The Chamber will therefore admit page 8 of document with Rule 65 *ter* number 21249, along with the cover

² P122 (Transcript from *Prosecutor v. Krajišnik*, Case No. IT-00-39), T. 5529.

page (page 1), which sets out Borislav Stankov's personal details, and it will instruct the Prosecution to upload those two pages as a separate document in ecourt, which shall be assigned an exhibit number by the Registry.

8. The document with Rule 65 *ter* number 13244 was denied admission in the Decision on Sixteen Witnesses on the basis that it was not available to the Chamber through ecourt. In the Motion, the Prosecution states that 13244 is a duplicate of the document with Rule 65 *ter* number 04082, which is now available on ecourt. Having reviewed the English version of the document with Rule 65 *ter* number 04082, which is two pages long, the Chamber is satisfied that it is the record from the Bajina Bašta OUP, dated 23 July 1995, and that it was discussed with Ljubo Bojanović, one of the witnesses who was the subject of the Decision on Sixteen Witnesses, during his testimony in the *Blagojević* case.³ The Chamber is also satisfied as to the relevance and probative value of these pages of this document, as they pertain to Bojanović's credibility. Furthermore, the Chamber considers that their probative value is not substantially outweighed by the need to ensure a fair trial. The two pages of the English version of the document with Rule 65 *ter* number 04082 will therefore be admitted in this case, with an exhibit number to be assigned by the Registry. The Chamber notes that the BCS version of the document with the same Rule 65 *ter* number is 12 pages long. Therefore, it will require the Prosecution to upload into ecourt the two pages of the BCS original of this document that correspond to the two pages of the English version that will be admitted into evidence.

9. In the Decision on Sixteen Witnesses, the Chamber denied admission of the document with Rule 65 *ter* number 13246, which contains excerpts from the notebook of the duty operations officers of the Zvornik Brigade, with the exception of particular pages containing parts of the entries for 16 and 18 July 1995. While Ljubo Bojanović was also shown an excerpt from the notebook of the entry for 23 July 1995 during the course of his prior testimony in the *Blagojević* case, this excerpt was not contained in the English translation of the document with Rule 65 *ter* number 13246. In the Motion, the Prosecution states that the full English translation is now available in ecourt, and requests the admission of the two pages of the 23 July 1995 entry that were discussed with Bojanović, being the pages with ERN numbers 0293-5795 and 0293-5796. Having reviewed these pages, the Chamber is satisfied that they form an indispensable and inseparable part of Bojanović's evidence, and that they are relevant and of probative value, as they go to his credibility.⁴ The Chamber is also satisfied that their probative value is not substantially outweighed by the need to ensure a fair trial. These two particular pages will

³ P116 (Transcript from *Prosecutor v. Blagojević*, Case No. IT-02-60), T. 11764.

⁴ P116 (Transcript from *Prosecutor v. Blagojević*, Case No. IT-02-60), T. 11760-11761.

therefore be admitted in this case, and the Prosecution should upload into court these two pages of the original BCS document and the English translations of the same pages as a separate document, so that they can be marked as admitted and assigned an exhibit number by the Registry.

10. Finally, in the Decision on Sixteen Witnesses, the Chamber admitted under seal the transcripts of prior testimony, and two witness statements, given by KDZ044, a protected witness. The Chamber also ordered the Prosecution to prepare public redacted versions of this evidence, so that it can eventually be referred to, where necessary, in the final Judgement in this case. In a confidential Appendix attached to the Motion, the Prosecution explains that the submission of any public redacted version of this witness's prior testimony and/or witness statement might reveal his identity in contravention of the protective measures in place in relation to him, as he testified openly in prior proceedings.

11. While the unfortunate effect of not having a public redacted version of the witness's evidence on the record is that that evidence cannot be cited in the final Judgement, except in a confidential appendix, the Chamber concurs with the Prosecution that KDZ044's protective measures may be jeopardised if the details of his testimony are revealed in these proceedings. For the purposes of the public record in this case, it accepts the Prosecution's proposal to file a public summary of the witness's evidence. This summary does not, however, form part of the evidentiary record in this case, and cannot be cited in the final Judgement. Therefore, it will not be assigned an exhibit number.

III. Disposition

12. For the above stated reasons, the Trial Chamber, pursuant to Rules 54 and 92 *quater* of the Rules, hereby **GRANTS** the Motion, and:

- a) **ORDERS** that the documents with Rule 65 *ter* numbers 04867, 21249 (pages 1 and 8 of the English version, and the corresponding pages of the BCS version, only), 04082, 13246 (pages with ERN numbers 0293-5795 and 0293-5796 of the English version, and the corresponding pages of the BCS version, only) are admitted into evidence;
- b) **INSTRUCTS** the Prosecution to upload into court: (i) the two admitted pages of the document with Rule 65 *ter* number 21249, in both the original BCS and the English version; (ii) the two admitted pages of the BCS version of the document with Rule 65 *ter* number 04082; and (iii) the two admitted pages of the document with Rule 65 *ter* number 13246 in both English and BCS;

- c) **REQUESTS** the Registry to assign exhibit numbers to these exhibits; and
- d) **ORDERS** the Prosecution to file a public summary of the evidence of KDZ044, as set out in Confidential Appendix A to the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-fifth day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]