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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: 2 December 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: 2 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S TWENTY-EIGHTH
MOTION TO ADMIT EVIDENCE PURSUANT TO RULE 92BIS**

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 23 May 2013, the Prosecution filed a motion (“Motion”) tendering statements, transcript excerpts, and associated exhibits for witnesses Muhamed Filipović, Elvir Jahić, Jakov Marić, Mirsad Mujadžić, Enes Sabanović, and Witness RM-038 (“Witnesses”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution further requests leave to add a number of documents to its Rule 65 *ter* exhibit list (“Exhibit List”). On 9 July 2013, after being granted until that day to request an extension to respond, the Defence requested a 30-day extension, which the Chamber granted on 16 July 2013.² On 9 August 2013, the Defence filed its response (“Response”), objecting to the Motion in its entirety.³ On 30 September 2013, the Prosecution filed a corrigendum regarding two associated exhibits for witness Mujadžić.⁴ On 13 November 2013, the Prosecution made an oral application to convert the Rule 92 *bis* Motion regarding the evidence of RM-038 into a Rule 92 *ter* application.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 The Chamber also recalls and refers to the applicable law governing the admission of associated exhibits, as set out in a previous decision.⁷ Finally, the Chamber recalls and refers to the applicable law governing additions to the Exhibit List, as set out in a previous decision.⁸

¹ Prosecution 28th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 23 May 2013 (Confidential). The Chamber refers to the Motion for the Prosecution submissions.

² T.13979, 14117-14119, 14506.

³ Defence Response to Prosecution 28th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 9 August 2013 (Confidential). The Chamber refers to the Response for the Defence submissions.

⁴ Prosecution Corrigendum to Prosecution 28th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 30 September 2013 (Confidential).

⁵ T. 19226-19227.

⁶ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.

⁷ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

⁸ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

III. DISCUSSION

(a) Preliminary Matters

3. Considering that the Motion covers six witnesses, the Chamber grants the Prosecution request to exceed the word limit in its Motion.⁹

4. Given the Prosecution's position not to adduce the evidence of Witness RM-038 pursuant to Rule 92 *bis*, the Chamber will not further consider the tendering of the evidence of this witness pursuant to Rule 92 *bis*.¹⁰ Since the Prosecution indicated that Witness RM-038 will be called as a Rule 92 *ter* witness, the Chamber will however consider the Prosecution's request for leave to add two documents to the Exhibit List.

5. The Chamber notes that four pages of the transcript forming part of the Rule 92 *bis* package of witness Mujadžić are labelled "not official and not corrected".¹¹ The Chamber instructs the Prosecution to replace the four pages with an official and corrected version of the transcript.

(b) Additions to the Prosecution's Rule 65 *ter* Exhibit List

6. The Prosecution seeks leave to add the associated exhibits identified in Annex A of the Motion to its Rule 65 *ter* Exhibit List.¹² The Chamber considers that the Prosecution's request concerns not only the two exhibits associated with the evidence of witnesses Marić and Jahić, as well as three tables of concordance mentioned in the "Discussion" part of the Motion, but also three additional documents mentioned in Annex A, these being a pseudonym sheet for Witness RM-038 and two tables of concordance for witnesses Sabanović and Filipović.¹³ The Chamber notes that the Prosecution has not shown good cause for the addition of the eight documents to the Exhibit List at this late stage of the proceedings. However, the Chamber notes that two documents are lists of victims discussed by witnesses Marić and Babić and are *prima facie* relevant to and probative of the crimes alleged in the Indictment. The Chamber further considers the concise and uncomplicated nature of the pseudonym sheet. Regarding the tables of concordance, their purpose is merely to assist the Chamber, and they do not contain any substantive evidence. Having considered these factors, the Chamber finds that the addition of the eight documents to the Exhibit List at this stage of the proceedings does not unduly burden the Defence or prejudice the Accused and is, on balance, consistent with the interests of justice.

⁹ Motion, paras 5, 50.

¹⁰ T. 19226-19227.

¹¹ Annex B to the Motion, Rule 92 *bis* package of Mirsad Mujadžić, T. 3897-3900.

(c) Compliance with Guidance

7. With regard to witnesses Filipović and Marić, the Prosecution tenders one supplementary statement in addition to the witnesses' statements. The Chamber notes that the additional statements are short in length, one and three pages respectively, and that they supplement or correct the remaining evidence of the witnesses. The Chamber further notes that the Prosecution tenders limited portions of the transcripts of previous testimony of witnesses Filipović, Marić, and Sabanović, which supplement the evidence of the witnesses. With regard to witness Mujadžić, the Prosecution seeks to tender limited portions of transcripts in place of a witness statement, on the basis that it does not wish to re-traumatize the witness by taking an additional statement.¹⁴ Under these circumstances and considering that the excerpts are sufficiently focused, the Chamber finds that tendering the supplementary statements and the transcripts is acceptable pursuant to the Chamber's guidance.¹⁵

8. The number of tendered associated exhibits for witness Sabanović is more than the Chamber prefers.¹⁶ However, considering that the number is only slightly above that indicated in the Chamber's guidance, the Chamber will on this occasion permit this deviation from its guidance.

9. With regard to tendered material which might overlap with adjudicated facts and for which the Prosecution argues against redactions so as to preserve a coherent narrative, the Chamber notes the importance of avoiding duplication of evidentiary material.¹⁷ The Chamber considers, however, that the narrative of the tendered evidence would be less clear if redacted and, therefore, in this instance allows deviation from its guidance in this regard.

(d) Attestation and declaration

10. The statement of witness Jahić has no corresponding attestation and declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.¹⁸ In line with this practice, the Chamber will conditionally admit the unattested witness statement of witness Jahić, pending the filing of the required attestation and declaration, provided that all other

¹² Motion, paras 15-16, 50.

¹³ Motion, paras 15-16; Annex A to the Motion.

¹⁴ Motion, para. 24.

¹⁵ See T. 106-110, 137-138, 194, 315-325, 525-532.

¹⁶ The Prosecution seeks to tender seven associated exhibits and one table of concordance with witness Sabanović, see motion para. 42 and Annex B to the Motion.

¹⁷ Decision in Relation to Prosecution's Rule 92 *ter* Motion for Witness RM-114, 16 August 2012.

¹⁸ Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

admissibility requirements are met. The statements of the remaining witnesses have corresponding attestations and declarations.¹⁹

(e) Admissibility Pursuant to Rule 89 (C) of the Rules

11. The tendered evidence concerns alleged crimes within the municipalities of Sanski Most, Prijedor, Novi Grad, Ilidža, Banja Luka, and Ključ relevant to Count 1 and Counts 3 through 8 of the Indictment.

12. With respect to the Defence's objection that parts of the tendered evidence of witnesses Jahić and Marić contain "extreme hearsay", the Chamber recalls that hearsay evidence is, in principle, admissible in proceedings before the Tribunal and that the weight to be attributed to it by the Chamber will be assessed in light of all the evidence before it.²⁰ Regarding the portions identified by the Defence, the Chamber finds that either the source of knowledge is stated in the evidence or that it is clear that the witnesses have no direct knowledge of certain subjects about which they testified. The Chamber does not consider that the portions of hearsay evidence affect the overall reliability of the evidence. Further, contrary to the submissions of the Defence, the Chamber finds that the evidence of witnesses Marić and Mujadžić does not contain expert opinion.²¹

13. The Defence objects to the admission of the statements of witnesses Marić and Sabanović on the ground that both witnesses gave incorrect information in prior statements, which affects the tendered evidence's reliability and credibility.²² The Chamber notes that witness Marić corrected his previous statement regarding the date of his arrest and regarding two people with the same surname involved in his arrest.²³ The Chamber notes that witness Sabanović clarified his previous statement with regard to the use of the isolation cell and to the meaning of a metaphor, and corrected his previous statement regarding the place and time of his arrest, his two-day detention in a toilet, and the fact that he did not examine his brother while he was alive.²⁴ The Chamber considers that these corrections do not affect the overall reliability of the tendered evidence, which remains internally consistent and coherent.

14. With regard to the Defence's objection that the transcript of witness Mujadžić is incomplete, creating a misleading and unreliable record, the Chamber recalls its guidance and previous decision that a party should only tender the parts of a transcript upon which it seeks to rely, including any

¹⁹ This concerns witnesses Filipović, Marić, and Sabanović.

²⁰ Response, paras 9-12, 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.

²¹ Response, paras 13-16.

²² Response, para. 18.

²³ Witness statement of Jakov Marić dated 11 March 2000, pp. 3-4.

parts necessary for providing the necessary context or clarifications.²⁵ The Chamber notes that the portion identified by the Defence starts with the end of a question put to the witness in cross-examination about the president of the National Defence Council; the Trial Chamber in *Prosecutor v. Stakić* then sustains the Prosecution's objection, ruling that the witness has already answered the question put to him and that a second answer is unnecessary.²⁶ The Chamber considers that without the portion of testimony where the witness is first asked the question about the president of the National Defence Council, the tendered evidence is not internally consistent and is not presented in a coherent manner and can therefore not be relied upon. The Chamber therefore instructs the Prosecution to redact portions of the transcript as identified in the disposition and will only admit the redacted version of the transcript.

15. In view of the above the Chamber finds that the requirements of Rule 89 (C) of the Rules have been met, and that the tendered evidence can be admitted.

(e) Admissibility Pursuant to Rule 92 bis of the Rules

16. The Defence does not argue and the Chamber does not find that the tendered evidence relates to the acts and conduct of the Accused as charged in the Indictment. The Chamber notes that much of the evidence goes to the crime-base of the case and concerns the impact the alleged crimes had upon victims. The Chamber considers that, to a large extent, the evidence is cumulative with other evidence the Chamber has received.²⁷ Moreover, the evidence of witness Mujadžić partly relates to a general analysis of the ethnic composition of the population in the places to which the Indictment relates and to the political and historical background, two circumstances envisaged by Rule 92 bis (A) (i) (b) and (c).

17. Having taken all of the above factors into consideration, the Chamber finds that the tendered evidence is admissible pursuant to Rule 92 bis of the Rules, pending the submission of the missing attestation and declaration.

²⁴ Witness statement of Enes Sabanović dated 19 February 2001, pp. 4, 12, 18.

²⁵ Response, para. 19; T. 5406-5407; Decision on Prosecution Sixth Motion to Admit Written Statements and Transcripts in Lieu of Oral Testimony Pursuant to Rule 92 bis, 19 June 2013, para. 23.

²⁶ Annex B to the Motion, Rule 92 bis package of Mirsad Mujadžić; this concerns T. 3818:1-3820:1.

²⁷ The tendered evidence of witnesses Filipović, Marić, and Sabanović is cumulative with oral evidence received from Adil Medić, Osman Selak, Witness RM-018, and Witness RM-051; the tendered evidence of witness Jahić is cumulative with the oral evidence of Witness RM-145; the tendered evidence of witness Mujadžić is cumulative with the oral evidence of Mevludin Sejmenović and the written evidence received from Witness RM-060 and Witness RM-704.

(f) Associated Exhibits

18. With regard to the associated exhibits which form part of the Rule 92 *bis* packages of witnesses Jahić, Filipović and Marić the Chamber finds that the exhibits were discussed in the witnesses' statements or during their testimony and that each exhibit forms an inseparable and indispensable part of that evidence.

19. The Prosecution tenders three associated exhibits and a concordance chart as part of the Rule 92 *bis* package of witness Mujadžić. Regarding the video and the transcript of the video bearing Rule 65 *ter* number 22389, the Chamber notes that the tendered materials have already been admitted (conditionally) in a previous Rule 92 *bis* decision and therefore considers the tendering moot.²⁸ The Chamber further notes that document bearing Rule 65 *ter* number 14025 has already been admitted in a previous Rule 92 *bis* decision and therefore considers the tendering moot.²⁹ The Chamber finds that the last exhibit tendered as part of witness Mujadžić's Rule 92 *bis* package, a map bearing Rule 65 *ter* number 18393 and the concordance chart bearing Rule 65 *ter* number 18918 form an inseparable and indispensable part of his evidence, and will therefore admit them into evidence.

20. Regarding the associated exhibits of the Rule 92 *bis* package of witness Sabanović, the Chamber notes that of the two lists contained in document bearing Rule 65 *ter* number 06606, the witness only testified to the second list entitled "the most extremists individuals from the region of Sanki Most".³⁰ The Chamber will therefore only admit the list that was discussed by the witness, namely page 3, and instructs the Prosecution to upload into eCourt a version of this document containing only page 3. The Chamber finds that the other exhibits tendered as part of witness Sabanović's Rule 92 *bis* package form an inseparable and indispensable part of his evidence, and therefore will admit them into evidence.

IV. DISPOSITION

21. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber

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

GRANTS the Motion **IN PART**;

²⁸ See Decision on Prosecution 29th Motion to admit evidence pursuant to Rule 92 *bis*, 2 December 2013, para. 15 (in relation to Witness RM-065).

²⁹ See Decision on Prosecution 27th Motion to admit evidence pursuant to Rule 92 *bis*, 8 November 2013, para. 17 (in relation to Kerim Mešanović).

³⁰ Annex B to the Motion, Rule 92 *bis* package of Enes Sabanović, T. 6473-6475.

With respect to

(i) Muhamed Filipović

GRANTS LEAVE to add the document bearing Rule 65 *ter* number 28921 to the Exhibit List;

ADMITS into evidence

- a) Two ICTY statements of Muhamed Filipović dated 24 May 1997 and 13 March 2001, the corresponding attestation and declaration to both statements, and excerpts of testimony of Muhamed Filipović in *Prosecutor v. Brđanin*, dated 30 August 2002 and 4-5 September 2002, Case No. IT-99-36-T, as specified in Annex A to the Motion;
- b) Documents with Rule 65 *ter* number 03096, 03092, and 28921.

(ii) Jakov Marić

GRANTS LEAVE to add the documents bearing Rule 65 *ter* numbers 28854 and 28909 to the Exhibit List;

ADMITS into evidence

- a) ICTY statement of Jakov Marić dated 11 March 2000, Amendment to the statement dated 2 June 2001, the corresponding attestation and declaration, excerpts of testimony of Jakov Marić in *Prosecutor v. Brđanin*, dated 16 October 2002, Case No. IT-99-36-T as specified in Annex A to the Motion;
- b) Documents with Rule 65 *ter* numbers 28854 and 28909.

(iii) Mirsad Mujadžić

GRANTS LEAVE to add the document bearing Rule 65 *ter* number 28918 to the Exhibit List;

DENIES admission of parts of the excerpts of testimony of Mirsad Mujadžić in *Prosecutor v. Stakić*, dated 27 - 30 May 2002, namely T. 3818:1-3820:1;

INSTRUCTS the Prosecution to replace the excerpts of testimony of Mirsad Mujadžić in *Prosecutor v. Stakić*, dated 27 - 30 May 2002, T. 3897:1-3900:25 with an official and corrected version of the transcript;

DECLARES MOOT the tendering of the documents bearing Rule 65 *ter* numbers 14025 and 22389;

ADMITS into evidence, UNDER SEAL

- a) Excerpts of testimony of Mirsad Mujadžić in *Prosecutor v. Stakić*, dated 27 - 30 May 2002, Case No. IT-97-24-T, T. 3569:9-3574:16, 3576:9-3579:15, 3580:13-3583:12, 3584:16-3585:7, 3589:12-19, 3591:22-3594:18, 3608:13-3614:1, 3658:9-3667:21, 3688:1-12, 3691:11-25, 3718:3-3723:13, 3737:3-12, 3820:2-3823:8, 3840:11-3842:5, 3897:1-3900:25;

ADMITS into evidence, documents with Rule 65 ter number 18393 and 28918;

(iv) Elvir Jahić

GRANTS LEAVE to add the document bearing Rule 65 ter number 28919 to the Exhibit List;

INSTRUCTS the Prosecution to file the corresponding attestation and declaration to the statement of witness Jahić within four weeks from the date of filing of this decision;

CONDITIONNALLY ADMITS into evidence

- a) ICTY statement of Elvir Jahić dated 5 April 2013 as specified in Annex A to the Motion, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 bis (B) of the Rules;
- b) Document with Rule 65 ter number 28919;

(v) Enes Sabanović

GRANTS LEAVE to add the document bearing Rule 65 ter number 28912 to the Exhibit List;

INSTRUCTS the Prosecution to upload an excerpted version of document bearing Rule 65 ter number 06606, only containing page 3;

ADMITS into evidence

- a) ICTY statement of Enes Sabanović dated 19 February 2001, the corresponding attestation and declaration, and excerpts of testimony of Enes Sabanović in *Prosecutor v. Brđanin*, dated 3-5 June 2002, Case No. IT-99-36-T, as specified in Annex A to the Motion;
- b) Excerpted version of document bearing Rule 65 ter number 06606, only containing page 3;
- c) Documents with Rule 65 ter numbers 06566, 06613, 06986, 07027, 07043, 07087, and 28912.

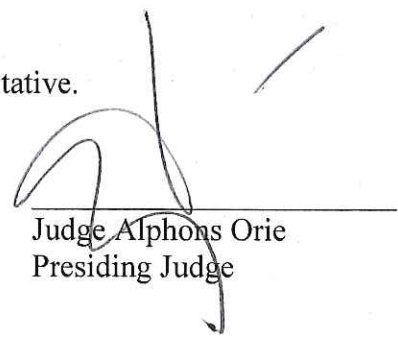
(vi) Witness RM-038

GRANTS LEAVE to add the documents bearing Rule 65 *ter* numbers 28917 and 28920 to the Exhibit List;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within three weeks of the date of 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 second day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]