



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: 22 October 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 22 October 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE RULE 92 *TER* MOTION TO ADMIT
EXHIBITS ASSOCIATED WITH THE WRITTEN TESTIMONY
OF GORAN DRAGOJEVIĆ**

Office of the Prosecutor
Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 15 September 2014, the Defence filed a motion seeking the admission into evidence of the witness statement of Goran Dragojević dated 26 June 2014, together with 12 associated exhibits (“Motion”), pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 29 September 2014, the Prosecution filed its response to the Motion, stating that it does not oppose the admission of the statement, but opposing the admission of the associated exhibits.²

2. On 19 January 2015, one of the 12 associated exhibits, the document bearing Rule 65 *ter* number 1D02850, was admitted into evidence as exhibit D864.³ On 14 May 2015, during the testimony of Dragojević, the statement and three of the remaining 11 associated exhibits were admitted into evidence.⁴

3. On 20 August 2015, the Chamber noted that the Defence had not sought the admission of the other eight associated exhibits included in its Motion, and asked the Defence to indicate by 25 August 2015 whether it maintains their tendering.⁵ On 24 August 2015, the Defence informed the Chamber and the Prosecution by email that it maintained the tendering of all remaining eight documents. On 31 August 2015, the Prosecution informed the Chamber and the Defence by email that it maintained its objection to the admission of the documents.⁶

II. SUBMISSIONS OF THE PARTIES

4. The Defence submits that the associated exhibits should be admitted into evidence because they are directly relevant to the case, form an inseparable and indispensable part of the statement, constitute an essential component of the witness’s evidence, and are important to the Defence case.⁷ The Prosecution objects to the admission of the associated exhibits because they do not form an

¹ Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Goran Dragojević, 15 September 2015, paras 1-2, Annex B. While the Defence refers to 13 associated exhibits, the actual number tendered in Annex B to the Motion is 12.

² Prosecution Response to Defence Rule 92*ter* Motion for Goran Dragojević, 29 September 2014 (Confidential) (“Response”), paras 3, 4.

³ T. 30145.

⁴ T. 35591, 35619.

⁵ T. 38117-38118.

⁶ In their emails, the Defence and the Prosecution refer to nine remaining associated exhibits, and the Defence specifically includes the document bearing Rule 65 *ter* number 1D02850 among them. However, the Chamber notes that Rule 65 *ter* number 1D02850 had already been admitted into evidence as exhibit D864 on 19 January 2015, *see* T. 30145. The Chamber therefore understands the Defence and the Prosecution’s emails as referring to the remaining eight associated exhibits.

⁷ Motion, para. 12.

inseparable and indispensable part of the statement, are not discussed by the witness, and do not give any greater probative value to the statement.⁸

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing the admission into evidence of associated exhibits as set out in previous decisions.⁹

IV. DISCUSSION

6. The Chamber has reviewed the eight remaining associated exhibits and applied the test for admission and finds that none of these documents forms an inseparable and indispensable part of the statement to the extent that the statement would be incomprehensible or of lesser probative value without them. To the contrary, the documents are simply listed in the last paragraph of the statement and were not discussed by the witness at all. The Chamber will therefore deny admission into evidence of the remaining associated exhibits.

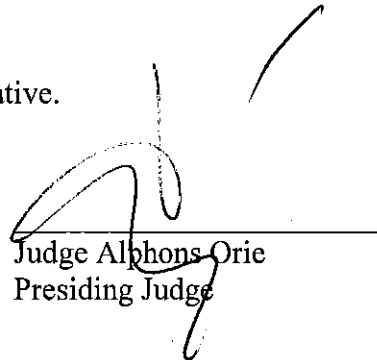
⁸ Response, para. 4.

⁹ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 12-13. *See also* Decision on Prosecution's Motion for Reconsideration, Granting Admission from the Bar Table or Certification in Relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8; T. 530-531, 5601-5603.

V. DISPOSITION

7. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *ter* of the Rules, the Chamber **DENIES** the Motion with respect to the admission of the remaining associated exhibits: the documents bearing Rule 65 *ter* numbers 1D02842, 1D02845 up to and including 1D02849, 1D02851, and 1D02852.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-second day of October 2015
At The Hague
The Netherlands

[Seal of the Tribunal]