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: 3 October 2011

Original: English

IN TRIAL CHAMBER II

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

Registrar: **Mr. John Hocking**

Order of: **3 October 2011**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

FURTHER ORDER ON THE ADMISSION OF RULE 92 *BIS* ASSOCIATED EXHIBITS

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");

NOTING the "Prosecution's Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*", filed on 13 February 2009 ("Rule 92 *bis* Motion"), in which the Prosecution tendered exhibits associated with the testimony of witnesses in prior proceedings;

NOTING 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 ordered the following:

> (2)(a) The written statements and/or transcripts of prior testimony tendered in the Rule 92 *bis* Motion, Appendix B for Witnesses Nos. 24, 25, 28, 45, 46, 57, 64, 65, 66, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 79, 97, 101, 104, 106, 111, 113, 116, 118, 119, 120, 123, 124, 146, 147, 154, 155, 157, 159, 160, 161, 163, 164, 165, 166, 167, 168, 169, 170, 173, 178, and 181 shall be provisionally admitted into evidence pursuant to Rule 92 *bis*(A) and/or (B) without requiring the witnesses to appear for cross-examination subject to the Prosecution, within 30 days of the date of this Decision, providing the corresponding Rule 65 *ter* numbers in the present case and replacing all transcripts headed "Not Official; Not Corrected" with transcripts reflecting the official record;
>
> (2)(b) *The associated exhibits tendered in the Rule 92 bis Motion, Appendix B which were admitted through each witness listed in paragraph (2)(a) above during the relevant prior proceedings* shall be provisionally admitted subject to the Prosecution, within 30 days of the date of this Decision, providing the corresponding Rule 65 *ter* numbers in the present case;
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> […]
>
> (5) **DENIES** the Motion in all other respects.[1]

NOTING that the Prosecution provided the Rule 65 *ter* numbers for the exhibits tendered in Appendix B of its Rule 92 *bis* Motion which were admitted through the above witnesses during the relevant prior proceedings, but that the Prosecution's submissions also contained 65 *ter* numbers for documents that:

(i) were not tendered in Appendix B of the Prosecution's Rule 92 *bis* Motion and, accordingly, were not subject to the 7 July Decision; or

(ii) were tendered in Appendix B of the Prosecution's Rule 92 *bis* Motion but were not admitted through the above witnesses during the relevant prior proceedings and, accordingly, were denied admission in the 7 July Decision;

[1] 7 July Decision, pp. 48–49 (emphasis added).

NOTING that on 27 January 2011, the Registry circulated to the Chamber and Parties a list of exhibit numbers it proposed to assign to associated exhibits based on the information provided by the Prosecution which included documents either not subject to or denied admission by the 7 July Decision;[2]

NOTING that this Chamber admitted by oral decision on 31 January 2011 the documents listed by the Registry,[3] as reflected also in the confidential Registry Internal Memorandum Assigning Exhibit Numbers of 17 February 2011 ("Internal Memorandum");

NOTING that the Chamber's oral decision, therefore, admitted into evidence a number of documents either not subject to or denied admission by its 7 July Decision;

NOTING the Chamber's "Order Regarding Admission of Rule 92 *bis* Associated Exhibits", filed on 1 September 2011 ("Order"), in which the Chamber instructed the Registry to file within 14 days of the Order a further memorandum identifying documents listed in the Internal Memorandum which were either not subject to or denied admission by the 7 July Decision;

NOTING that on 16 September 2011, in response to the Chamber's instruction, the Registry filed the partly confidential Registry Internal Memorandum ("Further Internal Memorandum"), in which it listed those documents it found to be either not subject to or denied by the 7 July Decision;[4]

NOTING that the Further Internal Memorandum refers to Witness No. 152, lists P01660 as an associated exhibit of Witness No. 163, and lists the transcripts of the witnesses' previous testimony as not tendered in the Rule 92 *bis* Motion and, therefore, not subject to the 7 July Decision;

CONSIDERING as a preliminary matter that the witness listed as Witness No. 152 should be Witness No. 154, the exhibit listed for Witness No. 163 as P01660 should be P01680, and the transcripts of the witnesses' previous testimony should not be listed since the date for each was included in Appendix B of the Rule 92 *bis* Motion and they were therefore tendered by the Prosecution and admitted by the 7 July Decision;

CONSIDERING that exhibit P01511 should be listed in the Further Internal Memorandum as not admitted through Witness No. 28 in the previous proceeding and therefore denied admission by the 7 July Decision;

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2 Registry email dated 27 January 2011.
3 T. 9097 (31 January 2011).
4 Further Internal Memorandum, Confidential Annex.

CONSIDERING that exhibit P01562 should be listed in the Further Internal Memorandum as not tendered with Witness No. 97 in the Rule 92 *bis* Motion and therefore not subject to the 7 July Decision;

CONSIDERING that the Chamber has identified P01584, and P01652–P01655 as documents that were admitted during the relevant prior proceedings through a witness other than the one specified in the Internal Memorandum and the Further Internal Memorandum, but were properly tendered in the Rule 92 bis Motion and admitted in the 7 July Decision;

CONSIDERING that the Chamber has further identified P01242, P01227a, P01227c–P01228c, P01229a, P01229c, and P01099 as documents that were not included in the 27 January 2011 list of exhibit numbers circulated by the Registry and therefore were not subject to the Chamber's 31 January 2011 oral decision admitting exhibits, but should have been;

CONSIDERING that it is in the interests of justice that the admission of exhibits should conform to the intentions of the Chamber, as reflected in the 7 July Decision;

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

HEREBY ORDERS as follows:

1. The following exhibits were either not subject to or denied admission by the 7 July Decision and, therefore, shall have their status changed from EXH to MFI:

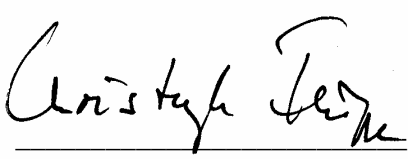
P01491	P01539b	P01544b	P01661
P01506	P01539c	P01544c	P01666
P01507	P01540a	P01545	P01668
P01508	P01540b	P01546	P01677
P01511	P01540c	P01547	P01678
P01516	P01541a	P01548	P01679
P01537a	P01541b	P01562	P01680
P01537b	P01541c	P01596	P01705
P01537c	P01542a	P01617	P01706
P01538a	P01542b	P01618	P01733
P01538b	P01542c	P01619	P01741
P01538e	P01542d	P01626	P01743
P01538f	P01543a	P01627	P01744
P01538g	P01543b	P01632	
P01539a	P01543c	P01660	

2. The following exhibits were inadvertently excluded from the 27 January 2011 list of exhibit numbers circulated by the Registry and therefore were not subject to the Chamber's

31 January 2011 oral decision admitting exhibits, but should have been and, therefore, shall have their status changed from MFI to EXH:

P01099	P01227d	P01228c	P01242
P01227a	P01228a	P01229a	
P01227c	P01228b	P01229c	

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



Judge Christoph Flügge
Presiding Judge

Dated this third day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]