



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-08-91-T
Date: 2 October 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 2 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**PUBLIC REDACTED DECISION ON PROSECUTION'S
MOTIONS
FOR ADMISSION OF EVIDENCE PURSUANT TO
RULE 92 *TER* (ST012 AND ST019)**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

I. INTRODUCTION

1. Trial Chamber II (“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 following Prosecution motions:

- Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, filed publicly with confidential annexes on 29 February 2008 (“Rule 92 *bis* Motion”);
- Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, filed in part confidentially on 29 February 2008 (“Rule 92 *ter* Motion”);
- Prosecution amended motion and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, filed on 10 December 2008;¹
- Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92 *bis* and 92 *ter*, with confidential annexes, filed on 28 July 2009 (“Supplemental Motion”).

2. By this decision, the Trial Chamber will consider the general submissions of the parties, and specifically those that relate to two witnesses subject to these motions, [REDACTED] (ST012) and [REDACTED] (ST019). The Trial Chamber will consider the remaining witnesses subject of these motions in separate decisions.

II. PROCEDURAL BACKGROUND

3. On 7 April 2008, the Defence of Mićo Stanišić (“Stanišić Defence”) responded that it opposes the Rule 92 *bis* Motion (“Stanišić Rule 92 *bis* Response”).² On 11 April 2008, the Prosecution sought leave to reply and filed a proposed reply (“Rule 92 *bis* Reply”).³ On 17 April 2008, the Stanišić Defence filed a response setting out its objections to the Rule 92 *ter* Motion

¹ This amended notice clarifies and maintains the Prosecution’s original notice, Prosecution’s notice and request regarding Rule 92 *bis*, 92 *ter*, 92 *quater* evidence, 19 Nov 2008.

² *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Defence’s response to Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, filed confidentially 7 Apr 2008. The substance of the relevant filings is discussed in Section III below.

³ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution’s motion for leave to reply and proposed reply to Defence’s response to Prosecution’s motion for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, filed confidentially 11 Apr 2008.

(“Stanišić Rule 92 *ter* Response”).⁴ On 23 April 2008, the Prosecution sought leave to reply and included a proposed reply (“Rule 92 *ter* Reply”).⁵

4. On 23 September 2008, following the arrest of Stojan Župljanin, the Trial Chamber granted a Prosecution motion to join the case against him with that against Mićo Stanišić.⁶ On 19 November 2008, the Prosecution requested, *inter alia*, that the Rule 92 *bis* Motion and Rule 92 *ter* Motion apply to the joint case.⁷ On 26 January 2009, following the filing of the Amended Notice, the Defence of Stojan Župljanin (“Župljanin Defence”) responded to the Rule 92 *bis* Motion (“Župljanin Rule 92 *bis* Response”) and the Rule 92 *ter* Motion (“Župljanin Rule 92 *ter* Response”), and simultaneously sought leave to exceed the word limit prescribed in the “Practice direction on the length of briefs and motions.”⁸

5. On 30 January 2009, the Stanišić Defence filed submissions in relation to the Rule 92 *bis* Motion and the Rule 92 *ter* Motion by which it seeks to join the responses filed by the Župljanin Defence (“Stanišić Submissions”).⁹ The Stanišić Defence submits that the Stanišić Response was filed without consultation by the then counsel representing Mićo Stanišić, since the Accused’s request pursuant to Rule 45(F) for the removal of his previous counsel and for self-representation had been pending since 5 March 2008.¹⁰ The Trial Chamber notes that, on 30 April 2008, Mićo Stanišić himself sought to file a response, which, on the Trial Chamber’s instructions, was not accepted by the Registry as he continued to be represented by counsel.¹¹

⁴ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Defence’s response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, filed confidentially on 17 Apr 2008.

⁵ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Motion for leave to reply and proposed reply to Defence’s response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 23 Apr 2008.

⁶ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT and *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, Decision on the Prosecution’s motion for joinder and for leave to consolidate and amend indictments, 23 Sep 2008; Prosecution’s motion for joinder and for leave to consolidate and amend indictments, with confidential annexes, 15 Jul 2008.

⁷ Prosecution notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 19 Nov 2008; Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 3 Dec 2008; Decision on Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 15 Dec 2008; Prosecution amended notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 10 December 2008. See also, Practice direction on the length of briefs and motions, IT/184 Rev. 2, 16 Sep 2005.

⁸ Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of transcripts and written statements in lieu of *viva voce* testimony pursuant to Rule 92 *bis*, filed confidentially on 26 Jan 2009; Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2009 for admission of evidence pursuant to Rule 92 *ter*, filed confidentially on 26 Jan 2009.

⁹ Submission of Mićo Stanišić’s Defense regarding Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of evidence pursuant to Rule 92 *bis*, 30 Jan 2009, and Submission of Mićo Stanišić’s Defense regarding Stojan Župljanin’s response to the Prosecution’s motion of 29 February 2008 for admission of evidence pursuant to Rule 92 *ter*, 30 Jan 2009.

¹⁰ Stanišić Submissions, para. 3.

¹¹ *Id.* The Trial Chamber notes that this response was filed a week after the Prosecution’s reply to the Stanišić Response, Mićo Stanišić’s response to Prosecution’s motion for admission of evidence pursuant to Rule 92 *ter*, 30 April 2008; Rule 65 *ter* conference, 5 May 2008, T. 167-168; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision of the Registrar, 13 June 2008, p. 3; Status Conference, 6 May 2008, T. 120-128.

6. The Stanišić Defence does not clearly indicate whether it seeks to replace the Stanišić Response, filed by the then counsel representing Mićo Stanišić, or to supplement those submissions. The Trial Chamber recalls that counsel currently representing the Accused was assigned to the case on 13 June 2008 but only filed these submissions on 30 January 2009.¹² In the Trial Chamber's opinion, counsel did not act with due diligence in approaching the Trial Chamber for the nullification of filings by the previous counsel. Nevertheless, the Trial Chamber has perused the Stanišić Submissions in order to ensure that the rights of the Accused are not unfairly prejudiced by such lack of diligence and finds that they do not contain any information that would aid the Trial Chamber's determination of this matter. The Trial Chamber, therefore, finds that no prejudice is caused to the Accused by disregarding these submissions. Accordingly, the Trial Chamber will not address the Stanišić Submissions any further.

7. On 2 February 2009, the Prosecution sought leave to reply and filed a proposed reply to the Župljanin 92 *bis* Response ("Consolidated Reply").¹³ Subsequently, on 9 February 2009, Stojan Župljanin filed a "rejoinder" to the Prosecution's Consolidated Reply.¹⁴ The Trial Chamber notes that the Rules of Procedure and Evidence ("Rules") do not envisage rejoinders and that it had not ordered the Župljanin Defence to make further submissions. Therefore, the Trial Chamber will not consider this filing.

8. On 8 June 2009, the Prosecution filed its pre-trial brief and witness and exhibit lists pursuant to Rule 65 *ter*(E).¹⁵ By the Supplemental Motion, the Prosecution seeks to amend the mode of testimony of some of the witnesses on its witness list and as described in a corrigendum to the list.¹⁶ This includes, *inter alia*, the conversion of the mode of testimony of six witnesses who are listed in the Rule 92 *bis* Motion, including [REDACTED] (ST012) and [REDACTED] (ST019), to testify pursuant to Rule 92 *ter*.¹⁷

9. On 30 August 2009, and close to three weeks after the expiry of the relevant time limit pursuant to Rule 126 *bis*, the Stanišić Defence responded to the Supplemental Motion. The Trial

¹² *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision of the Registrar, 13 Jun 2008, p. 3.

¹³ Prosecution's motion for leave to reply and proposed consolidated reply to Stojan Župljanin responses to the Prosecution's Rule 92 *bis* and 92 *quater* motions, with confidential annex, 2 Feb 2009.

¹⁴ Župljanin's rejoinder to the Prosecution's consolidated reply to Župljanin's responses to the Prosecution's Rule 92 *bis* and Rule 92 *quater* motions, filed confidentially on 9 Feb 2009.

¹⁵ Prosecution's pre-trial brief with confidential appendices, 8 Jun 2009.

¹⁶ Corrigendum to confidential appendices 3 & 4 of the Prosecution's pre-trial brief of 8 June 2009 with confidential annexes, 22 Jun 2009.

¹⁷ The Prosecution submits this reclassification is necessitated by the joinder of the cases against Mićo Stanišić and Stojan Župljanin as the evidence of the witnesses pertains, in part, to the acts and conduct of the second Accused. The Prosecution also submits that the Defence will not be prejudiced by this conversion as they will have the opportunity to cross-examine the witnesses; Supplemental Motion, paras 6,7 and Corrigendum, para. 2.

Chamber notes that the Stanišić Defence does not seek an extension of the time-limit.¹⁸ Accordingly, the Trial Chamber will not consider this response.

III. SUBMISSIONS

1. In relation to Rule 92 bis

10. In its Rule 92 *bis* Motion, the Prosecution seeks the admission of transcripts, witness statements and related exhibits of 64 witnesses including the evidence of [REDACTED] (ST012) and [REDACTED] (ST019). In its Supplemental Motion, the Prosecution states that it now seeks to amend the mode of testimony for six witnesses, including [REDACTED] (ST012) and [REDACTED] (ST019), and admit their evidence pursuant to Rule 92 *ter*, rather than pursuant to Rule 92 *bis*. The Prosecution submits that this change is necessitated by the joinder of the cases, since the evidence of these witnesses, at least in part, goes to the acts and conducts of Stojan Župljanin.¹⁹ In light of the position taken by the Prosecution, this Decision will address only the submissions pursuant to Rule 92 *ter*.

2. In relation to Rule 92 ter

11. The Prosecution submits that the testimony of the witnesses subject to this Motion meets the requirements of the Rule and confirms that witnesses called pursuant to this Rule will appear in court to attest to the accuracy of their earlier evidence and for cross-examination.²⁰ It is also asserted that the exhibits listed form “an inseparable and indispensable part of the witness’ testimony” and should be admitted with the transcripts and written statements.²¹

12. The Stanišić Defence requests that the Trial Chamber dismiss the Rule 92 *ter* Motion and that the witnesses be required to give evidence *viva voce*.²² The Defence contends that the rights of the accused as provided for by Articles 20 and 21 of the Statute would be undermined if the Motion were granted because the Motion seeks to “introduce evidence of alleged acts and conduct of the Accused” in order to “establish the alleged criminal responsibility of the Accused”.²³ Alternatively, if the Chamber is minded to grant the Rule 92 *ter* Motion in whole or in part, the Stanišić Defence requests that the admission of evidence be subject to the following limitations:

¹⁸ Mr. Mićo Stanišić’s response to the Prosecution’s supplemental motion for admission of evidence pursuant to Rules 92*bis* and 92*ter*, with confidential annexes, 31 Aug 2009.

¹⁹ Supplemental Motion, para. 6.

²⁰ Rule 92 *ter* Motion, para. 8.

²¹ Rule 92 *ter* Motion, para. 9.

²² Stanišić Rule 92 *ter* Response, para. 2.

²³ Stanišić Rule 92 *ter* Response, para. 2.

(i) the witnesses who have previously given testimony before the Tribunal in other cases must be given an opportunity to confirm and clarify any aspect of their previous testimony, and only the portions of the statements or transcripts which the witness confirms as accurate reflections of what they would say upon examination should be admitted as evidence;²⁴

(ii) the Prosecution should not be permitted “to elicit additional evidence or qualify the evidence contained in the statement” of witnesses testifying under Rule 92 *ter*;²⁵

(iii) if the Prosecution is allowed to ask questions of a witness with a view to clarifying prior testimony or written statement, it must identify such witnesses to the Defence in advance and also specify the issues to which the clarification will pertain in order for the Defence to be adequately prepared for cross-examination;²⁶

(iv) the Prosecution should not be allowed to proof the witnesses prior to their testimonies;²⁷ and

(vi) the Prosecution should not be permitted to tender any exhibit through Rule 92 *ter* witnesses or, should the Chamber permit the Prosecution to do so, these should be limited to those documents the authenticity, relevance and probative value of which the witness is able to attest.²⁸

13. The Stanišić Defence also notes that a number of the documents listed in Annex A to the Rule 92 *ter* Motion as being part of the witnesses’ evidence are not listed on the Prosecution’s exhibit list. It is noted that the Prosecution has not provided an explanation as to why they were not included. The Stanišić Defence, therefore, argues that these documents should not be admitted into evidence.²⁹

14. The Župljanin Defence does not object to the Rule 92 *ter* Motion insofar as it pertains to Stojan Župljanin, noting that Rule 92 *ter* allows for cross-examination.³⁰ The Župljanin Defence does, however, assert that a large amount of the evidence referenced in the Motion bears “little relevance to the instant case” and that the Prosecution should reconsider its request in the interest of judicial economy.³¹

15. In reply, the Prosecution refers to the practice of allowing the Prosecution to ask Rule 92 *ter* witnesses additional questions to clarify matters mentioned in prior transcripts and statements after the witness confirms that they accurately reflect what he or she would testify, if examined.³² In respect of the objections of the Stanišić Defence, the Prosecution states that it does not oppose disclosing the issues it intends to clarify or supplement prior to the testimony of the witnesses.³³ It argues, however, that it should be allowed to meet with the witnesses in proofing sessions prior to their testimony in order to identify these issues. In this context, the Prosecution asserts that no case

²⁴ Stanišić Rule 92 *ter* Response, para. 5.

²⁵ Stanišić Rule 92 *ter* Response, para. 6.

²⁶ Stanišić Rule 92 *ter* Response, para. 7.

²⁷ Stanišić Rule 92 *ter* Response, para. 8.

²⁸ Stanišić Rule 92 *ter* Response, para. 9.

²⁹ Stanišić Rule 92 *ter* Response, para. 10.

³⁰ Župljanin Rule 92 *ter* Response, para. 3.

³¹ Župljanin Rule 92 *ter* Response, para. 4.

³² Rule 92 *ter* Reply, para. 5.

in the Tribunal's jurisprudence has required the Prosecution to disclose this information prior to proofing a witness.³⁴

16. When addressing the Defence challenge to the admission of exhibits and other related documents, the Prosecution also submits that it should be allowed to tender into evidence, through the witnesses, exhibits referred to in the written statements and transcripts of the witnesses. It submits that "without these exhibits [the witnesses'] prior testimony cannot be fully evaluated for relevance and probative value".³⁵ The Prosecution clarifies that documents that are not included on its Rule 65 *ter* exhibit list,³⁶ are not "sufficiently significant to the Prosecution's case as to require them to be independently admitted into evidence".³⁷

3. Supplemental Motion

17. The Prosecution submits that its Supplemental Motion is "limited to updating the Prosecution's prior submissions in light of the Rule 65*ter* witness list filed concurrently with its Pre-Trial Brief" and for "clarifying and correcting a number of matters".³⁸ The Prosecution also identifies and highlights specific portions in the prior transcripts and statements for witnesses pursuant to Rule 92 *ter* as the relevant and probative evidence for its case.³⁹

IV. APPLICABLE LAW

18. Rule 92 *ter* sets out the law applicable to the admission of evidence in this form. The main objective of Rule 92 *ter* is to ensure an effective and expeditious trial while simultaneously ensuring and respecting the rights of the accused.⁴⁰ Although Rule 92 *ter* does not *per se* govern the admission of exhibits, the jurisprudence of the Tribunal permits the admission of exhibits where they accompany written statements or transcripts and form an "inseparable and indispensable" part of the evidence.⁴¹ In order to satisfy this requirement, the witness's testimony must actually discuss

³³ Rule 92 *ter* Reply, para. 6.

³⁴ Rule 92 *ter* Reply, paras 7 and 8.

³⁵ Rule 92 *ter* Reply, para. 9 and Supplemental Motion, para. 22.

³⁶ These are the documents which the Prosecution has listed in the annex to its Motion and in the annex to its Supplemental Motion as part of the "Rule 92 *ter* packages" of witnesses.

³⁷ Rule 92 *ter* Reply, para. 10; Supplemental Motion, para. 22. The Trial Chamber notes that at the time of making the Rule 92 *bis* Motion and Rule 92 *ter* Motion, the Prosecution's Rule 65 *ter* exhibit list pertained solely to the case against Mićo Stanišić. In its order of 8 May 2009, the Trial Chamber directed the Prosecution to file a consolidated exhibit list reflecting its case against both Mićo Stanišić and Stojan Župljanin. Scheduling Order for submission of pre-trial briefs and other materials pursuant to Rule 65 *ter*, 8 May 2009.

³⁸ Supplemental Motion, para. 2.

³⁹ Supplemental Motion, para. 21.

⁴⁰ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 25 Jun 2007, p. 2; *Prosecutor v. Delić*, Case No. IT-04-83-T, Decision on Prosecution Motion to admit written witness statements under Rule 92 *ter*, 27 Sep 2007, para. 10.

⁴¹ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on confidential Prosecution motion for the admission of prior testimony with associated exhibits and written statements of witnesses pursuant to Rule 92 *ter*, 9 Jul

the document, and the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.⁴²

19. The evidence sought to be admitted pursuant to Rule 92 *ter*, whether a written statement or a transcript of oral testimony, must also fulfil the general requirements of admissibility of Rule 89(C), that is, the proposed evidence must be relevant and have probative value.⁴³

V. DISCUSSION

20. As a preliminary point, the Trial Chamber notes that in its Consolidated Reply, filed in February 2009, the Prosecution stated that it seeks the withdrawal of [REDACTED] (ST012) from its witness list.⁴⁴ However, the Prosecution includes this witness in both the consolidated witness list, filed on 8 June 2009, and in its reduced witness list filed on 10 September 2009.⁴⁵ The Trial Chamber, therefore, considers this to be indicative of the Prosecution's intent to call [REDACTED] (ST012).

21. The Trial Chamber considers that the reclassification of the mode of testimony of [REDACTED] (ST012) and [REDACTED] (ST019) to Rule 92 *ter* does not prejudice the Defence as the witnesses will appear for cross-examination. The submissions raised in the Stanišić Rule 92 *bis* Response and the Župljanin Rule 92 *bis* Response, in particular those concerning the evidence of [REDACTED] (ST012) and [REDACTED] (ST019) going to the acts and conduct of the Accused and concerning prejudice to the Defence, will therefore not be considered.

22. The Trial Chamber is satisfied that the sections of the evidence of [REDACTED] (ST012) and [REDACTED] (ST019) identified by the Prosecution in its Supplemental Motion are relevant and probative to the issues in the present case and will therefore admit them and call the witnesses for cross-examination pursuant to Rule 92 *ter*. The Trial Chamber is also satisfied that the documents accompanying the prior transcripts and statements of these witnesses form an

2008 ("*Lukić and Lukić* Decision"), para. 15; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution's Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 Jan 2004, p. 3; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *bis*, 22 Feb 2007, para. 23; *Prosecutor v. Dordević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *ter*, 10 Feb 2009 ("*Dordević* Decision"), para. 5.

⁴² *Lukić and Lukić* Decision, para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008, para. 19; *Prosecutor v. Haraqija and Morina*, Case No. IT-04-84-R77.4, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* and/or 92 *ter*, 2 Sep 2008 ("*Haraqija* Decision"), para. 12; *Dordević* Decision, para. 5.

⁴³ *Lukić and Lukić* Decision, para.20; *Dordević* Decision, para. 6; *Haraqija* Decision, para. 13.

⁴⁴ Consolidated Reply, para. 3.

⁴⁵ Prosecution's Pre-trial Brief, Appendix 3, p. 3. See also Scheduling order for submission of pre-trial briefs and other materials pursuant to Rule 65 *ter*, 8 May 2009.

inextricable and indispensable part of the witnesses' evidence and assist the Trial Chamber's understanding of the evidence.

23. As for the associated exhibits, as a general rule, any material that a party seeks to have admitted into evidence must appear on its exhibit list.⁴⁶ Accordingly, the Trial Chamber will admit into evidence those accompanying documents that are presently on the Prosecution's exhibit list.

24. The Trial Chamber recalls that the jurisprudence of the Tribunal permits witnesses who are to be heard pursuant to Rule 92 *ter* to be given an opportunity to clarify his or her prior statement or testimony.⁴⁷ Insofar as the Stanišić Defence requests that the Prosecution obtain a separate confirmation from the witness in respect of each aspect of his or her evidence, the Trial Chamber is of the view that the requirements of Rule 92 *ter* are satisfied if the witness attests in general that an entire transcript of testimony or an entire statement accurately reflects his or her declaration and what he or she would say upon examination, subject to specific clarifications, if any.

25. The Stanišić Defence also argues that the Prosecution should not be permitted to elicit additional evidence from the witnesses called pursuant to Rule 92 *ter*. The Prosecution does not oppose the Defence request for disclosing the issues that it intends to clarify or supplement through the examination-in-chief of the Rule 92 *ter* witnesses.⁴⁸ The Trial Chamber recalls the guidelines for the admission and presentation of evidence, which state that unless permitted by the Trial Chamber upon the showing of good cause by the calling party, a witness testifying pursuant to Rule 92 *ter* will not be heard beyond the scope of the statements and transcripts admitted.⁴⁹

26. In respect of the argument by the Stanišić Defence that the Prosecution should not be permitted to proof these witnesses in advance of their testimony, the Trial Chamber recalls that the jurisprudence of the Tribunal allows for proofing of witnesses.⁵⁰ The request is therefore denied.

VI. DISPOSITION

27. For the foregoing reasons, and pursuant to Rules 54, 65 *ter*, 89, 92 *ter* and 126 *bis* of the Rules, the Trial Chamber:

⁴⁶ Order on guidelines on the admission and presentation of evidence ("Guidelines"), 10 Sep 2009, Annex A, para. 6.

⁴⁷ *Prosecutor v. Prlić et. al.*, Case No. IT-04-74-T, Decision on the application of Rule 92 *ter* of the Rules, 25 Jun 2007, p. 2; Guidelines, para. 24.

⁴⁸ Rule 92 *ter* Reply, para. 6.

⁴⁹ Guidelines para. 25.

⁵⁰ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, Decision on Tolimir's request to prohibit Prosecution's contact with witnesses proposed in Prosecution's 92 *bis* and 92 *ter* motions, 4 Jun 2009, p. 3; *Prosecutor v. Haradinaj et. al.*, Case No. IT-04-84-T, Decision on Defence request for audio-recording of Prosecution witness proofing sessions, 23 May 2007, paras 8-10; *Prosecutor v. Milutinović et. al.*, Case No. IT-05-87, Decision on Ojdanić's motion to prohibit witness proofing, 12 Dec 2006, paras 10, 16 and 20.

GRANTS the request in the Župljanin Rule 92 *bis* Response to exceed the word limit;

GRANTS leave to the Prosecution to reply to the Stanišić Rule 92 *bis* Response and the Župljanin Rule 92 *bis* Response;

DISMISSES the Stanišić Submissions of 30 January 2009 and the Župljanin Defence filing of 9 February 2009;

ACCEPTS the Amended Notice insofar as it relates to the motions pursuant to Rule 92 *bis* and *ter*;

GRANTS the Rule 92 *ter* Motion and the Supplemental Motion **IN PART**;

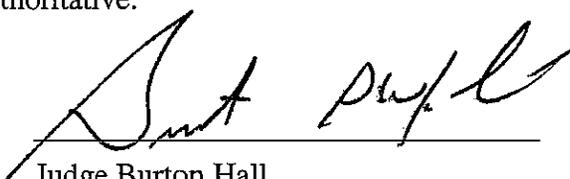
ADMITS INTO EVIDENCE the prior evidence of [REDACTED] (ST012) and [REDACTED] (ST019), subject to compliance with the conditions stipulated in Rule 92 *ter* when the witnesses are present in court;

ADMITS INTO EVIDENCE those documents accompanying the evidence of [REDACTED] (ST012) and [REDACTED] (ST019) that are presently on the Prosecution's exhibit list;

ORDERS the Registrar to assign exhibit numbers to each individual transcript, statement and accompanying document presently on the Prosecution's exhibit list, once attested to by the witnesses in court; and

REMAINS SEISED of the Rule 92 *bis* Motion, the Rule 92 *ter* Motion, Amended Notice and the Supplemental Motion in relation to all other witnesses.

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



Judge Burton Hall
Presiding

Dated this second day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]