



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-83-T

Date: 8 April 2008

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 8 April 2008

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION
OF EVIDENCE PURSUANT TO RULE 92 *BIS***

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Matthias Neuner
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

TRIAL CHAMBER I (“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 “Defence Motion for Admission of Evidence Pursuant to Rule 92 *bis*” filed on 19 March 2008 (“Motion”) and hereby renders its Decision.

I. SUBMISSIONS

A. Defence Motion

1. In its Motion, the Defence requests the Trial Chamber to dispense with the attendance of witnesses Fadil Alihodžić, Naim Horo and Hasan Zukanović, and to admit their written statements (“Proposed Statements”) pursuant to 92 *bis* of the Rules of Procedure and Evidence (“Rules”).¹ The Defence notes that while the statements of Naim Horo and Hasan Zukanović have already been certified by a Registry Presiding Officer in accordance with Rule 92 *bis* (B), the statement of Fadil Alihodžić has yet to be certified.²

2. The Defence submits that the evidence of the above-listed witnesses is reliable,³ relates to “crime-base” issues of a cumulative nature, and does not go to the acts and conduct of the Accused as charged in the Indictment.⁴ The Defence also states that the evidence of Fadil Alihodžić relates to the relevant historical and military background of events,⁵ and argues that none of the factors against admission as listed in Rule 92 *bis*(A)(ii) apply to the Proposed Statements.⁶ Furthermore, it is submitted that the admission of evidence in the form of written statements will expedite trial proceedings.⁷

3. The Defence requests that the Trial Chamber deny any Prosecution request for cross-examination, stating that the Trial Chamber has already heard a considerable amount of evidence relating to the matters addressed by these witnesses.⁸

B. Prosecution Response

4. On 1 April 2008, the Prosecution filed the “Prosecution Response to Defence Motion for Admission of Evidence Pursuant to Rule 92 *bis*” (“Response”), in which it does not oppose the

¹ Motion, para. 1.

² Motion, para. 2.

³ Motion, paras 11, 18, 22, 25.

⁴ Motion, paras 10, 16-17, 19-21, 23-24.

⁵ Motion, para. 17.

⁶ Motion, paras 11-12, 18, 22, 25.

⁷ Motion, para. 13.

motion to admit the Proposed Statements into evidence.⁹ However, the Prosecution requests that the Trial Chamber order witness Hasan Zukanović to appear for cross-examination. The Prosecution submits that Hasan Zukanović is a “linkage” witness rather than a “crime-base” witness, and that his claim to have conducted an investigation into the abduction of Croats from the custody of the Army of the Republic of Bosnia and Herzegovina (“ABiH”) in Poljanice on 8 June 1993 relates specifically to paragraph 27 of the Indictment and thus to a critical element of the Prosecution case.¹⁰ It is the Prosecution’s view that whether the perpetrators of the events in Bikoši were investigated and punished by the ABiH is a “live and important issue between the parties”.¹¹

6. Furthermore, the Prosecution disputes the Defence characterisation of Hasan Zukanović’s evidence as cumulative to that of Halim Husić and Asim Delalić.¹² The Prosecution notes that Hasan Zukanović arrived in Mehurići prior to Asim Delalić, and states that he is likely to have unique insight into the events that occurred in Mehurići for the time frame prior to Asim Delalić’s arrival.¹³ In addition, Hasan Zukanović’s firsthand description of the alleged investigation into the abduction will be distinct from that of Halim Husić.¹⁴ The Prosecution notes that of the more than 3,500 items in the exhibit lists of both parties, not one originates from Hasan Zukanović, nor do any of the items contain statements from the military police officers that the witness claims to have interviewed regarding the abduction of Croats in Poljanice.¹⁵

II. DISCUSSION

7. The Trial Chamber recalls the requirements for the admission of a written statement under Rules 92 *bis* of the Rules as set out in previous Decisions of this Trial Chamber.¹⁶ After careful review of the Proposed Statements, the Trial Chamber makes the following determinations.

(i) Fadil Alihodžić

8. Fadil Alihodžić was a member of the Supreme Command Staff of the ABiH during the relevant time frame. His statement concerns his mission to Mehurići on 23 June 1993 as a member of the Joint Humanitarian Commission for Monitoring Release of all Prisoners. His evidence

⁸ Motion, paras 14 and 26.

⁹ Response, para. 2.

¹⁰ Response, paras 7-8. Paragraph 27 of the Indictment concerns the Accused’s knowledge of the crimes alleged to have taken place on 8 June 1993 and measures taken by the Accused to address these crimes.

¹¹ Response, para. 8.

¹² Response, para. 9.

¹³ Response, para. 9.

¹⁴ Response, para. 10.

¹⁵ Response, para. 11.

¹⁶ Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 6 November 2007; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 13 November 2007 (“Decision of 13 November 2007”).

touches upon the conduct of the Mujahedin group in Mehurići, and in this respect, is similar to the evidence provided by Ivan Negovetić. Although there are differences between the testimony of Fadil Alihodžić and Ivan Negovetić, the Trial Chamber notes that the Prosecution has not requested that this witness appear for cross-examination. In addition, the evidence of Fadil Alihodžić relates to matters which do not go to the acts and conduct of the Accused as charged in the Indictment, including the historical and military background of events for the time in question. As the statement of this witness fulfils the relevant requirements, the Trial Chamber admits the statement of Fadil Alihodžić into evidence pursuant to Rule 92 *bis*, subject to the certification of his statement under Rule 92 *bis* (B).

(ii) Naim Horo

9. The statement of Naim Horo relates to the location of the 1st Battalion of the 7th Muslim Brigade and the combat engaged in by the Battalion in June 1993. The evidence of this witness is cumulative in nature to the evidence of Enver Adilović, Asim Delalić and Halim Husić. None of the factors disfavouring admission apply to the statement of this witness. Considering that his evidence fulfils the relevant requirements, the Trial Chamber admits into evidence the statement of Naim Horo pursuant to Rule 92 *bis*.

(iii) Hasan Zukanović

10. Hasan Zukanović was the Assistant Commander for Security of the 1st Battalion of the 306th Brigade. In his statement, he describes an investigation into the abduction of 20 persons from the Maline village in the beginning of June 1993. The witness indicates that all military policemen made statements as part of this investigation, and that he personally sent these statements to the Assistant Commander for Security of the 306th Brigade, along with a report indicating that no one from the 306th Brigade had been involved in the abductions. The Trial Chamber agrees with the Prosecution argument that the evidence of Hasan Zukanović regarding an investigation into the aforementioned abduction is a live and important issue between the parties.¹⁷ The Trial Chamber also notes the absence of exhibits containing statements of military police officers that Hasan Zukanović reports collecting during the investigation. This, in conjunction with the importance of the issue to the parties, militates in favour of allowing the Prosecution to cross-examine the witness. The Trial Chamber will therefore admit into evidence the statement of Hasan Zukanović pursuant to Rule 92 *bis*(C), subject to the appearance of the witness for cross-examination.

¹⁷ *E.g.* see the discussion concerning the same topic during the testimony of Halim Husić, T. 7495:20-7502:18.

III. DISPOSITION

11 For the reasons set out above, and pursuant to Rules 54, 89, 92 *bis* and 92 *ter* of the Rules, the Trial Chamber hereby

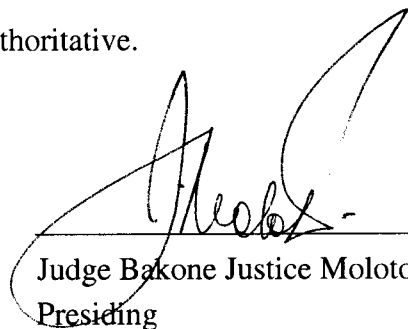
GRANTS the Motion **IN PART**, and

DECIDES as follows:

1. The statements of Naim Huso and Hasan Zukanović are admitted into evidence;
2. Witness Hasan Zukanović is to appear for cross-examination by the Prosecution;
3. The statement of Fadil Alihodžić is admitted into evidence subject to the certification of his statement under Rule 92 *bis* (B); and

REQUESTS the Registry to assign exhibit numbers to the statements admitted into evidence.

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



Judge Bakone Justice Moloto
Presiding

Dated this eighth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]