



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

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Case No.: IT-95-5/18-T

Date: 5 March 2010

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IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 5 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S FOURTH MOTION FOR ADMISSION OF
STATEMENTS AND TRANSCRIPTS OF EVIDENCE IN LIEU OF *VIVA VOCE*
TESTIMONY PURSUANT TO RULE 92 *BIS* -
SARAJEVO SIEGE WITNESSES**

Office of the Prosecutor

Mr. Alan Tieger
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The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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”) is seized of the “Prosecution’s Fourth Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Siege Witnesses”, filed on 29 May 2009 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of transcripts and written statements of 53 witnesses pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution submits that the proposed evidence is relevant to Counts 5–6 and 9–10 of the Third Amended Indictment (“Indictment”).² It also submits that the proposed evidence has probative value to the issues in this case, and that the testimony and statements “are consistent and corroborated by other evidence,” and is, therefore, reliable.³ According to the Prosecution, the admission of the proposed evidence through Rule 92 *bis* will substantially expedite the proceedings, obviate the unnecessary appearance of victims, and will not cause unfair prejudice to the Accused.⁴ The Prosecution further submits that the proposed evidence is suitable for admission in written form as it is crime-base evidence and does not go to the acts and conduct of the Accused,⁵ and that given the nature of the proposed evidence, “the right to cross-examination is outweighed by the interest in efficient and expeditious trial proceedings.”⁶

2. The Prosecution states that 44 of the proposed witnesses have previously testified before this Tribunal in the cases of *Prosecutor v. Galić*, *Prosecutor v. D. Milošević*, and/or *Prosecutor v. Perišić*, and seeks the admission of the transcripts of these witnesses’ testimony in these prior proceedings.⁷ Additionally, the Prosecution seeks admission of the witness statements of KDZ388 and Faris Gavrankapetanović (KDZ181), which are accompanied by attestations in accordance with Rule 92 *bis*(B).⁸ Finally, the Prosecution seeks the provisional admission of written statements for Ašida Fazlić (KDZ128), Fatima Palavra (KDZ135), Fadila Tarčin (KDZ162), Zilha Granilo (KDZ199), KDZ237, KDZ331, Ziba Avdić (KDZ449), and Fahra

¹ Motion, paras. 1, 29.

² Motion, para. 2.

³ Motion, paras. 2, 12–14.

⁴ Motion, para. 2.

⁵ Motion, paras. 8–11.

⁶ Motion, para. 24.

⁷ Motion, para. 5.

⁸ Motion, para. 6.

Mujanović (KDZ476). The Prosecution intends to re-submit these witnesses' written statements with the required Rule 92 *bis*(B) attestations if the Trial Chamber decides to provisionally admit them.⁹

3. The Prosecution also asserts that “[i]t is well established in the jurisprudence of the Tribunal that ‘exhibits accompanying written statements or transcripts form an inseparable and indispensable part of the testimony and can be admitted along with statements or transcripts’.”¹⁰ Thus, in addition to seeking the admission of transcripts of prior testimony and witness statements, the Prosecution seeks the admission into evidence of the documents accompanying the statements and/or transcripts of the testimony of 47 of the 53 witnesses.¹¹

4. On 25 June 2009, the Prosecution filed the “Prosecution’s Submission on Withdrawal of Seventeen Witnesses Contained in the Prosecution’s Fourth Rule 92 *bis* Motion” (“Submission on Withdrawal”), noting that “after reviewing the Trial Chamber’s Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts, the Prosecution considers that the testimony of each of [the seventeen] witnesses is supplanted by facts now judicially noticed by the Trial Chamber pursuant to Rule 94(B).”¹² Accordingly, the Prosecution withdrew from the Motion KDZ062 (also referred to as KDZ397), KDZ085, KDZ113, KDZ118, KDZ156, KDZ208, KDZ211, KDZ215, KDZ220, KDZ252, KDZ274, KDZ307, KDZ373, KDZ378, KDZ385, KDZ460, and KDZ505, thus leaving only 36 witnesses who are the subject of the Motion.¹³

5. Following the Accused’s request for an extension of time to respond, *inter alia*, to the Motion, the Chamber granted him two extensions of time, the second of which extended his time to respond to the Motion to on or before 16 July 2009.¹⁴ However, on 8 July 2009, the Accused filed his “Omnibus Response” to all Rule 92 *bis* Motions, opposing the Rule 92 *bis* applications for every witness, requesting to cross-examine each witness, and suggesting that the Chamber defer its decisions on all Rule 92 *bis* issues until the end of the Prosecution’s case.¹⁵ At the 23 July 2009 Status Conference, the Pre-trial Judge indicated to the Accused that

⁹ Motion, para. 7.

¹⁰ Motion, para. 25.

¹¹ Motion, para. 26.

¹² Submission on Withdrawal, para. 2 (footnote omitted).

¹³ Submission on Withdrawal, para. 1 and Appendix. The Prosecution clarified that it is not withdrawing these witnesses from its Rule 65 *ter* witness list, as it “may re-submit its application for admission of these witnesses’ testimony pursuant to Rule 92 *bis* during the Prosecution phase of the trial, or in rebuttal, if the judicially noticed facts are challenged by the Accused”; Submission on Withdrawal, paras. 3–4.

¹⁴ Motion for Extension of Time to Respond to Rule 92 *bis* Motions, 8 June 2009, para. 5; Order Following Upon Rule 65 *ter* Meeting and Decision on Motions for Extension of Time, 18 June 2009, paras. 4, 18(b); Decision on the Accused’s Application for Certification to Appeal Decision on Extension of Time, 8 July 2009, paras. 18–19.

¹⁵ Omnibus Response to Rule 92 *bis* Motions, paras. 3, 6.

decisions on the Rule 92 *bis* motions would be made by the Trial Chamber, but that the Accused could respond to each respective motion anytime before the decisions had been made.¹⁶

6. On 31 August 2009, the Prosecution filed the “Prosecution Submission Pursuant to Rule 73 *bis*(D)” (“Rule 73 *bis* Submission”) further reducing the number of witnesses it will call and designating certain witnesses as reserve witnesses.¹⁷ In the Rule 73 *bis* Submission, the Prosecution withdrew KDZ134, KDZ154, KDZ237, KDZ331, KDZ388, and KDZ417 from the Motion. The Prosecution also designated KDZ326 as reserve witness.¹⁸ At the Pre-trial Conference, the Trial Chamber accepted the Prosecution’s proposals for the reduction of its case, which had been set out in the Rule 73 *bis* Submission and the “Prosecution Second Submission Pursuant to Rule 73 *bis*(D)”, filed on 18 September 2009, and ordered, pursuant to Rule 73 *bis*(D), that the Prosecution may not present evidence in respect of the crime sites and incidents that it had identified.¹⁹

7. As a consequence, the Trial Chamber need only determine if the evidence of 29 of the 53 witnesses included in the Motion, i.e. KDZ036, KDZ079, KDZ090, Ziba Šubo (KDZ110), Ašida Fazlić, Anda Gotovac (KDZ132), Fatima Palavra, Thorbjorn Overgard (KDZ157), Fadila Tarčin, Nedžib Đozo (KDZ164), Faris Gavrankapetanović, KDZ194, Zilha Granilo, Sabina Sabanić (KDZ204), John Hamill (KDZ219), Per Anton Brennskag (KDZ227), Enes Jašarević (KDZ266), Slavica Livnjak (KDZ278), KDZ289, KDZ304, Tarik Žunić (KDZ347), Šefik Bešlić (KDZ371), Milomir Šoja (KDZ383), Bakir Nakaš (KDZ403), Ronald Eimers (KDZ429), Bogdan Vidović (KDZ438), Ziba Avdić, Fahra Mujanović, and KDZ485, is admissible pursuant to Rule 92 *bis*.

8. During the Pre-trial Conference held on 6 October 2009, the Pre-trial Judge informed the Accused that, should the Chamber admit the evidence of a witness under Rule 92 *bis* whose evidence the Accused wished to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.²⁰

9. On 2 November 2009, the Accused filed his “Partial Response to Fourth Motion for Admission of Statements and Transcripts: Sarajevo ‘Seige’ [*sic*] Events” (“Partial Response on Ašida Fazlić”). In the Partial Response on Ašida Fazlić, the Accused states that Ašida Fazlić was interviewed by members of his defence team, and provided information which supplements

¹⁶ Status Conference, T. 370 (23 July 2009).

¹⁷ Rule 73 *bis* Submission, paras. 6, 11.

¹⁸ Appendix A to Rule 73 *bis* Submission.

¹⁹ Pre-trial Conference, T. 467-468 (6 October 2009). *See also* the written decision that followed the Pre-trial Conference, Decision on Application of Rule 73 *bis*, 8 October 2009.

²⁰ Pre-trial Conference, T. 489-490 (6 October 2009).

the witness's written statement sought to be admitted pursuant to Rule 92 *bis*.²¹ The Accused avers that Ašida Fazlić need not appear as a witness in this case, and that her witness statement together with the supplemental information may be provisionally admitted pursuant to Rule 92 *bis*, as they both lack the attestation prescribed by Rule 92 *bis*(B) of the Rules.²² The Accused adds that, if the supplemental information is not accepted by the Chamber, the Chamber must require Ašida Fazlić to appear for cross-examination so that he can elicit the supplemental information in open court.²³

10. On 4 November 2009, the Prosecution sought leave to reply and filed its "Prosecution's Request for Leave to Reply and Reply to Karadžić's 'Partial Response to Fourth Motion for Admission of Statements and Transcripts: Sarajevo "Siege" Events'" ("Reply on Ašida Fazlić"). The Chamber grants the Prosecution leave to reply. In its Reply on Ašida Fazlić, the Prosecution states that it does not oppose the Accused's request to admit the supplemental information provided by Ašida Fazlić as part of her written evidence pursuant to Rule 92 *bis*.²⁴ The Prosecution also states that if the Chamber grants the Prosecution's application for admission of Ašida Fazlić's written evidence pursuant to Rule 92 *bis*, it will ensure that this supplemental information is certified by the witness, along with her witness statement.²⁵

11. On 30 December 2009, the Accused filed his "Partial Response to Prosecution's Fourth Motion for Admission of Statements and Transcripts: Witness KDZ371" ("Partial Response on Šefik Bešlić"), in which he states that Šefik Bešlić was interviewed by members of his defence team, and provided the supplemental information attached to the Partial Response on Šefik Bešlić. The Accused then opposes the admission of Šefik Bešlić's evidence pursuant to Rule 92 *bis*, but adds that, if the Chamber admits the witness's written evidence, the supplemental information should be admitted as well.²⁶ Furthermore, the Accused submits that, if the Chamber admits this witness's written evidence but declines to admit the supplemental information, the Chamber should then require the witness to appear for cross-examination.²⁷ Finally, the Accused notes that the Prosecution has requested the Chamber to take judicial notice of aspects of Šefik Bešlić's testimony as adjudicated facts in its "Fifth Prosecution Motion for Adjudicated Facts", dated 14 December 2009.²⁸

²¹ Partial Response on Ašida Fazlić, para. 5, confidential Annex A.

²² Partial Response on Ašida Fazlić, para. 7, fn. 4.

²³ Partial Response on Ašida Fazlić, para. 7.

²⁴ Reply on Ašida Fazlić, para. 2.

²⁵ Reply on Ašida Fazlić, para. 4.

²⁶ Partial Response on Šefik Bešlić, para. 5.

²⁷ Partial Response on Šefik Bešlić, para. 6.

²⁸ Facts 2438–2446; *See* Partial Response on Šefik Bešlić, para. 7.

12. On 31 December 2009, the Prosecution sought leave to reply and filed its “Prosecution Request for Leave to Reply and Reply to Karadžić’s Partial Response to Prosecution’s Fourth Motion for Admission of Statements and Transcripts: Witness KDZ371” (“Reply on Šefik Bešlić”). The Chamber grants the Prosecution leave to reply. In the Reply on Šefik Bešlić, the Prosecution states that Šefik Bešlić’s “supplementary statement” is inadmissible under Rule 92 *bis* because it does not fulfil the requirements of Rule 92 *bis*(B).²⁹ Nonetheless, the Prosecution states that if the Chamber admits Šefik Bešlić’s written evidence, it does not oppose the admission of the supplemental witness statement provided the Accused fulfils the requirements of Rule 92 *bis*(B).³⁰

13. On 14 January 2010, the Accused filed his “Partial Response to Prosecution’s Fourth Rule 92 *bis* Motion: Sarajevo Seige [*sic*] (Witness John Hamill)” (“Partial Response on John Hamill”), explaining that he has interviewed John Hamill, and that as a result of the interview, “it became apparent that John Hamill possesses a wealth of information which is relevant and material to the [Accused’s defence]”.³¹ The Accused explains that the results of John Hamill’s investigation of the shelling of the Markale Market on 5 February 1994, which is a core and disputed issue in the case, directly refute “an element of the offences charged against [the Accused]”.³² For these reasons, the Accused avers that John Hamill should be called as a live witness in the case. Alternatively, if the Trial Chamber is inclined to admit John Hamill’s prior testimony pursuant to Rule 92 *bis*, he should be called for cross-examination so that “additional facts can be elicited”.³³

14. On 15 January 2010, the Prosecution filed its “Prosecution Request for Leave to Reply to Karadžić’s Partial Response to Prosecution’s Fourth Rule 92 *bis* Motion: Sarajevo Siege (Witness John Hamill)”, which the Trial Chamber granted on 18 January 2010.³⁴ On 19 January 2010, the Prosecution filed its “Prosecution’s Reply to Karadžić’s Partial Response to Prosecution’s Fourth Rule 92 *bis* Motion: Sarajevo Siege (Witness John Hamill)” (“Reply on John Hamill”), arguing that the allegedly new information that John Hamill can testify to, and that the Accused considers as “relevant and material”, is already contained in the written

²⁹ Reply on Šefik Bešlić, para. 3.

³⁰ Reply on Šefik Bešlić, para. 3.

³¹ Partial Response on John Hamill, paras. 3–4.

³² Partial Response on John Hamill, paras. 2, 8, 10.

³³ Partial Response on John Hamill, para. 11.

³⁴ Decision on Prosecution Request for Leave to Reply to Karadžić’s Partial Response to Prosecution’s Fourth Rule 92 *Bis* Motion: Sarajevo Siege (Witness John Hamill), 18 January 2010.

evidence submitted for admission by the Prosecution in the Motion.³⁵ As such, the Prosecution argues that John Hamill need not be called as a live witness. However, the Prosecution does not oppose the Accused's alternate request for the witness to appear for cross-examination during trial.³⁶ Finally, the Prosecution withdraws the part of the Motion seeking the admission of John Hamill's testimony in the *Kordić and Čerkez* case and proposed associated exhibits with Rule 65 *ter* numbers 21200, 21201, 21202, and 40543, and clarifies that the description of the proposed associated exhibit with Rule 65 *ter* number 10053 should be corrected to read "Supplemental Information Sheet in Relation to Dobrinja Crater Examination".³⁷

15. On 1 March 2010, the Accused filed his "Motion to Subpoena Prosecution Witness Ronald Eimers for Interview" ("Motion to Subpoena"), requesting the Chamber to issue a subpoena compelling Ronald Eimers "to submit to an interview by [the Accused]'s defence team".³⁸ In the Motion to Subpoena, the Accused argues *inter alia* that he has a right to interview Ronald Eimers so that he can verify the information contained in the witness's statements made to the Prosecution, and that an interview would allow him to elicit additional information which could then be admitted either through Rule 92 *bis* or in the course of the witness's cross-examination.³⁹ On 4 March 2010, the Prosecution filed the "Prosecution's Response to Motion to Subpoena Prosecution Witness Ronald Eimers for Interview", opposing the Accused's request for a subpoena to compel Ronald Eimers to submit to an interview with the Accused's defence team.⁴⁰

II. Discussion

16. On 15 October 2009, the Trial Chamber issued its "Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)" ("Decision on Third Motion"), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Motion when necessary.⁴¹

³⁵ Reply on John Hamill, para. 2. The Prosecution also included a table citing the relevant parts of the transcript of John Hamill's prior testimony in the *Galić* case where the Trial Chamber can find what the Accused considers to be "new information"; see Reply on John Hamill, para. 5.

³⁶ Reply on John Hamill, paras. 2-3, 9.

³⁷ Reply on John Hamill, para. 4.

³⁸ Motion to Subpoena, para. 1.

³⁹ Motion to Subpoena, para. 6.

⁴⁰ Prosecution's Response to Motion to Subpoena Prosecution Witness Ronald Eimers for Interview, 4 March 2010, para. 1.

⁴¹ Decision on Third Motion, paras. 4-11.

17. The evidence of each of the 29 witnesses in the Motion is summarised and examined below. Due to the large number of witnesses, the Chamber has forgone providing individual summaries for all of the witnesses in this Decision. Instead, the Chamber has grouped the witnesses into five categories based on its analysis of their proposed evidence, namely: (i) victims of sniping and shelling incidents; (ii) witnesses of sniping and shelling incidents; (iii) United Nations (“UN”) officials; (iv) local investigative officials; and (v) other witnesses.

A. Proposed Witness Summaries

i. Victims of Sniping and Shelling Incidents in Sarajevo

18. 13 witnesses testified to or provided evidence in the form of written statements about being victims of sniping and shelling incidents in Sarajevo, most of which are listed in Schedules F and G of the Indictment. Of these 13 witnesses, ten were victims of shelling incidents, and three were victims of sniping incidents.

19. Six of the ten witnesses who were victims of shelling incidents, namely, KDZ079, Ašida Fazlić, Fatima Palavra, Fadila Tarčin, Zilha Granilo, and Fahra Mujanović, were all injured as a result of separate shelling incidents in Sarajevo between May and August 1992, some of which are listed in the Indictment as Scheduled Shelling Incidents G1, G2, and G15. According to their proposed evidence, all six witnesses were civilians; Ašida Fazlić was working at a hospital, and the remaining five witnesses were in residential areas at the time of the separate shelling incidents. They all received treatment for their injuries at a hospital. KDZ079 and Fatima Palavra both testified that other people died as a result of the shelling incidents that caused their injuries. Zilha Granilo also testified that on the day that she was injured, her daughter was killed in a separate shelling incident.

20. Ziba Šubo was injured during Scheduled Shelling Incident G10 on April 1995 when a shell hit her house, which then caved in as a result of the explosion. The witness, who crawled out of the rubble after the explosion, was injured by the shelling incident. Her cousin, who lived nearby, died because of the explosion.

21. The remaining three of the witnesses who were injured in shelling incidents, namely, KDZ036, Anda Gotovac, and Enes Jašarević, were all injured during shelling incidents in Sarajevo on May 1995, and listed as Scheduled Shelling Incidents G11, G12, and G13. According to their proposed evidence, the three witnesses were civilians; KDZ036 and Anda Gotovac were both in residential areas at the time of the shelling incidents, while Enes Jašarević was in a transformer station. They were treated in a hospital for their injuries. Anda Gotovac

and Enes Jašarević both testified that other people were killed because of the shelling incidents that caused their injuries.

22. Three witnesses, namely, KDZ090, Sabina Sabanić, and Tarik Zunić, were all injured by sniper fire during separate sniping incidents listed as Scheduled Sniping Incidents F11, F14, and F17. According to their proposed evidence, these witnesses were all civilians; KDZ090 and Sabina Sabanić were both riding a tram when they were hit by sniper fire, while Tarik Zunić was walking along a street near his house when he was shot. They all received treatment for their injuries at a hospital.

ii. Witnesses of Sniping and Shelling Incidents in Sarajevo

23. Three witnesses testified to or provided written statements about being witnesses to several sniping and shelling incidents in Sarajevo, which are alleged in Schedules F and G of the Indictment.

24. KDZ289 and Slavica Livnjak were working as tram drivers in Sarajevo during the Indictment period and witnessed sniping incidents which took place in February and March 1995. Slavica Livnjak testified that she was driving a tram that was travelling along Zmaja od Bosne in Sarajevo, when she heard the sound of a bullet hitting the tram. Similarly, KDZ289 testified that the tram she was driving came under sniper fire on one occasion, as a result of which a woman was injured. KDZ289 also testified about hearing of another tram which came under sniper fire, and which resulted in many individuals being injured. Both KDZ289 and Slavica Livnjak testified that the sniper fire came from sniper positions of the Bosnian Serb Army ("VRS").

25. Ziba Avdić witnessed Scheduled Shelling Incident G2, which occurred on 6 June 1992. According to Ziba Avdić's witness statement, she heard the sound of the shells while taking shelter in the basement of her house. Two shells then landed in front of her apartment building; the first one set her car on fire and the second one burned her camping caravan. Ziba Avdić's husband and neighbours went outside to extinguish the fires when a third shell landed in the same location. As a result of the explosion, several people were killed. Ziba Avdić's husband was severely injured and died in a hospital while receiving treatment.

iii. UN Officials in Sarajevo

26. Five witnesses testified to or provided written statements regarding their observations, experiences and investigations while working for the UN in Sarajevo. Four of these witnesses served as UN Military Observers ("UNMO"), namely Thorbjorn Overgard, John Hamill, Per

Anton Brennskag, and Ronald Eimers. KDZ304 served as an officer in the UN Protection Force (“UNPROFOR”) in Sarajevo.

27. Thorbjorn Overgard was deployed to Sarajevo as an UNMO from 23 October 1994 until 1 May 1995, where he investigated numerous shelling incidents. He testified extensively on the findings of his investigations, and specifically on positions held by the VRS and Army of Bosnia and Herzegovina (“ABiH”) in and around Sarajevo, on the source and direction of fire from VRS-held positions, and on the use of modified air bombs by the VRS. Thorbjorn Overgard also testified that much of the shelling targeted civilian areas, and that many civilians were killed and injured as a result of such attacks. He further testified on VRS attacks which targeted humanitarian aid convoys and UN vehicles.

28. John Hamill was an UNPROFOR military observer who served on the Serb side of the front line in Sarajevo from May to August 1993. John Hamill testified that sniper fire and shelling originated from SRK-controlled locations in Grbavica, Lukavica, and Gornji Kotorac, and provided detailed information as to the locations from where the shell that hit the Markale Market on 5 February 1994 probably originated. John Hamill also testified about his requests to liaison officers of the Sarajevo Romanija Corps (“SRK”) to cease the sniping and/or shelling in a particular area, and on the outcomes of his requests.

29. Per Anton Brennskag was an UNMO who was deployed as an observer in Pale from 16 March to 24 May 1995. Per Anton Brennskag gave evidence about his responsibilities and duties while posted in Pale, and testified that during his work as an UNMO, he witnessed four to five modified air bombs being fired from VRS positions in Ilidža. Per Anton Brennskag also testified about the Bosnian Serbs’ responsibility for the incident known as “Markale II”.

30. Ronald Eimers was deployed to Sarajevo as an UNMO from 26 October 1994 to 26 April 1995. In his written evidence, Ronald Eimers described the process undertaken by his UNMO team when investigating a particular sniping or shelling incident. He also described the weapons which Bosnian Serb forces had at their disposal, and the quality of the command and control system of the SRK, including the SRK’s communication system. Ronald Eimers also testified in regard to a number of attacks in the Hrasnica area that were carried out from Bosnian Serb-held positions as a result of which a number of civilians were killed or injured. He further testified about VRS attacks on vehicles irrespective of their civilian or non-civilian nature.

31. KDZ304 served as an UNPROFOR officer in Sarajevo. In his previous testimony, KDZ304 provided an overview of the military activities and the military situation in Sarajevo during the time he was with UNPROFOR, and testified about the structure, chain of command,

and reporting mechanisms within the SRK. KDZ304 gave evidence on the sniping and shelling campaign in Sarajevo, and the targeting of the civilian population. Specifically, KDZ304 testified about attacks carried out by the SRK, which targeted UN convoys, the launching of improvised rockets and mortars on Sarajevo by the SRK, and the protests sent by UNPROFOR members to the SRK command regarding the sniping and/or shelling of civilians and UN members. He also testified about a few incidents where the SRK shelled civilian locations to retaliate against attacks coming from ABiH-held positions. Furthermore, KDZ304 testified in regard to specific shelling incidents, such as the shelling of the TV building on 28 June 1995, and the scheduled shelling incidents concerning the shelling of the PTT building on 29 June 1995, and the shelling of the Markale Market on 28 August 1995.

iv. Local Investigative Officials

32. Four witnesses, namely KDZ194, KDZ485, Nedžib Đozo, and Bogdan Vidović, testified to or provided written statements regarding their observations, experiences, and conclusions in relation to their work as local investigative officials.

33. KDZ194 and KDZ485 worked as investigators/inspectors, and in those capacities investigated shelling and sniping incidents which occurred in Sarajevo during the war and which resulted in civilian casualties. Both KDZ194 and KDZ485, respectively, testified that sniper fire and shelling originated from positions controlled and held by the VRS. KDZ194 added that, on one occasion, the type of armament used in a shelling attack was the type of armament used by the Yugoslav People's Army ("JNA").

34. Nedžib Đozo joined the Sarajevo Stari Grad police station as a uniformed police officer in June or July 1992, and served as an investigator from mid-1994 until 2003. During his testimony, Nedžib Đozo explained that he investigated many sniping and shelling incidents during the war, and testified about his experiences while conducting such investigations, and on the conclusions reached. In particular, he gave evidence as to the source/direction of fire, and on the location of VRS and ABiH forces.

35. Bogdan Vidović joined the Centre for Security Bureau as a Criminal Forensic Technician in 1992, and worked as a criminal technician in Sarajevo during the war. He testified about his tasks as a forensic expert while conducting investigations into shelling and sniping incidents, which entailed obtaining information regarding casualties at the scene, and visiting hospitals and morgues. Bogdan Vidović investigated Scheduled Sniping Incident F8, Scheduled Shelling Incident G15, and an unscheduled sniping incident that occurred on 9

December 1994, and testified about the direction of fire during those incidents, various VRS held positions, and the use of modified air bombs by the VRS.

v. Other Witnesses

36. During the course of the conflict, Faris Gavrankapetanović and Bakir Nakaš worked as doctors at the Koševo Hospital and State Hospital in Sarajevo, respectively. Both witnesses provided evidence authenticating and validating various medical/hospital records from their respective hospitals, and described the conditions of patients who were admitted to the hospitals during the conflict. Faris Gavrankapetanović also testified about the procedures relating to the maintenance of hospital records, and on the protocols followed at the Koševo Hospital whenever a patient arrived.

37. Bakir Nakaš, who also served as the State Hospital's director at the time, testified about the constant shelling of the hospital, which resulted in the destruction of parts of the building, as well as on hospital personnel treating patients while the building was under attack. He also testified about a few sniping and shelling incidents, and added that on two separate occasions anti-aircraft artillery was fired into his office, and that his secretary was injured by gunfire while standing in the hospital corridor.

38. Šefik Bešlić is a Bosnian male surgeon who examined, and performed an operation, on witness KDZ209 (who is not subject to the Motion) after she was shot during Scheduled Sniping Incident F12 on 18 November 1994. The witness testified about his observations while treating KDZ209, and provided some conclusions about her entry and exit wounds and the damage caused to her by the bullet.

39. At the time of the conflict in Sarajevo, Milomir Šoja was working as an engineer for Energoinvest. He was mobilised into the VRS after he moved to Osjek village, and was primarily involved in guard duty. Milomir Šoja testified about his experiences while working for Energoinvest. He also testified about his visits to the Pretis munitions factory in Vogošća during the spring and summer of 1995, where he was asked to modify the electrical components used for air bomb launchers. Milomir Šoja also testified on his personal knowledge of the use of modified air bombs by the VRS.

B. Uncontested Witness

40. As described above, the Accused does not object to the admission into evidence of Ašida Fazlić's witness statement and has tendered a supplement to her statement for provisional

namely, murder (Counts 5 and 6), acts of violence the primary purpose of which is to spread terror among the civilian population (Count 9), and unlawful attacks on civilians (Count 10).

44. With respect to the admissibility of the proposed written evidence pursuant to Rule 92 *bis*, and having considered the factors that weigh in favour of admitting the evidence, the Chamber is satisfied that it is largely crime-base evidence, and that it concerns the impact of crimes upon the victims or relates to relevant military structures, as the witnesses recall their experiences in the events that took place in and around Sarajevo between April 1992 and November 1995. Furthermore, and with the exception of portions of KDZ304's evidence as discussed in paragraph 47 below, the evidence does not pertain to the acts and conduct of the Accused, or any acts or conduct which goes to establish that the Accused participated in a joint criminal enterprise ("JCE"), as charged in the Indictment, or shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes.

45. Regarding the cumulateness of the witnesses' evidence, the Chamber notes that the Prosecution made no attempt in its Motion to demonstrate for each witness how each witness's evidence was cumulative of the evidence of another witness but instead only generally listed other witnesses. Thus, although the Chamber is not in a position at this stage to fully assess every aspect of cumulateness between witnesses, the Chamber has thoroughly reviewed every witness's evidence and the Prosecution's Rule 65 *ter* witness list, and is satisfied that some of the witnesses' evidence is cumulative, as set out below. The Chamber has not discussed every way in which a witness's evidence is cumulative of another witness's or other witnesses' evidence; however, the following illustrates the cumulative nature of this evidence:

- (i) Fatima Palavra, Zilha Granilo, Ziba Avdić, and Fahra Mujanović's evidence on the heavy shelling carried out in Sarajevo on 6 June 1992 (Scheduled Shelling Incident G2) is partially cumulative;
- (ii) John Hamill's evidence on the investigation of the shelling of the Markale Market on 5 February 1994 (Scheduled Shelling Incident G8) is partially cumulative of the evidence of KDZ180, KDZ244, and KDZ349, who are not subject to the Motion;
- (iii) Ziba Šubo's evidence on the shelling incident in a residential area on 7 April 1995 (Scheduled Shelling Incident G10) is partially cumulative of the evidence of KDZ184, who is not subject to the Motion;

- (iv) Thorbjorn Overgard's evidence on the investigation of the shelling attack on Hrasnica on 7 April 1995 (Scheduled Shelling Incident G10) is cumulative of the evidence of KDZ166 and KDZ184, who are not subject to the Motion;
- (v) Anda Gotovac and Enes Jašarević's evidence on the shelling attack on Majdanska Street on 24 May 1995 (Scheduled Shelling Incident G12) is partially cumulative;
- (vi) KDZ485's evidence on the investigation of a shelling attack on Safeta Hadžica Street on 26 May 1995 (Scheduled Shelling Incident G13) is partially cumulative of the evidence of KDZ281 and KDZ477, who are not subject to the Motion;
- (vii) Bakir Nakaš's evidence on the shelling of the Markale Market on 28 August 1995 (Scheduled Shelling Incident G19) is partially cumulative of the evidence of KDZ200, KDZ235, and KDZ418, who are not subject to the Motion;
- (viii) KDZ304, KDZ485, and Nedžib Đozo's evidence on the investigation of the shelling of the Markale Market on 28 August 1995 (Scheduled Shelling Incident G19) is partially cumulative;
- (ix) KDZ485's evidence on the investigation of a sniping incident on 8 October 1994 (Scheduled Sniping Incident F11) is cumulative of the evidence of KDZ182, who is not subject to the Motion;
- (x) KDZ209 and Šefik Bešlić's evidence on the injuries suffered by KDZ209, who is not subject to the Motion, as a result of sniper fire on 18 November 1994 (Scheduled Sniping Incident F12) is cumulative;
- (xi) Sabina Sabanić's evidence on the sniping incident on 23 November 1994 (Scheduled Sniping Incident F14) is partially cumulative of the evidence of KDZ335, who is not subject to the Motion;
- (xii) KDZ194's evidence on his investigation of the sniping incident on 23 November 1994 (Scheduled Sniping Incident F14) is cumulative of the evidence of KDZ180 and KDZ335, who are not subject to the Motion;
- (xiii) KDZ289 and Slavica Livnjak's evidence regarding a tram coming under sniper fire on 3 March 1995 (Scheduled Sniping Incident F16) is cumulative, while KDZ194's evidence on the investigation of this sniping incident is cumulative of the evidence of KDZ369 and KDZ431, who are not subject to the Motion;

- (xiv) KDZ304, Per Anton Brennskag, and Milomir Šoja's evidence on the shelling of the TV building in Sarajevo on 28 June 1995 is cumulative, and of the evidence of KDZ182, KDZ323, and KDZ485, who are not subject to the Motion;
- (xv) Bogdan Vidović's evidence on his investigation of a shelling incident on Cobanija Street on 16 June 1995 is partially cumulative of the evidence of KDZ323, who is not subject to the Motion;
- (xvi) Per Anton Brennskag's evidence on the attack on Dobrinja is partially cumulative of the evidence of KDZ130, KDZ134, and KDZ290, who are not subject to the Motion;
- (xvii) Thorbjorn Overgard and Ronald Eimers's evidence on the shelling of Hrasnica is partially cumulative of, as well as of the evidence of KDZ184, who is not subject to the Motion;
- (xviii) KDZ304 and Ronald Eimers's evidence on the command and control system of the SRK is partially cumulative, as well as of the evidence of KDZ175, KDZ182, KDZ280, and KDZ412, who are not subject to the Motion; and
- (xix) Tarik Žunić's evidence on Sedrenik Street is partially cumulative of the evidence of KDZ222, who is not subject to the Motion.

46. The Chamber notes that it was unable to find other witnesses listed in the Prosecution's Rule 65 *ter* list who are scheduled to testify about the same sniping and/or shelling incidents in relation to which KDZ036, KDZ079, KDZ090, and Fadila Tarčin provided evidence, and is therefore not satisfied that their evidence is cumulative of other witnesses' evidence. Despite this, the Chamber does not consider that this factor, on its own, renders these witnesses' evidence inadmissible.

47. With regards to the factors that weigh against admitting the proposed evidence pursuant to Rule 92 *bis*, the Trial Chamber notes that certain parts of KDZ304's evidence relate to the acts and conduct of the Accused, as the witness testified that General Dragomir Milošević, who was in command of the SRK when the witness worked in Sarajevo, and as the commander of the SRK, was subordinate to Ratko Mladić and the Accused. KDZ304's evidence also describes in detail the acts and conduct of Dragomir Milošević and his role in the shelling and sniping campaign in Sarajevo, as well as the roles of other members of the SRK, such as Major Miša Indić. Additionally, it provides important information on the SRK's structure and chain of

command at the time.⁴³ The Chamber notes that Ratko Mladić and Dragomir Milošević are identified in paragraph 16 of the Indictment as members of the JCE “to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo [...]”, along with the Accused. Although parts of KDZ304’s evidence pertain to the sniping and shelling campaign in Sarajevo and may, therefore, be considered “crime-base” evidence, the Chamber is of the view that admitting only those portions of the testimony would make the evidence unreliable, and that the particular references that relate to the acts and conduct of the Accused, Ratko Mladić, and Dragomir Milošević are sufficient to render KDZ304’s evidence as a whole inadmissible pursuant to Rule 92 *bis*. The Chamber will therefore deny the admission of KDZ304’s written evidence.

48. Similarly, the Trial Chamber notes that other witnesses provided evidence describing the activities of a number of people who held various positions in the Bosnian Serb military. For example, John Hamill testified that a group of “Chetniks” led by Vasilije Vidović regularly impeded UNMO teams in the Radava area, and that the SRK used this group for purposes that would be normally illegal. John Hamill also testified that he reported sniping and shelling incidents in Sarajevo to Colonel Zarković, Captain Lucia, Major Miša Indić, and Captain Brane Luledzija of the SRK, with no results, and that Colonel Cvetković of the VRS confirmed to him that a number of VRS artillery positions were in the area from where it was estimated that the round that hit the Markale Market on 5 February 1994 originated. Furthermore, Milomir Šoja testified that Nikola Mijatović of the Ilidža Brigade urged him to construct a modified air bomb launcher for the Ilidža Brigade, that Major Krsmanović (an officer of the former JNA) instructed him on how to modify air bombs, that Commander Goran Radjeljac of the Ilidža Brigade’s artillery unit constructed a modified air bomb launcher, and that Major Krsmanović, Commander Radjeljac, and Commander Novica of the Ilidža Brigade were all present during an attempted launching of a modified air bomb. Additionally, the Chamber notes that Fadila Tarčin’s evidence makes a small reference to Ratko Mladić,⁴⁴ while KDZ079 testified that she had to leave her home in Grbavica because “troops of the Republika Srpska Army regularly barged into her apartment” and mistreated her and her family.

49. As stated above, Ratko Mladić is identified in paragraph 16 of the Indictment as a member of a JCE, along with the Accused. The other individuals referred to by the witnesses listed in the preceding paragraph may be considered members of the same JCE, along with the Accused, as provided for in paragraph 17 of the Indictment. That said, the Chamber is satisfied that these witnesses’ proposed evidence neither indicates that the Accused participated in the

⁴³ See para. 31 above for a more detailed description of this witness’s evidence.

alleged JCE, nor that he shared the intent of any of the individuals named above in committing the acts as described by the witnesses. Thus, the Chamber considers that the witnesses' testimony relating to the actions of these individuals alone is insufficient to render the proposed evidence inadmissible in terms of Rule 92 *bis*.

50. The Chamber further notes that KDZ194, KDZ289, KDZ485, Thorbjorn Overgard, Nedžib Đozo, Sabina Šabanić, John Hamill, Per Anton Brennskag, Enes Jašarević, Slavica Livnjak, Tarik Žunić, Milomir Šoja, Bakir Nakaš, Ronald Eimers, Bogdan Vidović, and Fahra Mujanović, all testified that shelling and/or sniper fired originated from locations controlled by "Bosnian Serb forces", the VRS or the SRK, in areas such as Blažuj, the Famos Factory, Gavrica Brdo, Gornji Kotorac, Grbavica, Ilidža, Lapišnica, Lukavica, Nedžarići, Špicasta Stijena, Toplik, Trebević, Vaskovići, and Vrača.

51. In particular: (i) KDZ194 testified that the shells that were used in the shelling of Livanjska Street on 8 November 1994 originated from the JNA, and that the VRS controlled the areas where the sniper fire came from; (ii) KDZ289 testified that snipers targeted a tram on 27 February 1995 from the direction of Bosnian Serb-held Grbavica; (iii) KDZ485 testified that during a number of investigations, he concluded that sniper fire and/or shelling originated from areas controlled by the VRS, such as Grbavica and Trebević; (iv) Thorbjorn Overgard testified that he had never investigated any sniping or shelling incident in Sarajevo wherein he had not determined that the source of fire was Bosnian Serb-held territory, such as Blazuj, Ilidža, and Lukavica; (v) Nedžib Đozo testified that the Bosnian Serb forces occupied Špicasta Stijena, and that around 100 civilians were killed by sniper fire originating from there; (vi) Sabina Šabanić, who was injured by sniper fire while riding on a tram, testified that the VRS controlled the three skyscrapers on the Bosnian Serb side of the confrontation line in Grbavica from which trams could easily be targeted; (vii) John Hamill testified that sniper fire and shelling in Sarajevo originated from VRS-controlled areas in Lukavica, Gornji Kotorac, and Toplik; (viii) Per Anton Brennskag testified about witnessing four or five modified air bombs being fired from VRS positions in Ilidža, and about a modified air bomb being launched from the VRS side of the confrontation line towards the TV Building; (ix) Enes Jašarević testified that a Serb tank positioned in Gavrica Brdo fired a shell into the witness's apartment building in Dobrinja, and that sniper fire originated from Bosnian Serb-controlled Nedžarići; (x) Slavica Livnjak testified that sniper fire directed at a crowded tram on 3 March 1995 came from the Metalka Building, a well known sniper position in an area held by the VRS; (xi) Tarik Žunić, who was injured by sniper fire on Sedrenik Street, testified that snipers located at Bosnian Serb-controlled Spicasta

⁴⁴ Fadila Tarčin recalled hearing a broadcast about an intercepted radio conversation featuring Ratko Mladić.

Stijena targeted civilians on Sedrenik Street; (xii) Milomir Šoja testified that the VRS occupied Vogosca, Ilidža, Ilijaš, and Blazuj, and that he had personal knowledge of the use of modified air bombs by the Ilidža Brigade, one of which hit the TV Building in 1995; (xiii) Bakir Nakaš testified that the State Hospital was subjected to sniper fire and shelling from Grbavica, Trebević, and Vrača, areas controlled by the VRS; (xiv) Ronald Eimers testified that a number of civilians were killed in Hrasnica as a result of attacks from Bosnian Serb-held positions; (xv) Bogdan Vidović testified that in separate shelling and sniping incidents artillery fire came from locations controlled by the VRS; and (xvi) Fahra Mujanović testified that in early 1992, her neighbourhood was subjected to shelling from Bosnian Serb positions;

52. In this context, the Chamber has considered whether the evidence in question relates to a “live and important issue between the parties”, and/or is “pivotal” or “critical” to the Prosecution’s case.⁴⁵ There is no doubt that the evidence described in the preceding paragraph concerns issues that are critical to the Prosecution’s case on events in Sarajevo, and particularly to the various sniping and shelling incidents alleged in Schedules F and G of the Indictment.⁴⁶ All of these witnesses have given their personal observations concerning the origin of shells fired in Sarajevo, and on the origin of sniper fire. Many have also discussed investigations carried out with respect to the incidents. Nevertheless, the Chamber does not consider this to be a reason for denying admission of the proposed evidence under Rule 92 *bis*. Although these witnesses testified that the source of shelling and/or sniper fire were VRS/SRK-held locations, the evidence in itself does not go to proof of any acts or conduct of the Accused upon which the Prosecution relies to establish that the Accused participated in a JCE with Bosnian Serb forces, the VRS and/or the SRK, or shared with these forces the requisite intent for any crimes that these forces might have committed. As such, even as these witnesses’ evidence relates to a live and important issue between the Prosecution and the Accused, namely the source of sniper fire and/or shelling in Sarajevo, taking into consideration all the factors in favour of and against admission, the Chamber considers that these portions of the witnesses’ evidence regarding the source/direction of fire do not weigh against the admission of their evidence as a whole.

53. In addition to the factors considered by the Chamber in the preceding paragraphs, the Chamber has given consideration to the Accused’s submissions opposing the admission of John Hamill and Šefik Bešlić’s written evidence pursuant to Rule 92 *bis*.⁴⁷ However, it is not satisfied that their evidence is inadmissible pursuant to Rule 92 *bis*. The Accused has not

⁴⁵ Decision on Third Motion, para. 8.

⁴⁶ See Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *quater*, 30 November 2009, para. 57.

⁴⁷ See Partial Response of 14 January, para. 11; Partial Response Šefik Bešlić, para. 5.

explained why he opposes the admission of Šefik Bešlić's written evidence. The Chamber is satisfied that Šefik Bešlić's written evidence is crime-base and cumulative of other evidence, factors which weigh in support of its admission pursuant to Rule 92 bis; there are no factors weighing against its admission. That John Hamill testified on the source of the shelling of Markale Market on 5 February 1994 does not outweigh the factors in favour of admission of this witness's evidence, namely: that his evidence is mostly crime-base, that it is cumulative of other evidence, and that it does not go to the proof of any acts or conduct of the Accused upon which the Prosecution relies to establish that the Accused participated in a JCE.

54. As a related matter, the Chamber notes that the Prosecution seeks the admission into evidence of two or more transcripts of prior testimony and/or witness statements in relation to the following witnesses: KDZ079, KDZ090, KDZ194, KDZ289, KDZ485, Ziba Šubo, Anda Gotovac, Thorbjorn Overgard, Fadila Tarčin, Nedžib Đozo, Faris Gavrankapetanović, Sabina Sabanić, John Hamill, Per Anton Brennskag, Enes Jašarević, Slavica Livnjak, Tarik Žunić, Milomir Šoja, Bakir Nakaš, Ronald Eimers, and Bogdan Vidović. The Chamber has previously expressed its view that presenting more than one statement or transcript for a witness may add unnecessary procedural and evidentiary complexity to the trial, which should be avoided, if at all possible.⁴⁸ The Chamber has paid special attention to the content of the written evidence of the witnesses listed above, and to whether admitting multiple transcripts of prior testimony and/or witness statements would be in the interests of justice.

55. In that regard, the Chamber considers that the transcripts of prior testimony and/or written statements sought to be admitted for the following witnesses are sufficiently distinct: KDZ079, KDZ090, KDZ194, KDZ289, KDZ485, Ziba Šubo, Anda Gotovac, Thorbjorn Overgard, Fadila Tarčin, Nedžib Đozo, Faris Gavrankapetanović, Sabina Sabanić, John Hamill, Per Anton Brennskag, Enes Jašarević, Slavica Livnjak, Tarik Žunić, Milomir Šoja, Ronald Eimers, and Bogdan Vidović. However, the Chamber finds that the relevant part of Bakir Nakaš's transcript of prior testimony on 9 January 2002 in the *Stanislav Galić* case (pages T. 1170–1195) dealing with the witness's knowledge regarding hospital recordkeeping procedures, protocols, and observations regarding patients, is repetitive of the evidence contained in the transcript of his prior testimony in the *Dragomir Milošević* case (23 January 2007) and in the *Momčilo Perišić* case (8 October 2008).

56. In conclusion, on the basis of the reasons provided above, the Chamber considers the evidence of KDZ036, KDZ079, KDZ090, KDZ194, KDZ289, KDZ485, Ziba Šubo, Anda Gotovac, Fatima Palavra, Thorbjorn Overgard, Fadila Tarčin, Nedžib Đozo, Faris

Gavrankapetanović, Zilha Granilo, Sabina Sabanić, John Hamill, Per Anton Brennskag, Enes Jašarević, Slavica Livjak, Tarik Žunić, Šefik Bešlić, Milomir Šoja, Bakir Nakaš (with the exception of pages T. 1170–1195 of the transcript of his prior testimony in the *Galić* case on 9 January 2002), Ronald Eimers, Bogdan Vidović, Ziba Avdić, and Fahra Mujanović, is admissible pursuant to Rule 92 *bis*(A).

D. Analysis Pursuant to Rule 92 *bis*(C)

57. The Chamber once again recalls that it has discretion to require witnesses to appear for cross-examination with regards to written evidence that is admissible pursuant to Rule 92 *bis*; if it decides that a witness be called for cross-examination, the provisions of Rule 92 *ter* shall apply. In assessing whether to require a witness to appear for cross-examination, the Chamber has taken into account the criteria under Rule 92 *bis*(C) established in the case-law of the Tribunal and described in detail in the Decision on Third Motion.⁴⁹ In particular, the Chamber has considered whether the evidence: (i) is cumulative; (ii) is crime-base; (iii) touches upon a “live and important issue between the parties”; and (iv) describes the acts and conduct of a person for whose acts and conduct the Accused is charged with responsibility, and how proximate the acts and conduct of this person are to the Accused.

58. First, the Chamber notes that: (i) KDZ036, KDZ079, KDZ090, Ziba Šubo, Tarik Žunić, Šefik Bešlić, Milomir Šoja, and Ronald Eimers were extensively cross-examined during their testimony in the *Dragomir Milošević* case; (ii) Faris Gavrankapetanović and John Hamill were both extensively cross-examined during their testimony in the *Stanislav Galić* case; (iii) KDZ194, KDZ278, KDZ289, KDZ485, Anda Gotovac, Thorbjorn Overgard, Nedžib Đozo, Sabina Sabanić, Per Anton Brennskag, and Enes Jašarević were extensively cross-examined during their testimony in the *Dragomir Milošević* and the *Momčilo Perišić* cases; (iv) Bogdan Vidović was extensively cross-examined during his testimony in the *Dragomir Milošević* and *Stanislav Galić* cases; and (v) Bakir Nakaš was extensively cross-examined during his testimony in the *Dragomir Milošević*, *Momčilo Perišić*, and *Stanislav Galić* cases. However, the Chamber notes that Fatima Palavra, Fadila Tarčin, Zilha Granilo, Ziba Avdić, and Fahra Mujanović have never been cross-examined. Despite this, the Chamber does not consider that this fact *per se* necessitates these witnesses to appear for cross-examination.

59. Secondly, the Chamber is satisfied that the evidence of KDZ036, KDZ090, Ziba Šubo, Anda Gotovac, Fatima Palavra, Faris Gavrankapetanović, Zilha Granilo, and Ziba Avdić

⁴⁸ See Pre-trial Conference, T. 478–479 (6 October 2009).

⁴⁹ Decision on Third Motion, para. 10.

constitutes crime-base evidence, and that none of these witnesses' evidence bears upon the Accused's responsibility as alleged in the Indictment or touches upon a live or important issue between the Prosecution and the Accused. The Chamber shall, therefore, not require these witnesses to appear for cross-examination.

60. As noted above, KDZ079, Fadila Tarčin, John Hamill, and Milomir Šoja described the activities of a number of people who held various positions in the Bosnian Serb military. While these individuals are mentioned in the evidence, the Chamber does not consider that their acts and conduct, as described by KDZ079, Fadila Tarčin, John Hamill, and Milomir Šoja, are sufficiently proximate to the Accused to require the witnesses to appear for cross-examination on this ground.

61. The evidence of KDZ194, KDZ485, Thorbjorn Overgard, Nedžib Dozo, John Hamill, Per Anton Brennskag, Enes Jašarević, Milomir Šoja, Bakir Nakaš, Ronald Eimers, Bogdan Vidović, and Fahra Mujanović constitutes crime-base evidence. However, the Chamber considers that their evidence on the origin of the shelling and/or sniper fire from locations controlled by Bosnian Serb forces in areas in and around Sarajevo, such as Blažuj, the Famos Factory, Gavrica Brdo, Gornji Kotorac, Grbavica, Ilidža, Lapišnica, Lukavica, Nedžarići, Špicasta Stijena, Toplik, Trebević, Vaskovići, and Vrača, represents a "critical" or "pivotal" element of the Prosecution's case.⁵⁰ The Chamber is of the view that these witnesses' evidence touches upon a live and important issue between the Prosecution and the Accused, namely, the origin of the shelling and sniper fire in Sarajevo, and that this constitutes a reason for the Chamber to exercise its discretion and call these witnesses for cross-examination.

62. Despite the fact that the written evidence of KDZ289, Sabina Sabanić, Slavica Livnjak, and Tarik Zunić also refers to the source/direction of sniper fire these witnesses' evidence relates to isolated sniping incidents the scope of which is relatively limited. The Chamber has extensively analysed the proposed evidence for KDZ289, Sabina Sabanić, Slavica Livnjak, and Tarik Zunić and has noted that the four witnesses have been extensively cross-examined while testifying in previous cases, and that a significant portion of their cross-examination relates to the source/direction of fire during the specific sniping incidents witnessed by them, as well as to the issue of VRS/SRK held positions in areas in and around Sarajevo.

63. Similarly, the Chamber notes that Šefik Bešlić's conclusion as to the origin of the shot that injured KDZ209, based on his examination of her entry and exit wounds, touches upon a live and important issue between the Prosecution and the Accused. However, the Defence in the

⁵⁰ See para. 51 above for a detailed description of the witnesses' evidence on this issue.

Dragomir Milošević case extensively cross-examined Šefik Bešlić about such conclusions, as well as on the inconsistency between his conclusions and the patient's medical record. The Chamber has considered the Accused's submission that if the Chamber admits Šefik Bešlić's written evidence but declines to admit his supplemental witness statement proposed for admission by the Accused, the Chamber should require the witness to appear for cross-examination.⁵¹ Having considered the witness's proposed written evidence and the supplemental witness statement submitted by the Accused, the Chamber is not satisfied that Šefik Bešlić should be called for cross-examination, but considers that it would be benefited if Šefik Bešlić's supplemental witness statement is admitted into evidence.

64. For the foregoing reasons, the Chamber will exercise its discretion to call witnesses KDZ194, KDZ485, Thorbjorn Overgard, Nedžib Dozo, John Hamill, Per Anton Brennskag, Enes Jašarević, Milomir Šoja, Bakir Nakaš,⁵² Ronald Eimers,⁵³ Bogdan Vidović, and Fahra Mujanović for cross-examination. Considering that the power to require a witness to appear for cross-examination is discretionary, that there would be no additional benefit in calling the following witnesses to appear for cross-examination, and that there would be no prejudice to the Accused, the Chamber will not require KDZ289, Sabina Sabanić, Slavica Livnjak, Tarik Zunić, and Šefik Bešlić to appear for cross-examination. Thus, the written evidence of KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Anda Gotovac, Fatima Palayra, Fadila Tarčin, Faris Gavrankapetanović, Zilha Granilo, Sabina Sabanić, Slavica Livnjak, Tarik Zunić, Šefik Bešlić, and Ziba Avdić as listed in the "Part of Transcript / Statement sought to be admitted" column in Confidential Appendix B of the Motion will be admitted pursuant to Rule 92 *bis*, subject to paragraphs 65 and 66 below. Šefik Bešlić's supplemental witness statement, as submitted by the Accused in the Partial Response on Šefik Bešlić, will also be admitted pursuant to Rule 92 *bis*, subject to paragraph 66 below.

⁵¹ Partial Response on Šefik Bešlić, para. 6. The Chamber also notes that the Prosecution does not oppose the Accused's request for John Hamill to appear for cross-examination during trial; Reply on John Hamill, paras. 2-3, 9.

⁵² In presenting this witness's evidence pursuant to Rule 92 *ter*, and following the Chamber's order to provide a consolidated statement for each proposed Rule 92 *ter* witness, the Prosecution should take note of the Chamber's determination regarding the repetitive nature of Bakir Nakaš's written evidence.

⁵³ Given that Ronald Eimers is being required to appear for cross-examination, the Chamber does not consider necessary to wait until after disposing of the Motion to Subpoena before issuing this Decision. The question of whether the Chamber should issue a subpoena to compel Ronald Eimers to submit to an interview has no direct bearing on the matters being decided in this Decision. Whether or not the Accused interviews Ronald Eimers before he appears for cross-examination, it will be open to the Accused to put matters to the witness during his cross-examination. Furthermore, should the Accused interview Ronald Eimers before he appears for cross-examination and, as a result of that interview, the Accused no longer wishes to cross-examine him, he may notify the Chamber of this.

E. Rule 92 *bis*(B) Requirement

65. The Chamber notes that the Prosecution seeks the provisional admission of Fatima Palavra, Fadila Tarčin, Zilha Granilo, and Ziba Avdić's written statements, subject to the Prosecution submitting the required Rule 92 *bis*(B) attestation.⁵⁴ However, the Chamber notes that the written statements of KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Anda Gotovac, Sabina Sabanić, Slavica Livnjak, Tarik Zunić, and Šefik Bešlić also lack the required Rule 92 *bis*(B) attestation, and that the Prosecution has not expressly requested their provisional admission of the written statements of these witnesses. Nevertheless, the Chamber will interpret the Prosecution's request to apply to the witness statements for all 14 witnesses.

66. The Chamber will provisionally admit the written statements of KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Anda Gotovac, Fatima Palavra, Fadila Tarčin, Zilha Granilo, Sabina Sabanić, Slavica Livnjak, Tarik Zunić, Šefik Bešlić, and Ziba Avdić until the Prosecution obtains the required attestation in compliance with Rule 92 *bis*(B) of the Rules. The Chamber will also provisionally admit Šefik Bešlić's supplemental witness statement, subject to the Accused obtaining the required Rule 92 *bis*(B) attestation.

F. Associated Exhibits

67. The Trial Chamber need only evaluate the associated exhibits, if any, for witnesses KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Ašida Fazlić, Anda Gotovac, Fatima Palavra, Fadila Tarčin, Faris Gavrankapetanović, Zilha Granilo, Sabina Sabanić, Slavica Livnjak, Tarik Zunić, Šefik Bešlić, and Ziba Avdić. In total, the Prosecution requests the admission of 102 associated exhibits for these witnesses.

68. As set out in the Decision on Third Motion, only those exhibits that "form an inseparable and indispensable part of the testimony" are admissible as associated exhibits. To fall into this category, the witness must have discussed the exhibit in his or her transcript or written statement, and that transcript or written statement would become incomprehensible or of less probative value if the exhibit is not admitted.⁵⁵

69. As a preliminary matter, the Chamber notes that the transcripts of prior testimony with Rule 65 *ter* numbers 08873, 08911, 10161, 10185, 10271, 10232, 10332, 10269, 14088, and 14089 have been tendered by the Prosecution both as the written evidence of the witnesses and as associated exhibits. Similarly, the Chamber notes that the witness statements with Rule

⁵⁴ Motion, para. 7.

⁵⁵ Decision on Third Motion, para. 11.

65 *ter* numbers 08871, 08908, 08910, 09747, 09959, 10126, 10136, 14092 (all of them admitted under seal), 09957, 09966, 09760, 09932, 09964, 10017, 10130, 10134, 10138, 10141, 10176, and 10307 have been tendered by the Prosecution both as proposed written evidence and as associated exhibits. The Chamber has determined above that these transcripts and witness statements will be admitted as the witnesses' written evidence, and, therefore, will not consider their admission into evidence as associated exhibits.

70. The Chamber also notes that the document with Rule 65 *ter* number 10079 does not contain Faris Gavrankapetanović's witness statement dated 11 October 2001 and 13 December 2001, as stated by the Prosecution in the Motion. Instead, the document is the required Rule 92 *bis*(B) attestation to such statement. The Prosecution should therefore attach this attestation to Faris Gavrankapetanović's witness statement dated 11 October 2001 and 13 December 2001, which has already been admitted into evidence.

71. The Prosecution has tendered the pseudonym sheets for witnesses KDZ036 (Rule 65 *ter* number 10272), KDZ079 (Rule 65 *ter* number 09537), KDZ090 (Rule 65 *ter* number 09569), and KDZ289 (Rule 65 *ter* number 09531 and 14111), which were admitted in previous cases where the witnesses testified with protective measures. The Chamber considers that these pseudonym sheets are necessary for the identification of these witnesses, and that they form an inseparable and indispensable part of the witnesses' testimony. These associated exhibits shall, therefore, be admitted into evidence under seal.

72. The Prosecution has also requested the admission into evidence of the following associated exhibits:

- (i) Photographs related to the testimony of KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Sabina Šabanić, Slavica Livnjak, and Tarik Žunić: Rule 65 *ter* numbers 10154, 10155,⁵⁶ 10158, 10159, 10181, 10182, 10183, 10184, 10194, 10195, 10202, 10203, 10204, 10205, 10206, 10255, 10256, 10273, 10399, 10441, 10464, 10465, 13330,⁵⁷ and 14178;
- (ii) Official investigative notes or records related to the testimony of KDZ079 and Šefik Bešlić: Rule 65 *ter* numbers 09791 (admitted under seal) and 10418;

⁵⁶ The Chamber notes that the document with Rule 65 *ter* number 10155 was tendered as a proposed associated exhibit for witnesses KDZ090 and Slavica Livnjak.

⁵⁷ The Chamber notes that the document with Rule 65 *ter* number 13330 was tendered as a proposed associated exhibit for witnesses KDZ194 and Sabina Šabanić.

- (iii) Maps related to the testimony of KDZ090, KDZ289, Slavica Livnjak, and Tarik Žunić: Rule 65 *ter* numbers 10153 (admitted under seal), 10160, 10193, 10196, 10293, and 14118;
- (iv) Medical/hospital records related to the testimony of Faris Gavrankapetanović: Rule 65 *ter* numbers 10442, 10443, 10444, and 10446; and
- (v) A report related to the testimony of KDZ289: Rule 65 *ter* number 09733.

73. Having reviewed the proposed evidence, the Trial Chamber notes that the associated exhibits listed above were all discussed or marked by the witness during that witness's testimony. In that regard, those exhibits form an inseparable and indispensable part of that witness's testimony, and failure to admit them would make said testimony incomprehensible or of lesser probative value. Therefore, the Trial Chamber will admit these associated exhibits into evidence. The associated exhibit with Rule 65 *ter* number 13330, which has been tendered with KDZ194 and Sabina Sabanić, will only be admitted into evidence in relation to the latter. Similarly, the associated exhibit with Rule 65 *ter* number 10155, which has been tendered with two different witnesses, will only be admitted into evidence once.

74. The Prosecution also requests the admission into evidence of a number of associated exhibits which, following their analysis together with the witnesses' written evidence, the Chamber has determined do not form an inseparable and indispensable part of the previous testimony or written statements of KDZ036, KDZ079, KDZ090, KDZ289, Ašida Fazlić, Anda Gotovac, Fatima Palavra, Faris Gavrankapetanović, Sabina Šabanić, Slavica Livnjak, Tarik Žunić, and Šefik Bešlić. The proposed associated exhibits with Rule 65 *ter* numbers 08872, 08909, 09740, 09988, 10153, 10367, 10378, 10315, 10423, 14188, 14216, 14222, 14228, 14230, 14232, 14309, 18881, 18882, and 18883 were not discussed by the relevant witness in his or her written evidence. The proposed associated exhibits with Rule 65 *ter* numbers 09576, 10384, 10439, 10445, and 13200 were briefly referred to by the relevant witness in his or her written evidence but the contents of these associated exhibits were not discussed by any of these witnesses. Therefore, the Chamber considers that these proposed associated exhibits do not form an inseparable and indispensable part of the witnesses' evidence, and that the evidence will not become incomprehensible or of lesser probative value if the associated exhibit is not admitted into evidence. The Prosecution's request to admit these associated exhibits will be denied.

75. Furthermore, the Chamber has been unable to analyse the contents of a number of proposed associated exhibits for the following reasons:

- (i) Rule 65 *ter* number 09572 does not have an English translation;
- (ii) Rule 65 *ter* numbers 10419, 10422, 40251⁵⁸ are videos that cannot be found in ecourt, and the Chamber was not provided copies of these videos for review;
- (iii) Rule 65 *ter* number 09933 is an exhibit which does not appear to have been uploaded into ecourt.

76. The admission into evidence of these associated exhibits is denied without prejudice. The Prosecution may reapply for their admission after it uploads the correct exhibits into ecourt and provides the videos to the Chamber so that it can verify whether they meet the requirements for admission.

III. Disposition

77. Accordingly, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Trial Chamber hereby:

- A. **GRANTS** the Prosecution's request for leave to reply to the Accused's Partial Response on Ašida;
- B. **GRANTS** the Prosecution's request for leave to reply to the Accused's Partial Response on Šefik Bešlić;
- C. **GRANTS** the Motion **IN PART** and **ORDERS** that:
 - (i) The written statement of Ašida Fazlić and the supplemental information tendered by the Accused are provisionally admitted into evidence without requiring the witness to appear for cross-examination, subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation for both documents;
 - (ii) The transcript of prior testimony of Šefik Bešlić is admitted into evidence without requiring the witness to appear for cross-examination, and the witness's written statement tendered by the Prosecution and supplemental

⁵⁸ The Prosecution has moved to admit the video with Rule 65 *ter* number 40251 for both KDZ090 and Anda Gotovac.


statement tendered by the Accused are provisionally admitted subject to the Prosecution and the Accused obtaining the required Rule 92 *bis*(B) attestations, respectively;

- (iii) The transcript of prior testimony and written statements of Faris Gavrankapetanović are admitted into evidence without requiring the witness to appear for cross-examination;
- (iv) The transcripts of prior testimony of KDZ036, KDZ079, KDZ090, KDZ289, Ziba Šubo, Anda Gotovac, Sabina Šabanić, Slavica Livnjak, and Tarik Žunić are admitted into evidence without requiring these witnesses to appear for cross-examination.
- (v) The written statements of Ziba Šubo, Anda Gotovac, Fatima Palavra, Fadila Tarčin, Zilha Granilo, Sabina Šabanić, Slavica Livnjak, Tarik Žunić, and Ziba Avdić are provisionally admitted into evidence, subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation;
- (vi) The written statements of KDZ036, KDZ079, KDZ090, and KDZ289, which are under seal, are provisionally admitted into evidence, subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation;
- (vii) The Prosecution shall, as soon as possible, provide the Registry with a confidential version of the transcripts admitted into evidence, as well as a public, redacted version of the same, ensuring the redaction of both the testimony given in private session and any redactions ordered by the Trial Chambers in the *Dragomir Milosević* and/or *Momčilo Perišić* cases;
- (viii) The Prosecution shall attach the Rule 92 *bis*(B) attestation with Rule 65 *ter* number 10079 to Faris Gavrankapetanović's witness statement dated 11 October 2001 and 13 December 2001, and a single exhibit number will be assigned to the one resulting document;
- (ix) KDZ194, KDZ485, Thorbjorn Overgard, Nedžib Đozo, John Hamill, Per Anton Brennskag, Enes Jašarević, Milomir Šoja, Bakir Nakaš, Ronald Eimers, Bogdan Vidović, and Fahra Mujanović shall appear for cross-examination and their evidence shall be presented in accordance with Rule 92 *ter*;

- (x) The confidential associated exhibits with Rule 65 *ter* numbers 09531, 09537, 09569, 09791, 10153, 10272, and 14111, are admitted into evidence under seal;
 - (xi) The associated exhibits with Rule 65 *ter* numbers 09733, 10154, 10155, 10158, 10159, 10160, 10181, 10182, 10183, 10184, 10193, 10194, 10195, 10196, 10202, 10203, 10204, 10205, 10206, 10255, 10256, 10273, 10293, 10399, 10418, 10441, 10442, 10443, 10444, 10446, 10464, 10465, 13330 (only in relation to Sabina Šabanić's evidence), 14118, and 14178 are admitted into evidence;
 - (xii) The admission into evidence of the associated exhibit with Rule 65 *ter* number 09572 is denied without prejudice subject to the Prosecution providing the Chamber with an English translation of the document, and reapplying for its admission into evidence;
 - (xiii) The admission into evidence of associated exhibits with Rule 65 *ter* numbers 10419, 10422, and 40251 is denied without prejudice subject to the Prosecution providing the Chamber with copies of the relevant videos, and reapplying for their admission into evidence; and
 - (xiv) The admission into evidence of the associated exhibit with Rule 65 *ter* number 09933 is denied without prejudice subject to the Prosecution uploading the exhibit into e-court, and reapplying for its admission into evidence.
- D. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence;
- E. **POSTPONES** the determination of the admission into evidence of the transcripts of prior testimony, written statements, and associated exhibits of KDZ194, KDZ485, Thorbjorn Overgard, Nedžib Dozo, John Hamill, Per Anton Brennskag, Enes Jašarević, Milomir Šoja, Bakir Nakaš, Ronald Eimers, Bogdan Vidović, and Fahra Mujanović, until such time as the witnesses are brought to give evidence before the Chamber; and

F. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]