



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-95-5/18-T

Date: 18 March 2010

Original: English

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: 18 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION AND SUBMISSION CONCERNING
FURTHER DECISION ON PROSECUTION'S FIRST RULE 92 *BIS* MOTION
(WITNESSES FOR ELEVEN MUNICIPALITIES)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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 seised of the “Prosecution Motion and Submission Concerning Further Decision on Prosecution’s First Rule 92 *bis* Motion (Witnesses for Eleven Municipalities)”, filed on 12 February 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 29 May 2009, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s First Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities)” (“First Rule 92 *bis* Motion”), in which it requested, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the admission of the transcripts of prior testimony and/or witness statements of what was ultimately 20 witnesses, and numerous associated exhibits in relation to that written evidence.¹

2. On 10 November 2009, the Chamber issued the “Decision of Prosecution’s First Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities)” (“Decision on First Rule 92 *bis* Motion”), in which it granted the First Rule 92 *bis* Motion in part, admitting into evidence the written statements and/or transcripts of prior testimony of 14 witnesses, as well as various associated exhibits related to their written evidence.² In the Decision on First Rule 92 *bis* Motion, the Chamber also denied without prejudice the proposed evidence for three witnesses, namely KDZ010, KDZ027, and Mersudina Saim-Hodžić, as well as a number of associated exhibits, primarily on the basis that the Chamber was unable to review them.³

3. On 18 November 2009, the Prosecution filed the “Prosecution’s Motion for Admission of Evidence, and Notifications and Clarification Relating to the Trial Chamber’s 10 November 2009 Decision on Prosecution’s First Rule 92 *bis* Motion” (“Motion and Clarification”). In the Motion and Clarification, the Prosecution *inter alia* resubmitted the written statements of KDZ027 and Mersudina Saim-Hodžić and the full transcript of KDZ010’s prior testimony, and

¹ First Rule 92 *bis* Motion, paras. 1, 4–5, Appendix A.

² Decision on First Rule 92 *bis* Motion, para. 47. *See also* Corrigendum to Decision of Prosecution’s First Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities), 16 November 2009 (“Corrigendum”).

³ Decision on First Rule 92 *bis* Motion, paras. 19–20, 45.

requested the Chamber to admit this written evidence pursuant to Rule 92 *bis* of the Rules.⁴ The Prosecution also resubmitted the various associated exhibits whose admission was denied without prejudice in the Decision on First Rule 92 *bis* Motion, and requested the Chamber to admit them into evidence.⁵

4. On 9 February 2010, the Chamber issued the “Further Decision on Prosecution’s First Rule 92 *bis* Motion (Witnesses for Eleven Municipalities)” (“Further Decision on First Rule 92 *bis* Motion”), admitting into evidence the transcripts of KDZ010’s prior testimony and four associated exhibits tendered with the witness’s evidence, as well as the written statement of Mersudina Saim-Hodžić.⁶ In the Further Decision on First Rule 92 *bis* Motion, the Chamber also denied admission of *inter alia* the associated exhibits with Rule 65 *ter* numbers 14835 (as it was unable to review its content) and 40568 (as it did not consider it an inseparable and indispensable part of KDZ216’s prior testimony).⁷ It also instructed the Prosecution to provide the Registry with confidential versions of the transcripts of prior testimony of KDZ057 and KDZ072, as well as public, redacted versions of the same, and to replace the incorrect English translation of the document with Rule 65 *ter* number 12144 with a correct one.⁸

5. In the Motion, the Prosecution informs the Chamber that it has now uploaded the English translation of the associated exhibit with Rule 65 *ter* number 14835 and requests the admission into evidence of this document.⁹ The Prosecution also requests the Chamber to admit the associated exhibit with Rule 65 *ter* number 40568 (videotape showing a man smoking a cigarette, and wearing a cowboy hat and an armband), and points the Chamber to the relevant portions of KDZ216’s prior testimony where the video was discussed.¹⁰ Finally, and upon instructions by the Chamber in the Further Decision on First Rule 92 *bis* Motion, the Prosecution informs the Chamber that it has uploaded into e-court the confidential and public redacted versions of KDZ057 and KDZ072’s prior testimony, as well as a “more detailed version” of the English translation of the document with Rule 65 *ter* number 12144.¹¹

⁴ Motion and Clarification, paras. 2, 21.

⁵ Motion and Clarification, paras. 9–10.

⁶ Further Decision on First Rule 92 *bis* Motion, paras. 21, 25, 28, 44(A)(1), 44(A)(6)–(7).

⁷ Further Decision on First Rule 92 *bis* Motion, paras. 30–31.

⁸ Further Decision on First Rule 92 *bis* Motion, para. 44(A)(5), 44(A)(8).

⁹ Motion, paras. 1–3.

¹⁰ Motion, paras. 1–2.

¹¹ Motion, paras. 4–5.

II. Applicable Law

6. On 15 October 2009, the Trial Chamber issued the “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 Rule 92 *bis* 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 Rule 92 *bis* Motion.¹² However, the Chamber notes that, according to the Tribunal’s case-law, associated exhibits that form an inseparable and indispensable part of a witness’s evidence may be admitted.¹³

III. Discussion

7. In the Further Decision on First Rule 92 *bis* Motion, the Chamber denied without prejudice the admission into evidence of the associated exhibit with Rule 65 *ter* number 14835 in relation to witness Ferid Spahić because the document did not have an English translation.¹⁴ In the Motion, the Prosecution notifies the Chamber that it has uploaded the English translation in court, and requests its admission into evidence.¹⁵ The Chamber notes that this document is an addendum to the statement provided by Ferid Spahić on 3–4 November 1997, which has already been admitted into evidence pursuant to the Decision on First Rule 92 *bis* Motion.¹⁶ Upon review of Ferid Spahić’s prior testimony, the Chamber is satisfied that this addendum forms an inseparable and indispensable part of the witness’s testimony, and will, therefore, admit it into evidence.

8. The Chamber also denied the admission into evidence of the associated exhibit with Rule 65 *ter* number 40568, which had been tendered as an associated exhibit of KDZ216, on the basis that it was not discussed by the witness during her prior testimony.¹⁷ In the Motion, the Prosecution identifies the pages of KDZ216’s prior testimony where the video was discussed, and requests the Chamber to admit the associated exhibit on this basis.¹⁸ The Chamber has reviewed the video against the relevant pages of KDZ216’s prior testimony, and is satisfied that the video forms an inseparable and indispensable part of KDZ216’s testimony. It will, therefore, admit it into evidence.

¹² Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹³ Decision on Third Rule 92 *bis* Motion, paras. 4–11.

¹⁴ Further Decision on First Rule 92 *bis* Motion, para. 31.

¹⁵ Motion, para. 3.

¹⁶ Decision on First Rule 92 *bis* Motion, para. 47(1)(a).

¹⁷ Further Decision on First Rule 92 *bis* Motion, para. 30.

¹⁸ Motion, para. 2.

9. In paragraph 32 of the Further Decision on First Rule 92 *bis* Motion, the Chamber discussed the associated exhibit with Rule 65 *ter* number 40542, and determined that it was not an inseparable and indispensable part of Jusuf Avdispahić's evidence. However, it erroneously referred to this video as the associated exhibit with Rule 65 *ter* number 40568.¹⁹ Therefore, the Chamber considers that, for reasons of clarity, the number 40568, currently in paragraph 32 of the Further Decision on First Rule 92 *bis* Motion, should, in fact, be 40542.²⁰

10. Finally, in the Decision on First Rule 92 *bis* Motion, and in relation to Sakib Husrefović's evidence, the Chamber admitted the associated exhibits with Rule 65 *ter* numbers 21180, 21181, and 21182, and denied admission of the associated exhibit with Rule 65 *ter* number 21183.²¹ In the Further Decision on First Rule 92 *bis* Motion, however, the Chamber erroneously referred to the associated exhibits with Rule 65 *ter* numbers 21181, 21182, and 21183, when changing their status from "admitted" to "provisionally admitted", while, in fact, this order pertained to the associated exhibits with Rule 65 *ter* numbers 21180, 21181, and 21182 (and not 21183).²² The Chamber hereby confirms that it denied the admission of the associated exhibit with Rule 65 *ter* number 21183, and provisionally admitted the associated exhibits with Rule 65 *ter* numbers 21180, 21181, and 21182, subject to the Prosecution providing Sakib Husrefović's written statement in a form which fully complies with the formal requirements of Rule 92 *bis*(B).

IV. Disposition

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

A. **GRANTS** the Motion and **ORDERS** that:

- (i) The associated exhibits with Rule 65 *ter* numbers 14835 and 40568 are admitted into evidence;
- (ii) The first sentence of paragraph 32 of the Further Decision on First Rule 92 *bis* Motion shall read as follows:

¹⁹ The determination of the admissibility of the associated exhibit with Rule 65 *ter* number 40568 had already been dealt with in paragraph 30 of the Further Decision on First Rule 92 *bis* Motion in relation to KDZ216's evidence.

²⁰ The Chamber has taken note of the Prosecution's clarification with respect to the associated exhibit with Rule 65 *ter* number 40542 in footnote 1 of the Motion, that is, the associated exhibit referred to in the First Rule 92 *bis* Motion should have been that with Rule 65 *ter* number 40523 and not 40542. However, this clarification does not impact on the Chamber's determination in paragraph 32 of the Further Decision on First Rule 92 *bis* Motion.

²¹ Decision on First Rule 92 *bis* Motion, para. 38. *See also* Corrigendum, para. 2.

²² Further Decision on First Rule 92 *bis* Motion, paras. 40, 44(A)(4).

The associated exhibit with Rule 65 *ter* number 40542 was tendered as an associated exhibit along with Jusuf Avdispahić's evidence.

- (iii) The third sentence of paragraph 40 of the Further Decision on First Rule 92 *bis* Motion shall read as follows:

Following from this, the associated exhibits of Sakib Husrefović's evidence, and which bear Rule 65 *ter* numbers 21180, 21181, and 21182, should have also only been provisionally admitted by the Chamber.

- (iv) Paragraph 44(A)(4) of the Further Decision on First Rule 92 *bis* Motion shall read as follows:

The status of the admission into evidence of Sakib Husrefović's written statement and the three associated exhibits pertaining to his evidence (Rule 65 *ter* numbers 21180, 21181, and 21182) is changed, so that the documents are provisionally admitted into evidence, subject to the Prosecution providing the written statement in a form which fully complies with the formal requirements of Rule 92 *bis*(B);

- B. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]