



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: 8 September 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: 8 September 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S SUBMISSION REGARDING ADDITIONAL
TRANSCRIPT PAGES FROM MOMČILO MANDIĆ'S *STANIŠIĆ & ŽUPLJANIN*
TESTIMONY FOR ADMISSION INTO EVIDENCE**

Office of the Prosecutor

Mr. Alan Tieger
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The Accused

Mr. Radovan Karadžić

Standby 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 Submission Regarding Additional Transcript Pages from Momčilo Mandić’s *Stanišić & Župljanin* Testimony for Admission into Evidence”, filed on 21 July 2010 (“Submission”), and the “*Corrigendum* to Prosecution’s Submission Regarding Additional Transcript Pages from Momčilo Mandić’s *Stanišić & Župljanin* Testimony for Admission into Evidence”, filed on 22 July 2010, and hereby issues its decision thereon.

I. Background and Submissions

1. In the present case, Mr. Momčilo Mandić (“Mandić”) was listed as a witness to be brought by the Office of the Prosecutor (“Prosecution”) pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). However, upon his arrival at the Tribunal in June 2010, he requested to give his evidence as a Chamber witness and testified as such from 30 June to 16 July 2010. Mandić had testified previously in the cases of *Prosecutor v. Krajišnik* (“*Krajišnik* case”),¹ and in *Prosecutor v. Stanišić & Župljanin* (“*Stanišić & Župljanin* case”).²

2. At the outset of his testimony in this case, the Prosecution sought the admission into evidence of the transcript of Mandić’s testimony in the *Krajišnik* case as his Rule 92 *ter* statement, and this transcript has thus been admitted as exhibit C2. On 6 July 2010, the Chamber admitted 61 of the 71 exhibits tendered by the Prosecution as associated with Mandić’s testimony in the *Krajišnik* case.³ However, the Chamber denied the remaining ten proposed associated exhibits, all intercepted telephone conversations, noting that it did not find them to form an “inseparable and indispensable” part of Mandić’s testimony in the *Krajišnik* case.⁴ On 8 July 2010, the Accused notified the Chamber by way of email that he wished to tender portions of Mandić’s testimony from the *Stanišić & Župljanin* case.⁵ In an oral ruling on 16 July 2010, the Chamber admitted all of the transcript pages tendered by the Accused,⁶ and the Accused, in turn, informed the Chamber in court that he would not be submitting any of the

¹ The dates of his testimony were 23–26, 29–30 November 2004; 1, 7, 9–10 December 2004.

² The dates of his testimony were 3–7 May 2010.

³ Hearing, T. 4691–4692 (6 July 2010).

⁴ Hearing, T. 4691–4692 (6 July 2010).

⁵ The portions are as follows: T. 9435–9436; T. 9440; T. 9447–9458; T. 9462–9465; T. 9475–9481; T. 9484–9486; T. 9489–9490; T. 9492–9500; T. 9504–9405; T. 9510–9515; T. 9520–9528; T. 9531–9534; T. 9545–9548; T. 9560–9564; T. 9568–9573; T. 9580–9581; T. 9583; T. 9585–9608; T. 9610–9618; T. 9622–9623; T. 9626–9643; T. 9649–9651; T. 9653–9659; T. 9622–9677; T. 9680–9693; T. 9696–9698; T. 9700–9702; T. 9704–9710; T. 9716; T. 9718–9731; T. 9738–9740; T. 9743; T. 9754–9758; T. 9766; T. 9768–9769; T. 9779–9783; T. 9785; T. 9798–9801; T. 9810–9813; and T. 9818–9821.

⁶ Hearing, T. 5287 (16 July 2010).

exhibits associated with Mandić's testimony in the *Stanišić & Župljanin* case.⁷ Also on 16 July 2010, the Prosecution indicated that it wished to tender additional portions of Mandić's testimony in the *Stanišić & Župljanin* case, along with the corresponding associated exhibits, which it would identify in a written submission.⁸ The Accused stated that he did not object to the Prosecution tendering such additional pages.⁹ The Chamber then indicated that all of the admitted pages from Mandić's testimony in the *Stanišić & Župljanin* case would be given one exhibit number.¹⁰

3. In the Submission, the Prosecution identifies those pages of the *Stanišić & Župljanin* transcript which it would wish to have admitted along with those submitted by the Accused.¹¹ Additionally, the Prosecution requests the admission of 25 documents, which it describes as exhibits associated with the portions of the *Stanišić & Župljanin* transcript it tenders in the Submission, as well as some associated with the portions tendered by the Accused and already admitted by the Trial Chamber.¹² The Prosecution submits that all of the documents form an inseparable and indispensable part of Mandić's testimony in the *Stanišić & Župljanin* case.¹³ It further notes that 12 of the documents tendered in the Submission are not on its Rule 65 *ter* exhibit list.¹⁴ Two of these 12 documents are maps marked by Mandić during his testimony in the *Stanišić & Župljanin* case, after the Prosecution had submitted its Rule 65 *ter* exhibit list in the present case.¹⁵ The Prosecution further submits that the relevance of the remainder of the documents arises from the admission of the transcript pages from Mandić's testimony in the *Stanišić & Župljanin* case tendered by the Accused.¹⁶

4. On 3 August 2010, the Accused filed the "Response to Motion to Admit Mandić Testimony and Exhibits" ("Response"), stating that he does not object to the Submission. However, the Accused maintains his previously-expressed objection to the admission of pre-war intercepted conversations pursuant to Rule 95 of the Rules.¹⁷

⁷ Hearing, T. 5317 (16 July 2010).

⁸ Hearing, T. 5317 (16 July 2010).

⁹ Hearing, T. 5317 (16 July 2010).

¹⁰ Hearing, T. 5287 (16 July 2010).

¹¹ The portions are as follows: T. 9420–9426; T. 9466–9467; T. 9482–9483; T. 9487–9488; T. 9491; T. 9506–9507; T. 9535–9542; T. 9549; T. 9552–9556; T. 9619–9621; T. 9771–9780; T. 9784–9793; and T. 9796–9797. Submission, para. 1.

¹² Submission, paras. 1–2.

¹³ Submission, paras. 1–2.

¹⁴ The Prosecution notes that the documents with the following Rule 65 *ter* numbers are not on its Rule 65 *ter* list: 22926, 22927, 22928, 22929, 22930, 22931, 22932, 22933, 22934, 22935, 22936, and 1D01915. Submission, paras. 1–2.

¹⁵ Submission, para. 1.

¹⁶ Submission, paras. 1–2.

¹⁷ Response, para. 1.

II. Applicable Law

5. Where a party calls a witness pursuant to Rule 92 *bis* or *ter*, it may also tender for admission into evidence documents that have been discussed by the witness in his or her witness statement or previous testimony.¹⁸ In addition to meeting the fundamental requirements for admission under Rule 89 of the Rules, these “associated exhibits” must form an “inseparable and indispensable” part of the witness’s written evidence, as the Trial Chamber has previously explained:

[D]ocuments accompanying the written statements or transcripts which “form an inseparable and indispensable part of the testimony” can also be admitted pursuant to Rule 92 *bis*. Not every document referred to in a witness’s written statement and/or transcript from a prior proceeding automatically forms an “inseparable and indispensable part” of the witness’s testimony. Rather, a document falls into this category if the witness discusses the document in his or her written statement or transcript, and if that written statement or transcript would become incomprehensible or have lesser probative value without the admission of the document.¹⁹

6. Additionally, as noted by the Trial Chamber in its previous “Decision on the Prosecution’s Motion for Leave to File a Supplemental Rule 65 *ter* Exhibit List”, Rule 65 *ter* (E)(iii) of the Rules provides, *inter alia*, that the Prosecution shall file the list of exhibits it intends to offer within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference. If the Prosecution requests the addition of some items to its exhibit list later than six weeks before the Pre-Trial Conference, the Trial Chamber may authorise this addition in the exercise of its inherent discretion to manage the trial proceedings, and if satisfied that this is in the interests of justice.²⁰

7. When exercising this discretion, the Trial Chamber examines whether the Prosecution has shown good cause for its request and whether the items sought to be added are relevant and

¹⁸ See, for example, Decision on 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), 15 October 2009 (“Decision on Third Rule 92 *bis* Motion”), para. 11; Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*, 20 August 2009, paras. 4-10; Decision on Prosecution Request for Reconsideration and/or Certification of Parts of the “Decision on Prosecution’s Motion for the Admission of the Evidence of KDZ172 (Milan Babić) Pursuant to Rule 92 *quater*”, 3 June 2010, paras. 24-25.

¹⁹ Decision on Third Rule 92 *bis* Motion, para. 11. See also *Prosecutor v. Lukić & Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses pursuant to Rule 92 *ter*, 9 July 2008, para. 15.

²⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin’s Questioning, 14 December 2007 (“*Popović et al.* Appeal Decision”), para. 27; *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Prosecution Motion for Leave to File a Fifth Supplemental Rule 65 *ter* Exhibit List with Annex A (Confidential), 29 August 2008, para. 10; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Third Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 23 April 2007, p. 3 (“*Dragomir Milošević* Decision”).

of sufficient importance to justify their late addition.²¹ The Trial Chamber may also take into account other factors which militate in favour of or against a requested addition,²² including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused,²³ the complexity of the case, on-going investigations, and translation of documents and other materials.²⁴ Finally, the Trial Chamber must carefully balance any amendment to the Prosecution's exhibit list with an adequate protection of the rights of the accused.²⁵ That is, the Trial Chamber must be satisfied that amendments to the exhibit list at that stage of the proceedings provide an accused sufficient notice, and do not adversely affect his ability to prepare for trial.²⁶

III. Discussion

8. The Chamber has reviewed the additional transcript pages from Mandić's testimony in the *Stanišić & Župljanin* case tendered by the Prosecution in the Submission and notes that the Accused does not object to the admission of these additional portions. The Chamber has considered the Prosecution's request and will admit the additional portions of Mandić's evidence from the *Stanišić & Župljanin* case tendered in the Submission pursuant to Rule 92 *ter*. As instructed by the Chamber in court, all of the admitted portions of Mandić's testimony in the *Stanišić & Župljanin* case should be uploaded into e-court and given one exhibit number.²⁷

9. In relation to the proposed associated exhibits tendered by the Prosecution in its Submission, the Chamber first notes that 12 of the documents are not on the Prosecution's Rule 65 *ter* exhibit list, and that the Prosecution must therefore be seeking to add those documents to its list at the same time as tendering them for admission into evidence.²⁸ Two of the documents, assigned Rule 65 *ter* numbers 22929 and 22930, are maps which Mandić marked during his testimony in the *Stanišić & Župljanin* case on 3 May 2010, well after the Prosecution submitted its Rule 65 *ter* exhibit list. As such, the Chamber is satisfied that the Prosecution could not have included them on its Rule 65 *ter* exhibit list in accordance with the time-line set by the pre-trial

²¹ *Popović et al.* Appeal Decision, para. 37; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Confidential Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 8 May 2008 ("*Stanišić & Simatović* Decision"), para. 6.

²² *Stanišić & Simatović* Decision, para. 6.

²³ *Dragomir Milošević* Decision, p. 3; *Prosecutor v. Popović et al.*, Decision on Prosecution's Motions for Leave to Amend Rule 65 *ter* Witness List and Rule 65 *ter* Exhibit List (Confidential), 6 December 2006, p. 7 ("*Popović et al.* Decision").

²⁴ *Popović et al.* Decision, p. 7.

²⁵ *Stanišić & Simatović* Decision, para. 6.

²⁶ *Dragomir Milošević* Decision, p. 3.

²⁷ Hearing, T. 5287 (16 July 2010).

Judge, as envisaged by the Rules, and it is not unreasonable for it to have not sought leave for their addition to that list at an earlier date. Therefore, the Chamber grants the Prosecution leave to supplement its Rule 65 *ter* exhibit list with the documents with Rule 65 *ter* numbers 22929 and 22930, and will consider their admission, provided they form an inseparable and indispensable part of Mandić's testimony in *Stanišić & Župljanin*, as discussed further below.

10. Even though the Accused does not object specifically to the addition of the remaining ten documents to the Prosecution's Rule 65 *ter* exhibit list, or to their admission into evidence, the Chamber is unconvinced that it is necessary for them to be admitted, or indeed added to the Rule 65 *ter* exhibit list, at this time. The fact that these documents were tendered, or admitted, during Mandić's testimony in the *Stanišić & Župljanin* case in May 2010, after the submission of the Prosecution's Rule 65 *ter* exhibit list, does not wholly justify their omission from its Rule 65 *ter* exhibit list in this case prior to this point if the Prosecution considers them important evidence against the Accused. In distinguishing these remaining documents from the two marked maps discussed above, the Chamber notes that all of them bear dates from 1992, have not been modified in court by a witness, and the Prosecution does not provide any indication in the Submission that they came into its possession after it filed its Rule 65 *ter* exhibit list on 18 May 2009. The Chamber further notes that simply because these documents were admitted in the *Stanišić & Župljanin* case during Mandić's testimony, which the Prosecution had not intended to offer as his Rule 92 *ter* evidence in this case, does not mean that they should automatically be added to the Prosecution's Rule 65 *ter* exhibit list, or form part of the evidence in this case, now that that testimony has itself been admitted. Moreover, five of these ten documents are clearly not indispensable or inseparable parts of the admitted portions of Mandić's testimony in the *Stanišić & Župljanin* case,²⁹ and the Chamber also does not consider it necessary to admit the remaining five, which are of marginal additional value to Mandić's evidence itself. Therefore, the Chamber denies the Prosecution's request to add the documents with the following Rule 65 *ter* numbers to its Rule 65 *ter* exhibit list: 22926, 22927, 22928, 22931, 22932, 22933, 22934, 22935, 22936, and 1D01915, and will not admit them into evidence.

11. Upon close review of the remainder of the proposed associated exhibits tendered in the Submission, which are on the Prosecution's Rule 65 *ter* exhibit list, the Chamber finds that

²⁸ The Chamber notes that, in the Submission, the Prosecution did not actually request the addition of these documents to its Rule 65 *ter* list, stating only in a footnote that the documents are not currently included in its Rule 65 *ter* list.

²⁹ The Chamber notes that the five documents assigned Rule 65 *ter* numbers 22931, 22932, 22933, 22934, 22935 are a series of "MUP Bulletins of Daily Events" which the witness was unable to discuss during his testimony in

many of them do not form an “inseparable and indispensable” part of Mandić’s testimony in the *Stanišić & Župljanin* case. First, with regard to the proposed associated exhibit with Rule 65 *ter* number 01625, Mandić was unfamiliar with this document and was unable to discuss it during his testimony in the *Stanišić & Župljanin* case.³⁰ Therefore, his testimony from the *Stanišić & Župljanin* case does not become incomprehensible or have lesser probative value without the admission of this document. Similarly, in the Submission the Prosecution tenders a series of “MUP Bulletins of Daily Events”, including the documents with Rule 65 *ter* numbers 00265 and 08542, dated between April and June 1992, although Mandić testified in the *Stanišić & Župljanin* case that he was not in Pale when they were issued and was unable to discuss any of them. Again, non-admission of these documents will not render Mandić’s testimony in the *Stanišić & Župljanin* case incomprehensible in any sense, nor affect its probative value, and, thus, they do not form an “inseparable and indispensable” part of that testimony. For these reasons, the Chamber shall deny admission of the proposed associated exhibits with Rule 65 *ter* numbers 00265, 01625, and 08542.

12. The Chamber notes that three of the remaining proposed associated exhibits tendered by the Prosecution in the Submission are intercepts of telephone conversations, namely, Rule 65 *ter* numbers 30607, 30798 and 31769. The Chamber recalls its prior decisions regarding the admission of intercepts, in which it found that intercepts are a special category of evidence which bear no *prima facie* indicia of authenticity or reliability; as such, the authenticity and reliability of intercepts is established by further evidence, such as hearing from the relevant intercept operators or the participants in the intercepted conversation themselves.³¹ The Chamber further recalls that the admission of an intercept into evidence does not depend on whether it was obtained legally or illegally; rather, the Chamber must simply be satisfied that the requirements for admissibility of evidence provided by Rule 89 are met and that there are no grounds for exclusion under Rule 95.³²

the *Stanišić & Župljanin* case, and therefore, do not form an “inseparable and indispensable” part of that testimony.

³⁰ The Chamber notes that the Prosecution tendered the document assigned Rule 65 *ter* number 01625 twice in the Submission.

³¹ Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010, para. 9; Decision on Prosecution’s Motion for Admission of the Evidence of KDZ172 (Milan Babić) Pursuant to Rule 92 *Quater*, 13 April 2010, paras. 84–87; Decision on the Prosecution’s First Bar Table Motion, 13 April 2010, para. 13.

³² Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010, para. 10 (citing *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision Denying the Stanišić Motion for Exclusion of Recorded Intercepts, 16 December 2009, para. 14; *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on the Defence “Objection to Intercept Evidence”, 3 October 2003, paras. 53-55).

13. With regard to the latter issue, the Chamber notes the Accused's generally-expressed objection to the admission of pre-war intercepted conversations.³³ In the Submission, the Prosecution has tendered only one conversation intercepted prior to the commencement of the conflict in Bosnia and Herzegovina, that is, the intercept with Rule 65 *ter* number 30607 (dated 19 February 1992). However, this document as uploaded in ecourt is not the same intercepted telephone conversation referred to in the relevant pages of Mandić's testimony in the *Stanišić & Župljanin* case. It notes, furthermore, that Mandić was neither a participant in the intercept actually discussed in the relevant pages of the *Stanišić & Župljanin* case, nor the one currently uploaded as Rule 65 *ter* number 30607. As it has been unable to review the correct intercept, the Chamber will not consider its admissibility as an associated exhibit or pursuant to Rule 95.

14. With respect to the document with Rule 65 *ter* number 30798, the Chamber notes first that Mandić was a participant in the intercepted telephone conversation, which took place on 23 May 1992, and thus could properly testify to its authenticity. The Chamber considers that it satisfies the admissibility requirements under Rule 89 of the Rules, and that it forms an "inseparable and indispensable part" of Mandić's testimony in the *Stanišić & Župljanin* case. As such, it will admit this intercept into evidence. The Chamber has, however, been unable to analyse the third intercept, assigned Rule 65 *ter* number 31769, because it does not have an English translation uploaded to ecourt. The admission into evidence of Rule 65 *ter* number 31769 is thus denied without prejudice; the Prosecution may reapply for its admission after it uploads the translation into ecourt.

15. The Chamber notes that the proposed associated exhibit with Rule 65 *ter* number 00033 has already been admitted by the Chamber in its Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records, filed on 22 July 2010, as exhibit number P1361. It will not, therefore, consider its admission again.

16. Finally, the Chamber has reviewed each of the remaining eight proposed associated exhibits tendered in the Submission and finds that they form an "inseparable and indispensable part" of Mandić's testimony in the *Stanišić & Župljanin* case, and furthermore, satisfy the requirements of Rule 89 of the Rules. Therefore, the Chamber will admit into evidence the associated exhibits with the following Rule 65 *ter* numbers: 00200, 01116, 01529, 01584, 01603, 05151, 22929, and 22930.

³³ The Chamber recalls that the Accused has filed a motion challenging the admissibility of conversations that may have been intercepted illegally, which remains pending before the Chamber. *See* Motion to Exclude Intercepted Conversations, 17 August 2010.

IV. Disposition

17. Accordingly, pursuant to Rules 65 *ter*, 89, and 92 *ter* of the Rules, the Trial Chamber hereby:

- a) **GRANTS** the Submission **IN PART** and **ORDERS** that:
1. The following additional transcript pages from Mandić's testimony in the *Stanišić & Župljanin* case, as tendered in the Submission, are admitted into evidence: T. 9420–9426, T. 9466–9467, T. 9482–9483, T. 9487–9488, T. 9491, T. 9506–9507, T. 9535–9542, T. 9549, T. 9552–9556, T. 9619–9621, T. 9771–9780, T. 9784–9793, and T. 9796–9797;
 2. The proposed associated exhibits listed in the Submission with the following Rule 65 *ter* numbers are admitted into evidence: 00200, 01116, 01529, 01584, 01603, 05151, 22929, 22930, and 30798;
- b) **REQUESTS** the Registry to assign one exhibit number to the transcript pages of Mandić's testimony in the *Stanišić & Župljanin* case, tendered by both the Accused and the Prosecution, and to assign exhibit numbers to the associated exhibits that have been admitted into evidence; and
- c) **DENIES** the Submission in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this eighth day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]