



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: 9 January 2012

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: 9 January 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR ADMISSION OF THE EVIDENCE OF
MILENKO LAZIĆ PURSUANT TO RULE 92 *QUATER* AND FOR LEAVE TO ADD
EXHIBITS TO RULE 65 *TER* EXHIBIT LIST**

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’s Motion for Admission of the Evidence of Milenko Lazić Pursuant to Rule 92 *quater* and Request for Leave to Add Exhibits to the Rule 65 *ter* Exhibit List” with public appendices A and B and confidential appendix C, filed on 14 October 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests the admission of the transcript of prior testimony of Milenko Lazić (“Witness”) in *Prosecutor v. Popović et al.*, Case No. IT-05-88-T (“*Popović* case”), as well as 20 associated exhibits,¹ pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”),² and seeks leave to add two documents related to the Witness’s testimony to its Rule 65 *ter* exhibit list.³

2. The Prosecution contends that the Witness’s evidence is directly relevant to and probative of the objectives of the joint criminal enterprises alleged in the Third Amended Indictment (“Indictment”) to permanently remove the non-Serb population from Bosnian Serb-claimed territory in Bosnia and Herzegovina (“BiH”) and, specifically, to the Srebrenica component of the case.⁴ According to the Prosecution, the Witness’s evidence is also relevant to Counts 2 to 8 in the Indictment.⁵ In support of its arguments, the Prosecution notes that the Witness was Chief of the Operations and Training Section of the Drina Corps of the Bosnian Serb Army (“VRS”) from September 1994 until August 1995 and, in that capacity, attended a meeting on 28 June 1995 with the Accused and Radislav Krstić, in which the Accused encouraged a quick implementation of the plan to take Srebrenica.⁶ The Prosecution argues that, immediately after the Accused’s departure, a plan to attack Srebrenica was drafted by the Drina Corps, as an extension to Directive 7.⁷

¹ In relation to the number of associated exhibits tendered by the Prosecution, the Chamber notes that paras. 1 and 15 of the Motion refer to 19 documents; however, Appendix A to the Motion includes an additional document as an associated exhibit (65 *ter* number 04122) thus bringing the total number of documents tendered to 20.

² Motion, paras. 1, 15; Appendix A.

³ Motion, para. 16.

⁴ Motion, para. 8.

⁵ Motion, para. 8.

⁶ Motion, para. 8.

⁷ Motion, para. 8; Appendix B.

3. The Prosecution further submits that the Witness is unavailable to testify *viva voce* for medical reasons,⁸ and provides medical records and official documentation from the Lower Court of Kruševac, Republic of Serbia.⁹

4. The Prosecution states that the Witness's prior testimony has numerous indicia of reliability which satisfy the requirements for its admissibility under Rule 92 *quater*.¹⁰ Specifically, the Prosecution explains that the Witness's testimony was given under oath and elicited within the safeguards of judicial proceedings, does not contain obvious or manifest inconsistencies, and is corroborated by other evidence.¹¹ Additionally, the Witness was subject to four different direct examinations and two cross-examinations.¹² In relation to this last point, the Prosecution argues that the fact that one cross-examination was conducted by the Prosecution does not lessen the testimony's reliability and that, on the contrary, it is relevant to the Accused because it relates to whether the chain of command in the VRS was operational during the Srebrenica operation.¹³ The Prosecution concludes that if the Chamber were to find that the cross-examinations did not cover all the issues the Accused may wish to address, this would be a factor which goes to the weight of the evidence rather than its admissibility.¹⁴

5. Furthermore, the Prosecution contends that there are no grounds to exclude the Witness's evidence under Rule 89(D) because its admission pursuant to Rule 92 *quater* would not unfairly prejudice the rights of the Accused.¹⁵ In support of this argument, the Prosecution contends that the parts of the Witness's testimony which go to the acts and conduct of the Accused are corroborated by the Accused's own statements, making the testimony reliable.¹⁶ Again, the Prosecution contends that the fact that parts of the Witness's evidence go to the acts and conduct of the Accused does not warrant its exclusion and that the Accused's inability to cross-examine the Witness on those parts is a factor which goes to the weight of the evidence.¹⁷ The Prosecution concludes by saying that excluding the Witness's evidence would adversely affect

⁸ Motion, para. 9.

⁹ Motion, para. 10; confidential Appendix C.

¹⁰ Motion, para. 11.

¹¹ Motion, para. 12.

¹² Motion, para. 12. The Witness was called by the defence for Vujadin Popović and gave further evidence for three other Accused. The Witness was then cross-examined by the Prosecution and the defence for Milan Gvero.

¹³ The Prosecution adds that the defence in the *Popović* case attempted to show that the VRS Main Staff was not included in the planning of the Srebrenica operation and that this plan was not intended to kill anyone; Motion, para. 12.

¹⁴ Motion, para. 12.

¹⁵ Motion, para. 13.

¹⁶ Motion, para. 13.

¹⁷ Motion, paras. 12–13.

the fairness of the trial because it would deprive the Chamber of reliable, relevant, and probative evidence in its determination of the case.¹⁸

6. Moreover, the Prosecution seeks to tender into evidence the documents bearing 65 *ter* numbers 01983, 03724, 04122, 04242, 04265, 04267, 04273, 14873, 15583, 20048, 20049, 20050, 20051, 20052, 20053, 20056, 20057, 20058, 20799, and 30297 as associated exhibits.¹⁹ The Prosecution considers that these exhibits constitute an inseparable and indispensable part of the Witness's testimony, and therefore, should be admitted together with his evidence in the *Popović* case.²⁰

7. The Prosecution also requests leave to add the documents bearing 65 *ter* numbers 23490 and 23491 to its Rule 65 *ter* exhibit list.²¹ The Prosecution argues that these documents corroborate the Witness's testimony and that their relevance to the Witness's evidence only became apparent when the Prosecution understood that the Witness would be unavailable to testify *viva voce* and that corroboration of his previous testimony was warranted.²² The Chamber notes that the Prosecution does not expressly seek to tender these documents into evidence at this time.²³

8. Having been granted an extension of time to respond to the Motion,²⁴ the Accused filed his "Response to Motion to Admit Testimony of Milenko Lazic" on 27 October 2011 ("Response") opposing the Motion.²⁵ The Accused agrees with the Prosecution that the Witness is unavailable to testify, as he has now learned that the Witness passed away in September of 2011.²⁶

9. The Accused does not contend the relevance and probative value of the Witness's evidence nor its reliability, but opposes the Motion on the ground that the Witness's prior testimony goes directly to the acts and conduct of the Accused in a way that affects the need to ensure his right to a fair trial.²⁷ In support of his position, the Accused submits that his interests differ from those of the parties in the *Popović* case, where no one had an interest in challenging

¹⁸ Motion, para. 14.

¹⁹ Motion, para. 15; Appendix A.

²⁰ Motion, para. 15.

²¹ Motion, para. 16.

²² Motion, para. 16.

²³ Motion, para. 16, Appendix B(2).

²⁴ Oral Decision, T. 20366–20367 (26 October 2011). *See* Motion for Extension of Time to Respond – 92 Quater Motion, 21 October 2011.

²⁵ Response, para. 1.

²⁶ Response, para. 2.

²⁷ Response, paras. 3–5.

the Witness's account of the meeting between the Accused and General Krstić.²⁸ Therefore, it would be unfair for the Chamber to admit "one-sided evidence" which has not been tested.²⁹ The Accused concludes by saying that if the Witness had been cross-examined by the Accused, he would have elicited many facts favourable to him.³⁰

10. Having been granted leave to reply,³¹ the Prosecution filed its "Reply to the Accused's Response to Motion to Admit Testimony of Milenko Lazić with Appendix A" on 2 November 2011 ("Reply"). In the Reply, the Prosecution amends its previous submission in relation to the reasons for the Witness's unavailability, and notes that the Serbian authorities have confirmed that the Witness is in fact deceased.³²

11. The Prosecution then states that the Accused's arguments in relation to the inadmissibility of the Witness's evidence under Rule 89(D) of the Rules should be considered by the Chamber as factors relevant to its reliability and weight.³³ The Prosecution adds that, pursuant to Rule 92 *quater*, the deficiency in cross-examination is not a bar to the admission of the evidence and thus the Accused's inability to cross-examine the Witness is a factor that goes to the weight of the evidence and not to its admissibility.³⁴

12. The Prosecution also states that the Accused's claim that he cannot elicit additional favourable testimony from the Witness's cross-examination is speculative, has no bearing on the reliability of the evidence already given by the Witness, and does not warrant the exclusion of the Witness's evidence under Rule 89(D).³⁵ In relation to the Accused's argument that the parties in the *Popović* case had disparate interests to his, the Prosecution contends that the Witness was examined in detail about the substance of the meeting between the Accused and Krstić and states that the Accused appears to concede the existence of the meeting in the Response when stating that mass killings were not foreseeable at the time of the meeting.³⁶ The Prosecution concludes by arguing that, even if the adequacy of the cross-examination in the *Popović* case and the Accused's inability to elicit further information from the Witness are

²⁸ According to the Accused, the defence in the *Popović* case attempted to show that the Srebrenica operation was planned by the Accused and Krstić and not by the VRS Main Staff and thus the Prosecution's cross-examination was aimed at showing the additional involvement of the VRS Main Staff, not to disputing the alleged meeting; Response, para. 7.

²⁹ Response, paras. 8, 9.

³⁰ Response, para. 9.

³¹ Oral Decision, T. 20586 (28 October 2011). *See also* Request for Leave to Reply to the Response to Motion to Admit Testimony of Milenko Lazić, 28 October 2011.

³² Reply, para. 1.

³³ Reply, paras. 2, 3.

³⁴ Reply, para. 3.

³⁵ Reply, para. 3.

³⁶ Reply, para. 5.

considered by the Chamber as relevant factors to the assessment of the admissibility of the evidence pursuant to Rule 89, these issues should not lead to the exclusion of the evidence under Rule 89(D) because they do not substantially outweigh its probative value.³⁷

II. Applicable Law

13. Regarding the Prosecution's request to admit the Witness's prior testimony and associated exhibits pursuant Rule 92 *quater* of the Rules, the Chamber recalls that the pre-Trial Chamber set out the applicable law in the "Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*" issued on 20 August 2009 ("KDZ198 Decision").³⁸ It will therefore not repeat that discussion here. The Chamber reiterates, however, that the evidence of an unavailable witness may be submitted in written form if the Chamber finds: (i) the witness unavailable within the meaning of Rule 92 *quater*(A), (ii) from the circumstances in which the statement was made and recorded that it is reliable, (iii) the evidence is relevant to the proceedings and of probative value, and (iv) that the probative value of the evidence, which may include evidence pertaining to acts and conduct of an accused, is not outweighed by the need to ensure a fair trial.³⁹

14. Regarding the Prosecution's request to add two documents to its 65 *ter* exhibit list, the Chamber recalls that it has most recently set out the applicable law in the "Decision on Prosecution's Motion for Leave to Amend its Exhibit List" issued on 19 October 2011 ("Decision to Amend Exhibit List") and it will not repeat that discussion here.⁴⁰ However, the Chamber wishes to emphasise that it is in its discretion to authorise any addition of documents to the 65 *ter* exhibit list and that, when exercising its discretion, it is under a duty to examine, *inter alia*: (i) whether the Prosecution has shown good cause for its request, (ii) whether the items sought to be added are relevant and of sufficient importance to justify their late addition, (iii) whether the proposed evidence is *prima facie* relevant and of probative value to the charges against the Accused, (iv) the complexity of the case, and (v) the protection of the rights of the Accused.⁴¹

³⁷ Reply, para. 4.

³⁸ KDZ198 Decision, paras. 4–10.

³⁹ KDZ198 Decision, paras. 4–6; Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *quater*, 30 November 2009, para. 6. *See Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on Beara's and Nikolić's Interlocutory Appeals Against Chamber's Decision on 21 April 2008 Admitting 92 *quater* Evidence, 18 August 2008 ("Popović Appeal Decision"), para. 30.

⁴⁰ Decision to Amend Exhibit List, paras. 8–10.

⁴¹ *See* Decision to Amend Exhibit List, paras. 8, 9, citing *Popović 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, para. 6.

III. Discussion

A. Witness's Evidence

15. The Chamber notes that the Accused does not challenge the Witness's unavailability, and accepts he is in fact unable to testify orally.⁴² The Chamber is satisfied with the information provided by the parties and accepts that the Witness is deceased and thus unavailable for the purposes of Rule 92 *quater* (A)(i).

16. The Chamber recalls that, to have any probative value, evidence must be *prima facie* reliable.⁴³ Thus, it remains in the Chamber's sole discretion to evaluate whether, based on the circumstances in which the Witness's evidence was given and recorded, it meets this requirement.⁴⁴ The Chamber notes that, prior to his death, the Witness testified as a defence witness in the *Popović* case and was subject to cross-examination by the Prosecution and one of the accused in that case. Having reviewed the transcript of the Witness's testimony in its entirety, the Chamber finds that it was elicited with the safeguards of judicial proceedings, namely: it was given under oath, with the assistance of a Registry approved interpreter, and was subject to cross-examination. Moreover, despite the fact that the Witness suffered from, and received medical treatment for, a psychological condition prior to him testifying in the *Popović* case,⁴⁵ the Chamber notes no evident inconsistencies, contradictions or lack of clarity in the Witness's testimony which could constitute proof of a diminished mental capacity.⁴⁶ In light of the above, the Chamber is satisfied that the Witness's evidence is sufficiently reliable to be admitted under Rule 92 *quater* and now moves to consider whether it meets the basic requirements of relevance and probative value enshrined in Rule 89.

17. During his testimony in the *Popović* case, the Witness testified among other things that, in his capacity as the Chief of the Operations and Training Section of the Drina Corps, he was at the Drina Corps headquarters when the Accused visited on 28 June 1995.⁴⁷ During his visit, the

⁴² Response, para. 2; Reply, para. 1.

⁴³ See *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22.

⁴⁴ Decision on Prosecution's Motion for Admission of the Evidence of KDZ172 (Milan Babić) pursuant to Rule 92 *quater*, 13 April 2010, ("Babić Decision"), para. 25. See *Prosecutor v. Prlić et al.*, Case No. IT-04-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defense Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para. 27.

⁴⁵ See the confidential medical documentation appended to the Motion; Motion, confidential Appendix C.

⁴⁶ Moreover, the fact that the *Popović* Trial Chamber relied on the Witness's evidence while rendering its final judgement is considered by the Chamber as an indicia of its reliability. See *Popović* case, Trial Judgement, 10 June 2010, paras. 242, 243, fns 737-747.

⁴⁷ *Popović* case, T. 21727, 21744-21745 (4 June 2008).

Accused met with then Colonel Krstić.⁴⁸ According to the Witness, who was present during this meeting, the Accused asked Krstić how long he would need to set off for Srebrenica, to which Krstić replied that, depending on the objectives, preparations could take from three to five days.⁴⁹ The Accused then told Krstić to try to make it “as short as possible”.⁵⁰ Upon the Accused’s departure, Krstić told the Witness that the operation for Srebrenica should be planned.⁵¹ Later that same day, Krstić conveyed the assignment to the Drina Corps command which then started drafting a combat plan.⁵² The Witness further testified about the process in which the combat plan was drafted,⁵³ and explained that it was based on Directive 7 and Directive 7/1, and was consistent with the goals contained therein.⁵⁴

18. In his evidence, the Witness also testified that, two days after the Accused’s visit to the Drina Corps headquarters, the Witness went to the Milići Light Infantry Brigade command to set up a reconnaissance unit to prevent any attempt by the Army of the Republic of BiH to break through towards the enclave during the VRS operation to take Srebrenica.⁵⁵ The Witness then described Srebrenica and Žepa as zones which were never demilitarised and which therefore represented a constant threat to the Drina Corps units.⁵⁶ He further testified about the VRS objectives in relation to Srebrenica.⁵⁷

19. Having reviewed the Witness’s evidence in the *Popović* case and the position taken by the parties in relation to the relevance of the Witness’s testimony, the Chamber is satisfied that the Witness’s evidence is relevant to the current proceedings as much of it relates to Counts 2 through 8 of the Indictment.

20. The Chamber now moves to consider whether the admission of the portion of the Witness’s evidence which goes to the acts and conduct of the Accused, as discussed above, would affect his right to a fair trial. The Chamber reaffirms that the fact that parts of the Witness’s evidence go to acts and conduct of the Accused is not in itself a bar to the admission

⁴⁸ *Popović* case, T. 21727 (4 June 2008).

⁴⁹ *Popović* case, T. 21727 (4 June 2008).

⁵⁰ *Popović* case, T. 21727 (4 June 2008).

⁵¹ *Popović* case, T. 21727–21728 (4 June 2008). The Witness further testified that, in total, the preparations for the take over of Srebrenica took six days; *Popović* case, T. 21747 (4 June 2008).

⁵² *Popović* case, T. 21728 (4 June 2008).

⁵³ *Popović* case, T. 21728, 21730 (4 June 2008).

⁵⁴ *Popović* case, T. 21811, 21813, 21864 (5 June 2008).

⁵⁵ *Popović* case, T. 21729–21730 (4 June 2008).

⁵⁶ *Popović* case, T. 21754, 21754 (4 June 2008).

⁵⁷ The Witness stated that such objectives were: (i) the defence of the Serb population, (ii) the creation of a Serbian State on the areas of BiH where the Serbian population lived, and (iii) if no other option was available, the separation of the people of BiH on ethnic grounds; *Popović* case, T. 21833–21835 (5 June 2008). The Witness added that, according to his knowledge, “liberating” Srebrenica and the upper and middle Podrinje regions had been an objective of the Bosnian Serb leadership at least since early 1993; *Popović* case, T. 21825 (5 June 2008).

of the evidence, or the relevant portions thereof, but may be a factor against admitting that evidence, or parts thereof.⁵⁸ The Chamber reiterates that the admission of evidence under Rule 92 *quater* remains subject to the general requirements for the admission of evidence contained in Rule 89(D), which provides that evidence may be excluded if its probative value is substantially outweighed by the need to ensure a fair trial.⁵⁹

21. The Accused argues that the Witness's evidence should not be admitted pursuant to Rule 92 *quater* as it goes directly to his acts and conduct in a way that affects his right to a fair trial. According to the Accused, the parties in the *Popović* case had disparate interests from his and, therefore, the parts of the Witness's evidence that go to his acts and conduct were not tested.⁶⁰ Contrary to this assertion, the Prosecution argues that these factors go to the weight of the evidence rather than to its admissibility.⁶¹

22. In reviewing the proposed evidence, the Chamber notes that a considerable part of it relates to the alleged meeting between the Accused and Krstić at the Drina Corps headquarters, and it therefore provides a description of the Accused's acts and conduct during the Indictment period relating to allegations in the Indictment. While the Witness was subject to direct and cross-examination about this meeting in the *Popović* case, the direct examination of the Witness focused on proving that the Accused had circumvented the VRS Main Staff in the planning of the operation to take Srebrenica. Similarly, the cross-examination conducted by the Prosecution in that case did not test the fact that the meeting took place nor the Accused's intentions.⁶² Thus, it is the Chamber's view that the admission of this evidence, without the Accused having an opportunity to cross-examine the Witness on it, would constitute an unfair prejudice to the Accused. Given this unfair prejudice, the Chamber also considers that the need to ensure a fair trial outweighs the probative value of this particular evidence. The Chamber therefore finds that parts of the Witness's evidence where the meeting in question is discussed, namely the transcript of the Witness's evidence from the *Popović* case identified as T. 21727, line 2 (starting with the text "when the president...") to 25; T. 21728, lines 1 to 4; T. 21744, lines 20 to 25; T. 21745, lines 1 to 21; T. 21757, lines 22 to 25; T. 21758, line 1; T. 21784, lines 8 to 25; T. 21785;

⁵⁸ Babić Decision, para. 33.

⁵⁹ Babić Decision, para. 33. *See Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 14.

⁶⁰ Response, paras. 7, 8.

⁶¹ Reply, para. 3.

⁶² The Chamber considers this scenario to be different from that in the Babić Decision where the Chamber, by majority, Judge Kwon dissenting, decided to exclude certain parts of Milan Babić's testimony because of the deficiencies it found in the brief and inconclusive cross-examination of the witness; *see* Babić Decision, paras. 41-42.

T. 21786, lines 12 to 19; T. 21861, lines 11 to 25; T. 21862–21865; T. 21866, lines 1 to 7; T. 21899; and T. 21900, lines 1 to 6, shall not be admitted into evidence.

23. As stated above, the Chamber considers that the remainder of the Witness's evidence in the *Popović* case is reliable, relevant to the current proceedings, and of probative value. Given that it is not highly prejudicial to the rights of the Accused, the Chamber considers that it can be admitted into evidence pursuant to Rule 92 *quater*.

B. Associated exhibits

24. In addition to the transcript of the Witness's prior testimony in the *Popović* case, the Prosecution has tendered 20 associated exhibits.⁶³ The Chamber reiterates that associated exhibits should form an "inseparable and indispensable part" of the testimony, meaning that they should not merely have been mentioned during the course of that testimony, but rather have been used and explained by the relevant witness.⁶⁴ It follows that such exhibits should also satisfy the requirements of relevance and probative value contained in Rule 89 of the Rules, and that their probative value must not be substantially outweighed by the need to ensure a fair trial.⁶⁵

25. The Chamber recalls that it has denied admission of portions of the Witness's evidence because it deemed that its probative value was outweighed by the need to ensure a fair trial.⁶⁶ The Chamber finds that the document identified with Rule 65 *ter* number 20058, which is the transcript of an interview given by the Accused to a TV news agency, was discussed in those portions of the Witness's evidence. Therefore, this document no longer forms an inseparable and indispensable part of the admitted evidence and shall not be admitted into evidence.

26. The Chamber also notes that the English translation of the document with Rule 65 *ter* number 15583 is not available in e-court and thus it has not been in a position to assess the document. Regarding the document bearing Rule 65 *ter* number 04242, the Chamber notes that the English translation uploaded into e-court does not correspond to the original document. In light of these reasons, the documents bearing Rule 65 *ter* numbers 15583 and 04242 shall not be admitted at this time.

⁶³ Motion, paras. 1, 15, Appendix A.

⁶⁴ *Popović* case, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, para. 65.

⁶⁵ KDZ198 Decision, para. 7.

⁶⁶ *See* above, para. 22.

27. The Chamber further notes that the document with 65 *ter* number 30297 is an intercept of a conversation between the Accused and Momčilo Krajišnik on 2 October 1991. Having reviewed the content of the document and the transcript of the Witness's testimony in the *Popović* case, the Chamber finds that the document was not referred to or commented on by the Witness during his testimony. Therefore, it does not form an inseparable and indispensable part of the Witness's evidence and shall not be admitted into evidence.

28. Regarding the remaining documents, the Chamber notes that those bearing Rule 65 *ter* numbers 01983, 03724, 04122, 04265, 04267, 14873, 20048, 20049, 20050, 20051, 20052, 20053, 20056, 20057, and 20799 are orders, work plans, combat reports, duties summaries, and analysis of combat situations in relation to different units of the VRS. Additionally, the document with Rule 65 *ter* number 04273 is a news article from *Srpska Vojska* regarding the combat formation of the VRS Main Staff 1st Guards Motorised Brigade which includes a quote from the Witness. Having reviewed the content of the documents and the transcript of the Witness's testimony in the *Popović* case, the Chamber finds that the Witness was able to recognise and comment on all of them. Therefore, the Chamber considers that these documents are relevant to the Prosecution's case and that they form an inseparable and indispensable part of the Witness's testimony. The Chamber is also of the view that the probative value of the documents is not substantially outweighed by the need to ensure a fair trial. Accordingly, the documents bearing Rule 65 *ter* numbers 01983, 03724, 04122, 04265, 04267, 04273, 14873, 20048, 20049, 20050, 20051, 20052, 20053, 20056, 20057, and 20799 shall be admitted into evidence.

C. Addition of documents to Rule 65 *ter* exhibit list

29. The Chamber now moves to assess the Prosecution's request to add documents bearing Rule 65 *ter* numbers 23490 and 23491 to its Rule 65 *ter* exhibit list. The Chamber notes that both documents are combat reports from the Drina Corps Commander, Milenko Živanović, to the VRS Main Staff, informing *inter alia* that a group of officers was carrying out reconnaissance assignments and issuing combat orders in the area of responsibility of the Milići Light Infantry Brigade, a subordinate unit of the Drina Corps.

30. The Chamber finds that the Prosecution's request was filed a considerable time after the commencement of the trial proceedings and of the hearing of evidence in this case. However, the Chamber considers that the Prosecution has shown good cause to add these documents at this stage of the proceedings given the Witness's recent unavailability to testify. Having reviewed the documents, the Chamber considers them to be *prima facie* relevant and of

probative value to the charges against the Accused, given that they are related to the preparations of the Drina Corps Milići Light Infantry Brigade to implement the plan for the take-over of Srebrenica. Furthermore, taking into account the size of the documents, and the phase of the case, the Chamber considers that the Accused will not be prejudiced by their late addition to the list. Consequently, the Chamber considers that it is in the interests of justice to allow the Prosecution to add the two requested items to its Rule 65 *ter* exhibit list.

IV. Disposition

31. Accordingly, pursuant to Rules 54, 65 *ter*, 89, and 92 *quater* of the Rules, the Chamber hereby **GRANTS** the Motion in part and:

- (i) **ADMITS** into evidence the relevant portions of the Witness's testimony in the *Popović* case, with the exception of the portions described in paragraph 22;
- (ii) **ORDERS** the Prosecution to upload into e-court the revised transcript of the Witness's evidence, which should contain only the portions of testimony admitted in this Decision, while the remaining portions should be redacted;
- (iii) **INSTRUCTS** the Registry to assign an exhibit number to the transcript referred to above;
- (iv) **ADMITS** into evidence the documents with Rule 65 *ter* numbers: 01983, 03724, 04122, 04265, 04267, 04273, 14873, 20048, 20049, 20050, 20051, 20052, 20053, 20056, 20057, and 20799, and instructs the Registry to assign each of them an exhibit number; and
- (v) **GRANTS** the Prosecution's leave to add documents bearing Rule 65 *ter* numbers 23490 and 23491 to its Rule 65 *ter* exhibit list.

32. The Chamber **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]