



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: 6 March 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: 6 March 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF “DECISION ON PROSECUTION’S FIFTH MOTION
FOR ADMISSION OF STATEMENTS IN LIEU OF *VIVA VOCE* TESTIMONY
PURSUANT TO RULE 92 *BIS* (SREBRENICA WITNESSES)” ISSUED ON 21
DECEMBER 2009**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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 seised of the “Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica 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 75 witnesses: Dražen Erdemović (KDZ018), KDZ039, KDZ045, KDZ063, KDZ065, KDZ066, KDZ069, KDZ070, KDZ071, Srećko Aćimović (KDZ105), KDZ107, KDZ117, Danko Gojković (KDZ120), KDZ122, Nebojša Jeremić (KDZ139), Mevludin Orić (KDZ140), Cvijetin Ristanović (KDZ150), KDZ155, Damjan Lazarević (KDZ165), Ahmo Hasić (KDZ167), Mile Simanić (KDZ176), Mirsada Malagić (KDZ178), KDZ186, Milorad Birčaković (KDZ187), Rajko Babić (KDZ189), KDZ229, Mitar Lazarević (KDZ255), Dragan Jović (KDZ257), Vicentius Egbers (KDZ261), KDZ265, Tanacko Tanić (KDZ276), KDZ284, KDZ285, Mile Janjić (KDZ291), Milenko Pepić (KDZ305), KDZ329, KDZ333, KDZ351, KDZ360, Predrag Drinić (KDZ372), KDZ374, Zoran Petrović-Piroćanac (KDZ380), Zlatan Čelanović (KDZ381), KDZ396, KDZ407, KDZ425, Ostoja Stanišić (KDZ427), Desimir Đukanović (KDZ434), Veljko Ivanović (KDZ479), Jevto Bogdanović (KDZ481), KDZ496, KDZ508, [REDACTED], Slobodan Stojković (KDZ521), Milenko Tomić (KDZ524), KDZ556, Hafiza Salihović (KDZ558), KDZ559, Semija Suljić (KDZ560), Mejra Mešanović (KDZ561), Mevlida Bektić (KDZ562), Behara Krdžić (KDZ563), Hanifa Hafizović (KDZ564), KDZ565, Razija Pašagić (KDZ566), Saliha Osmanović (KDZ567), KDZ568, Husein Delić (KDZ569), Šehra Ibišević (KDZ570), Alma Gabeljić (KDZ571), KDZ572, KDZ573, Rahima Malkić (KDZ574), Samila Salčinović (KDZ575), and Amer Malagić (KDZ577), pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. The Prosecution submits that the proposed evidence is relevant to Counts 2–8 of the Third Amended Indictment (“Indictment”).² It also submits that the proposed evidence has

¹ Motion, para. 1.

² Motion, paras. 2, 13.

probative value to the issues in this case, and that the testimony and statements “are consistent and corroborated by other evidence,” and, therefore, is reliable.³ 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,⁴ 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.”⁵ In addition, the Prosecution asserts that admission of this evidence through Rule 92 *bis* will substantially expedite these proceedings and not cause unfair prejudice to the Accused.⁶

3. The Prosecution states that 52 of the proposed witnesses have previously testified at this Tribunal in the cases of *Prosecutor v. Krstić*, *Prosecutor v. Blagojević and Jokić*, and *Prosecutor v. Popović et al.*, and that they were “subject to cross-examinations [*sic*] about events which are also subject to the current proceedings.”⁷ It also seeks to admit the witness statement of Alma Gabeljić, who has not testified at the Tribunal but has provided a witness statement which bears the required Rule 92 *bis*(B) attestation. Additionally, the Prosecution seeks the admission of the witness statements of 18 witnesses who have given statements to the Tuzla or Sarajevo Cantonal Courts, and whose statements have the required Rule 92 *bis*(B) attestations.⁸ Finally, the Prosecution seeks provisional admission of written statements for witnesses Desimir Đukanović, [REDACTED], Slobodan Stojković, and KDZ556. 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

4. 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 transcripts of prior testimony and written witness statements, the

³ Motion, paras. 2, 13–14.

⁴ Motion, paras. 2, 8, 10.

⁵ Motion, para. 24.

⁶ Motion, para. 2.

⁷ Motion, paras. 5, 23.

⁸ Motion, para. 6.

⁹ Motion, para. 7.

¹⁰ Motion, para. 25.

Prosecution seeks admission into evidence of “the documents accompanying the statements and/or transcripts of the testimony of 66 of the 75 witness”.¹¹

5. On 24 July 2009, the Prosecution filed a “Prosecution’s Submission on Withdrawal of Nine Witnesses Contained in the Prosecution’s Fifth Rule 92 *bis* Motion and One Witness Contained in the Prosecution’s Seventh Rule 92 *bis* Motion” (“Submission”). In the Submission, the Prosecution noted that “due to the Trial Chamber’s Decision on Third Prosecution Motion for Judicial Notice of Adjudicated Facts, the Prosecution considers that the testimony of [some] witnesses is largely supplanted by facts now judicially noticed.”¹² Accordingly, the Prosecution withdrew from this Motion witnesses KDZ045, KDZ071, KDZ117, KDZ155, KDZ396, KDZ559, KDZ565, KDZ572, and KDZ573, thus leaving the 66 witnesses who remain the subject of the Motion.

6. 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, and ordered him to respond to the Motion on or before 4 August 2009.¹³ 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.¹⁴ At the 23 July 2009 Status Conference, the Pre-trial Judge indicated to the Accused that 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.¹⁵ During the Pre-trial Conference held on 6 October 2009, the Pre-trial Judge informed the Accused that decisions on the Rule 92 *bis* motions would be issued in the coming few weeks, and added that, should the Chamber admit the evidence of a witness under Rule 92 *bis*, whose evidence the Accused would wish to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.¹⁶

¹¹ Motion, para. 26.

¹² Submission, para. 2.

¹³ 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 for Time, 8 July 2009, para. 18.

¹⁴ Omnibus Response to Rule 92 *bis* Motions, paras. 3, 6.

¹⁵ Status Conference, T. 370 (23 July 2009).

¹⁶ Pre-trial Conference, T. 489–490 (6 October 2009).

7. On 25 September 2009, the Accused filed a “Partial Response to Fifth Motion for Admission of Statements and Transcripts: Srebrenica Events” (“Partial Response”). In the Partial Response, the Accused noted that on 4 September 2009 his legal advisor had been able to interview Vicentius Egbers in the presence of representatives of the Prosecution.¹⁷ After the interview, the witness verified the accuracy of a supplemental information statement drawn up by the Accused, as a result of which the Accused agrees that Vicentius Egbers’ evidence should be admitted pursuant to Rule 92 *bis* along with the provisional admission of the supplemental information page, pending the certification required by Rule 92 *bis*(B).¹⁸ The Accused asserts, however, that if the supplement is not acceptable then Vicentius Egbers should be called for cross-examination so that the supplemental information can be elicited in open court.¹⁹ No further responses to the Motion as a whole, or to individual witnesses who are the subject of the Motion, have been filed by the Accused.

8. On 2 October 2009, the Prosecution sought leave to reply and filed its “Prosecution’s Reply to Karadžić’s Partial Response to Fifth Motion for Admission of Statements and Transcripts: Srebrenica Events” (“Reply”). The Chamber grants the Prosecution leave to reply. In the Reply, the Prosecution stated that they did not object to provisionally admitting the supplemental statement submitted by the Accused, pending its certification.²⁰ The Prosecution also noted that during the interview Vicentius Egbers reviewed his prior transcript and found an error that he wished to correct.²¹ The Prosecution indicated that, pursuant to an agreement between the parties, it would seek the admission of a “brief supplement” to Vicentius Egbers’ statement correcting the error, which will also need to be certified by the witness.²² At the time of this Decision, no such motion has been filed by the Prosecution.

9. 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 “Prosecution Submission Pursuant to Rule 73 *bis*(D)”, filed on 31 August 2009 and the “Prosecution Second Submission Pursuant to Rule 73 *bis*(D)”, filed on 18 September 2009, and ordered, pursuant to Rule 73 *bis*(D) of the Rules, that the Prosecution may not present evidence in respect of the crime sites and incidents

¹⁷ Partial Response, para. 5.

¹⁸ Partial Response, paras. 6–7, fn 5.

¹⁹ Partial Response, para. 7.

²⁰ Reply, para. 3.

²¹ Reply, para. 4.

²² Reply, para. 4, fn 3.

that it had identified.²³ The Chamber's decision had no effect on the status of the witnesses subject to the Motion.

II. Discussion

10. 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.²⁴

11. As a result of the Submission, the Trial Chamber will not consider the withdrawn witnesses or their associated exhibits. The evidence of each of the 66 remaining witnesses is summarised and examined below. Due to the large number of witnesses, the Chamber will forgo providing individual summaries for each witness in this Decision. Rather, the Chamber has grouped the witnesses into four categories based on its analysis of their proposed evidence, namely: (i) victims from the Srebrenica enclave; (ii) members of Army of the Republika Srpska ("VRS"), the Ministry of the Interior ("MUP"), or Bosnian Serb political and civilian institutions; (iii) members of DutchBat; and (iv) other witnesses.

A. Proposed Witness Summaries

i. Victims from the Srebrenica Enclave

12. 28 witnesses testified to or provided written statements about being victims as a result of the events in Srebrenica.

13. In July 1995, KDZ039, KDZ070, Ahmo Hasić, Mirsada Malagić, KDZ186, KDZ265, Hafiza Salihović, Semija Suljić, Mejra Mešanović, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, Saliha Osmanović, Šehra Ibišević, Rahima Malkić, and Samila Salčinović all went to the United Nations Protection Force ("UNPROFOR") base in Potočari after the shelling in Srebrenica in July 1995. KDZ039, KDZ070, and Ahmo Hasić are Muslim

²³ 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.

²⁴ Decision on Third Motion, paras. 4–11.

men who were separated from their families and bussed to various sites where, according to their testimony, many Muslim men were being killed. KDZ186, KDZ265, Semija Suljić, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, and Rahima Malkić are Muslim women who testified to or provided written statements about the male members of their families being separated from them at the Potočari compound. Mirsada Malagić, Mejra Mešanović, Saliha Osmanović, Šehra Ibišević, and Samila Salčinović all witnessed the separation of Muslim men and women. Hafiza Salihović's witness statement is limited to her account of her husband and sons fleeing through the woods; she has a death certificate for her husband, and her sons are still considered missing.

14. Eight of the victim witnesses, namely, KDZ063, KDZ065, KDZ066, KDZ069, Mevludin Orić, KDZ333, KDZ425, and KDZ568, are Muslim men who fled Srebrenica as part of the column of Muslim men and boys that attempted to reach Tuzla. Of these witnesses, KDZ063, KDZ065, KDZ069, Mevludin Orić, and KDZ333 were captured by Serb forces, and taken to and detained at Kravica, the Jadar River, Petkovci, Zvornik, and the Branjevo Military Farm, respectively. While at those locations, KDZ063, KDZ065, KDZ069, Mevludin Orić, and KDZ333 witnessed VRS soldiers executing Muslim men. However, they all managed to escape to the "free territory". KDZ065 also testified in some detail about the shelling of Srebrenica, which commenced on 9 June 1995. KDZ066 also testified that near Cerska he saw three buses, which were full of Muslim men, turning down a road, followed by an excavator, and then heard gunshots. Later, he found what he believed to be a mass grave in the same area. KDZ425 recounts being detained by members of the VRS but managing to escape and reach Tuzla. KDZ568 was able to reach Tuzla without being captured but, during the journey, he lost several family members, who he now presumes are dead.

15. Husein Delić and Amer Malagić's family members were taken by Serbs from the Srebrenica enclave in July 1995 and subsequently went missing. Alma Gabeljić, who was a resident of Srebrenica, recounts in her statement that her house was shelled in May 1995, and that she received injuries as a result of the shelling.

ii. Members of the VRS, MUP, or Bosnian Serb Political and Civilian Institutions

16. 31 witnesses testified about, or provided written statements in connection with, their roles and activities within the VRS, MUP, or Bosnian Serb political and civilian institutions.

17. Dražen Erdemović, Srećko Aćimović, KDZ122, Nebojša Jeremić, Cvijetin Ristanović, Damjan Lazarević, Milorad Birčaković, Rajko Babić, Mitar Lazarević, Dragan Jović, Tanacko Tanić, KDZ407, Ostoja Stanišić, Veljko Ivanović, Jevto Bogdanović, and Milenko Tomić all testified about the detention and execution of Muslim men during July 1995 in one or a number of different locations. Srećko Aćimović, Damjan Lazarević, Milorad Birčaković, Mitar Lazarević, Dragan Jović, KDZ407, and Veljko Ivanović, testified about executions that took place in or near Ročević and Kozluk. Cvijetin Ristanović, Damjan Lazarević and Milenko Tomić testified about executions near and around Branjevo Farm. Dražen Erdemović testified about the executions at Branjevo Farm and the cultural centre in Pilica. Nebojša Jeremić, Milorad Birčaković, Rajko Babić, Jevto Bogdanović, and Milenko Tomić testified about executions in and around Pilica. KDZ122 and Ostoja Stanišić testified about executions in Zvornik and Petkovci, respectively, and Nebojša Jeremić, Cvijetin Ristanović, Damjan Lazarević, Milorad Birčaković, Tanacko Tanić, and KDZ407 testified about executions in or around Orahovac.

18. KDZ107, Mile Janjić, Milenko Pepić, KDZ329, Zlatan Čelanović, and Desimir Đukanović's evidence recalls events that occurred in and around Bratunac during July 1995, and relating to the detention and execution of Muslim men. Mile Janjić discussed the separation of Muslim men in Bratunac. Milenko Pepić discussed the capture of Bosnian Muslim men on the premise that UNPROFOR was there and would protect them; he was stationed on a bridge near Kravica where he was instructed to stop buses carrying Muslim women so that they could be used to transport Muslim men to a warehouse in Kravica. Zlatan Čelanović testified about how he was ordered to interrogate Muslim prisoners in Bratunac and to look for listed war criminals. KDZ107 and KDZ329 discussed meetings with senior members of the VRS and the acquisition of excavation machines to dig mass graves. Desimir Đukanović's statements recalled his activity at the Vuk Karadžić school where he was assigned to collect and bury the dead from the school.

19. The remaining witnesses in this group are Danko Gojković, Mile Simanić, KDZ285, KDZ351, and Predrag Drinić. In his testimony, Danko Gojković primarily authenticated Drina Corps and Main Staff communications, and addressed technical aspects of Drina Corps communications. The testimony of Mile Simanić largely focused on a daily combat report, which he allegedly signed, and which stated, "1,000 to 1,500 enemy civilians and soldiers were arrested killed" near Konjević Polje. He also testified about the structure of a unit of the Drina

Corps. KDZ285 testified about an order given to him to drive members of a special unit on a mission. KDZ351, who was tasked with providing logistic support to a VRS unit, testified to issuing supplies for a mission on 15 and 16 July 1995, although he did not know what the mission entailed. Predrag Drinić testified about a discussion between several representative of Bosnian Serb institutions about an order from the Accused to open an investigation into possible burial locations of victims from Srebrenica, and that there were no prosecutions by the VRS for crimes committed in Srebrenica during 1995.

iii. Members of DutchBat

20. Five witnesses were members of DutchBat. Four of them, KDZ229, Vicentius Egbers, KDZ284, and KDZ360, have testified in prior proceedings, and one, KDZ556, provided a witness statement.

21. The five DutchBat members were all stationed in and around Srebrenica and Potočari. Each of the witnesses testified to numerous issues, and most particularly: the restriction of humanitarian aid convoys by the VRS; attacks from Army of Bosnia and Herzegovina (“ABiH”) soldiers on areas inside and outside the enclave; the shelling and sniping of civilian homes by the VRS; the separation of Muslim men and women at the evacuation points; the humanitarian crisis created during the first half of July; the theft of DutchBat supplies and weapons by members of the VRS; the meeting and negotiations that took place at Hotel Fontana; the execution of Muslim men; and the interrogations and possible torture of Muslim men at what was called the “White House”.

iv. Other Witnesses

22. The remaining witnesses in the Motion are KDZ374, Zoran Petrović-Piroćanac, KDZ496, KDZ508, [REDACTED], and Slobodan Stojković.

23. KDZ374 was a police officer in Han Pijesak. Before the war, KDZ374 knew a man named Himzo Mujić who worked for him. In this testimony, KDZ374 identified Himzo Mujić’s name in an intercept dated 24 July 1995.

24. Zoran Petrović-Piroćanac was assigned to Ljubomir Borovčanin during the Srebrenica operation. During that time, he filmed the documentary, “Operation Srebrenica”; while

testifying before the Tribunal, he was specifically questioned about one aspect of the film, a shot of the Kravica warehouse with a pile of dead bodies in front of it.

25. KDZ496 was a 15 year-old boy who testified about witnessing a mass execution at Kozluk.

26. KDZ508 testified about the reconnaissance and intercept process, and in particular about how and where the tapes and notebooks containing intercepts of VRS communications were kept, and at what time and when they were handed over to members of Prosecution. KDZ508 further helped with identifying several of the tapes containing the intercepted material.

27. [REDACTED].

B. Rule 89(C)

28. As stated in the Decision on Third Motion, “[a]ny evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admission of evidence, as set out in Rule 89(C) and (D) of the Rules, namely, the evidence must be relevant and have probative value, and its probative value must not be substantially outweighed by the need to ensure a fair trial. It is for the Prosecution to demonstrate the relevance and probative value of the evidence of which it seeks admission.”²⁵

29. In relation to KDZ374, the Trial Chamber has reviewed both the witness’s transcript from the *Popović et al.* case and his ICTY witness statement and is not satisfied that his proposed evidence is relevant to the crimes alleged in the Indictment. Additionally, in the Motion, the Prosecution has not demonstrated the relevance that this evidence has to its case. Accordingly, the Trial Chamber will deny the Motion in relation to KDZ374.

C. Uncontested Witness

30. The Accused does not object to the admission into evidence of Vicentius Egbers’ prior testimony and has tendered an additional witness statement for provisional admission, subject to him obtaining the required Rule 92 *bis*(B) attestation. The Prosecution does not object to the admission into evidence of this additional statement.

²⁵ Decision on Third Motion, para. 4.

31. The Chamber is satisfied of the relevance and probative value of Vicentius Egbers' proposed evidence. Furthermore, it notes that neither party objects to the admission into evidence of this witness's evidence, including the additional witness statement submitted by the Accused. Therefore, the Trial Chamber will grant the Motion with respect to Vicentius Egbers' prior testimony and will grant the Accused's request for provisional admission into evidence of the additional statement, subject to the Accused obtaining the required Rule 92 *bis*(B) attestation.²⁶ The admissibility of the witness's associated exhibits is examined below.

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

32. The evidence of the remaining 64 witnesses includes evidence concerning the victims who were in Srebrenica, the activities of members of the VRS, MUP, and Bosnian Serb political and civilian institutions, and the activities of DutchBat members in and around the Srebrenica enclave in July 1995. The Chamber considers that the proposed evidence is relevant as it relates to a number of the charges against the Accused, namely, genocide (Count 2), persecutions (Count 3), extermination and murder (Counts 4, 5, and 6), and deportation and inhumane acts (forcible transfer) (Counts 7 and 8).

33. The Chamber notes that the transcripts of previous testimony of which the Prosecution seeks admission into evidence are from the *Krstić, Blagojević and Jokić*, and *Popović et al.* cases, and that the witness statements that were given to the Prosecution, in most of cases, have met the requirements under Rule 92 *bis*(B). The Chamber is thus satisfied of the probative value of the transcripts and witness statements, noting that where the required Rule 92 *bis*(B) attestation has not yet been obtained for a witness statement, that statement will only be admitted provisionally.

34. With respect to the admissibility of the proposed written evidence pursuant to Rule 92 *bis*, the Chamber is satisfied, on the basis of its thorough review of all the proposed evidence, that it is largely crime-base evidence or concerns the impact of crimes upon the victims. It does not pertain to the acts and conduct of the Accused as charged in the Indictment. Furthermore, 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

²⁶ The Trial Chamber also reminds the Prosecution that they have yet to file any Motion correcting Vicentius Egbers' evidence as noted in their Reply.

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.

35. The Chamber has further considered the factors that weigh in favour of admitting the evidence through Rule 92 *bis*. With regard to the factors that have most bearing on the issues raised by the Motion, first, the Chamber is satisfied that the evidence of the remaining 64 witnesses is crime-base evidence, as the witnesses recall their experiences, including their roles in, and what they witnessed, of events that took place in and around Srebrenica in July 1995. Other witnesses describe the impact of crimes committed against them.

36. Secondly, the Chamber reviewed the cumulateness of the witnesses' evidence. The Chamber notes that the Prosecution made no attempt in its Motion to demonstrate for each witness how that witness's evidence was cumulative of the evidence of another witness save generally listing other witnesses. The Prosecution seems to argue that all the witnesses testifying about events in and around Srebrenica in July 1995 present cumulative evidence. Applying the Rule 92 *bis* cumulateness test in such a manner would mean that most if not all witnesses whose evidence the Prosecution seeks admission in the Motion would have one factor immediately weighing in their favour. That would seem to make this factor redundant for the purposes of assessment under Rule 92 *bis*, which the Chamber considers cannot have been intended.

37. In undertaking an analysis of the cumulative nature of the evidence of the witnesses who are the subject of the Motion, the Chamber has kept this in mind. 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. As set out below, the Chamber is satisfied that the witnesses' evidence is cumulative. It 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) KDZ039's evidence is cumulative of the evidence of Cvijetin Ristanović, Damjan Lazarević, Milorad Birčaković, Tanacko Tanić, and KDZ407. It is also cumulative to another witness who is not subject to the Motion, KDZ064. KDZ063's evidence is cumulative of the evidence of KDZ107, Milenko Pepić, and Zoran Petrović-Piroćanac, and to the evidence of witnesses who are not subject to the Motion, namely, KDZ480

and KDZ510. Mevludin Orić's evidence is cumulative of the evidence of Tanacko Tanić, KDZ329, Zlatan Čelanović, and KDZ407, and of the evidence of witnesses who are not subject to the Motion, namely, KDZ064, KDZ336, KDZ341, and KDZ480. Additionally, Ahmo Hasić and KDZ333's evidence is cumulative of the evidence of Dražen Erdemović, Cvijetin Ristanović, Damjan Lazarević, Rajko Babić, and KDZ351.

- (ii) KDZ122 and Rajko Babić's evidence about the execution of Muslim men is also cumulative of the evidence of Srećko Aćimović, Nebojša Jeremić, Cvijetin Ristanović, Milorad Birčaković, Mitar Lazarević, Dragan Jović, Tanacko Tanić, KDZ407, Ostoja Stanišić, Veljko Ivanović, Jevto Bogdanović, and Milenko Tomić. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely KDZ218 and KDZ486;
- (iii) Mirsada Malagić, KDZ186, KDZ265, Hafiza Salihović, Semija Suljić, Mejra Mešanović, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, Saliha Osmanović, KDZ568, Šehra Ibišević, Alma Gabeljić, Husein Delić, Amer Malagić, and Rahima Malkić's evidence, in which they described themselves or their relatives fleeing the Srebrenica enclave and the psychological effects of their experiences on them, is cumulative, as well as being cumulative of the evidence of KDZ039, KDZ229, Vicentius Egbers, KDZ265, KDZ284, and KDZ360. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely, KDZ171 and KDZ207;
- (iv) The evidence of Cvijetin Ristanović, Damjan Lazarević, and Milorad Birčaković about executions at Orahovac is cumulative, as well as being cumulative of the evidence of Mevludin Orić, Tanacko Tanić, and KDZ407. It is also cumulative of the evidence of a witness who is not the subject of this Motion, that is, KDZ064.
- (v) Srećko Aćimović, Mitar Lazarević, Dragan Jović, KDZ407, Veljko Ivanović, and KDZ496's evidence about executions in Ročević area is cumulative;
- (vi) Dražen Erdemović's evidence about the massacre at Branjevo Farm is cumulative of the evidence of Cvijetin Ristanović and KDZ333. KDZ351's previous testimony

about participating in the 10th Sabotage unit is cumulative of the evidence of Dražen Erdemović;

- (vii) With regards to witnesses that provided evidence about events in and around Bratunac, KDZ107's evidence concerning digging burial sites is cumulative of the evidence of Mevludin Orić, Milenko Pepić, KDZ329, and Zoran Petrović-Piroćanac. KDZ107's evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely, KDZ217, KDZ480, and KDZ510;
- (viii) Mile Janjić's evidence relating to the forced separation of Muslim men and women in Potočari is cumulative of the evidence of Vicentius Egbers, KDZ284, KDZ360, Semija Suljić, Behara Krdžić, Hanifa Hafizović, KDZ565, Razija Pašagić, Šehra Ibišević, and Rahima Malkić;
- (ix) Milenko Pepić's evidence about the forcible transfer and execution of Muslims near the Kravica warehouse is cumulative of the evidence of KDZ063 and Zoran Petrović-Piroćanac. Milenko Pepić's evidence is also cumulative of the evidence of a witness not subject to this Motion, that is, KDZ510;
- (x) Zoran Petrović-Piroćanac's evidence concerning footage filmed around Potočari and during events connected to the Kravica warehouse executions is cumulative of the evidence of KDZ063, KDZ107, and Milenko Pepić. Zoran Petrović-Piroćanac's evidence is also cumulative of the evidence of witnesses not subject to this Motion, namely, KDZ217 and KDZ510;
- (xi) KDZ329's evidence concerning the transportation of Muslim men and women from Bratunac is cumulative of the evidence of KDZ063, Mevludin Orić, and Milenko Pepić. It is also cumulative of the evidence of a witness not subject to this Motion, KDZ341;
- (xii) Zlatan Čelanović's evidence relating to the forcible transfer and execution of Muslims in Bratunac is cumulative of the evidence of KDZ107. Desimir Đukanović's evidence about the collecting, loading, and burying bodies from around Bratunac is cumulative of the evidence of KDZ107, Mevludin Orić, and KDZ329. It is also cumulative of the

evidence of witnesses not subject to the Motion, namely, KDZ217, KDZ341, and KDZ480;

(xiii) [REDACTED];

(xiv) KDZ285's previous testimony concerning driving soldiers to and from Bišina is cumulative of the evidence of a witness who is not the subject of the Motion, KDZ391, who will testify about taking prisoners to Bišina to be executed;

(xv) Predrag Drinić's evidence about military prosecutions of war crimes is cumulative of two documents with Rule 65 *ter* numbers 01895 ("Order 01-489/96 from Radovan Karadžić to Republika Srpska General Staff and Various Ministries Regarding Events in Srebrenica") and 01897 ("Response from Republika Srpska MUP to the Investigation Ordered by Radovan Karadžić on 1 April 1996 Regarding Srebrenica 1995");

(xvi) The evidence of KDZ229, Vicentius Egbers, KDZ284, and KDZ556, who were members of DutchBat and who testified about similar events that took place in Srebrenica in July 1995, is cumulative of the evidence of KDZ186. Their evidence is also cumulative of the evidence of witnesses who are not subject to the Motion, namely, KDZ171, KDZ343, and KDZ546;

(xvii) In respect of KDZ360, who was a member of DutchBat, the Prosecution asserts that his previous testimony is cumulative of the evidence of KDZ117, KDZ155, and KDZ217. Following the Prosecution's Rule 73 *bis* submission, both KDZ117 and KDZ155 are now "reserve" witnesses and, therefore, the Chamber will not consider the possible cumulative nature of their evidence. Furthermore, according to the Prosecution's Rule 65 *ter* summaries, KDZ217 will testify about exhumations of mass graves in the Srebrenica enclave. The Chamber finds that KDZ360's evidence is not cumulative of KDZ217's evidence. However, the Trial Chamber is satisfied that KDZ360's evidence is cumulative of that of other DutchBat witnesses;

(xviii) The Prosecution asserts that Mile Simanić's previous testimony about a daily combat report issued by his battalion command, which bears his signature, is cumulative of the evidence of KDZ226. On the basis of KDZ226's Rule 65 *ter* summary, and in the

absence of any explanation as to how this evidence is cumulative from the Prosecution, the Trial Chamber is not satisfied that this evidence is cumulative;

- (xix) The Prosecution asserts that Danko Gojković's evidence, in which he authenticated some military correspondence, is cumulative of the evidence of KDZ122 and KDZ226 both of who, according to the Prosecution, "describe the process of receiving and transmitting communications". The Trial Chamber has reviewed KDZ122's proposed evidence and KDZ226's Rule 65 *ter* summary, and is not convinced that the evidence is cumulative of Danko Gojković's evidence,
- (xx) The remaining witness, KDZ508, testified about electronic reconnaissance and intercepts received from the ABiH. His evidence is cumulative of the evidence of two witnesses who are not the subject of the Motion, KDZ126 and KDZ507.

38. With regards to factors that weigh against admitting the proposed evidence pursuant to Rule 92 *bis*, the Chamber notes that Dražen Erdemović, KDZ039, KDZ063, KDZ065, KDZ122, Mevludin Orić, Mile Simanić, Mirsada Malagić, KDZ186, KDZ229, KDZ284, Mile Janjić, Milenko Pepić, KDZ329, KDZ333, KDZ351, KDZ360, Predrag Drinić, Zoran Petrović-Piroćanac, and KDZ556 testified about the acts and conduct of Ratko Mladić, who is named in the Indictment as a member of the JCE charged in respect of the Srebrenica events.²⁷ Some of these witnesses testified that Ratko Mladić was at the scene overseeing the separation of men and women in Potočari, and the forcible transfers. Some of these witnesses testified about orders given by Ratko Mladić in relation to the execution of Muslim men, and his instructions at the Hotel Fontana meetings. Others testified about Ratko Mladić speaking to the detained Muslim men before they were to be exchanged or executed.

39. Similarly, the Trial Chamber notes that several witness provide evidence describing the activities of a number of people who held various positions in the Bosnian Serb political and military organs, namely: (i) Srećko Aćimović testified about orders he received from Dragan Nikolić to deploy his men for an execution assignment and Vujadin Popović's presence at the execution site at Ročević; (ii) KDZ107 testified about orders from Ljubiša Beara to find a grave site for the executed Muslims and the presence of Miroslav Deronjić when the orders were given; (iii) KDZ122 testified about working directly under Vinko Pandurević, about a

conversation where Vujadin Popović told Drago Nikolić about prisoners being transported to Zvornik to be executed, about a conversation with Dragan Jokić about the difficulties they were having executing the Muslims, about the command and communication structures of the VRS and VRS attacks on Srebrenica, and about the column of Muslim men and boys fleeing Srebrenica; (iv) Milorad Birčaković testified about Milorad Trbić, Drago Nikolić, Vujadin Popović, and Ljubiša Beara being present at the Orahovac school while prisoners were detained there; (v) KDZ229 testified about the participants at the Hotel Fontana meetings, that is, Ratko Mladić, Radislav Krstić, Radislav Janković, Momir Nikolić, and Milenko Živanović; (vi) Tanacko Tanić testified about the presence of Drago Nikolić and Vujadin Popović at the Orahovac school; (vii) KDZ284 testified about Momir Nikolić and Gojko Janković's presence in Srebrenica in July 1995; (viii) KDZ285 testified about an order allegedly approved by Vujadin Popović to drive soldiers on a mission to carry out executions; (ix) Mile Janjić testified about orders from Momir Nikolić and Gojko Janković, and about Radislav Krstić's presence in Bratunac, where he oversaw the separation of Muslim men and women; (x) KDZ329 testified about Miroslav Deronjić's knowledge of the Muslims being bussed through Bratunac, about a conversation with Dragan Nikolić where KDZ329 was told of the executions of Muslims, and about a meeting with Ljubiša Beara where KDZ329 was requested to acquire excavating machines; (xi) KDZ360 testified about interactions he had with Momir Nikolić during the forcible transfer of Muslims; and (xii) Zlatan Čelanović testified about orders he had from Ljubiša Beara to identify certain Muslims and about walking around Bratunac with Ljubiša Beara and seeing detainees.

40. Having considered the evidence described in the previous paragraph, the Chamber is satisfied that the evidence of the witnesses neither indicates that the Accused participated in the alleged JCE, nor that he shared the intent of Ratko Mladić or any of the other individuals named above for committing the acts as described by the witnesses. Thus the Chamber does not consider that the witnesses' testimony that relates to the actions of these individuals alone is sufficient to render the proposed evidence inadmissible. The Trial Chamber notes that there are no other factors that weigh against the admission of the statements into evidence pursuant to Rule 92 *bis*.

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

²⁷ Indictment, paras. 6–8, 11, 16, 21 and 26; Prosecution's Submission Pursuant to Rule 65 *ter*(E)(i)-(iii), 18 May 2009, para. 227.

41. The Chamber once again recalls that, with regard to written evidence that is admissible pursuant to Rule 92 *bis*, the Chamber has discretion to require witnesses to appear for cross-examination; if it does so decide, the provisions of Rule 92 *ter* shall apply. In making this assessment, the Chamber has taken into account the criteria pertaining to Rule 92 *bis*(C) established in the case-law of the Tribunal, and described in detail in the Decision on Third Motion.²⁸ 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.

42. First, the Chamber notes that KDZ285, [REDACTED], Milenko Tomić, KDZ556, and Alma Gabeljić have never been cross-examined. Furthermore, during KDZ265’s testimony she was only questioned by the Trial Chamber; Desimir Đukanović’s prior testimony is from the Bosnia and Herzegovina State Court; and Slobodan Stojković’s testimony is from the Belgrade District Court. Additionally, the Trial Chamber finds that Dražen Erdemović, KDZ069, and Mirsada Malagić faced limited cross-examination; Dražen Erdemović was not cross-examined on the mass executions that he had testified to during direct examination; KDZ069 was similarly not cross-examined about the mass execution at the Petkovći dam; and Mirsada Malagić was not cross-examined extensively about her departure from Srebrenica. However, the Chamber does not consider that this, *per se*, necessitates the witnesses to appear for cross-examination.

43. Secondly, the Trial Chamber is satisfied that none of the evidence bears directly upon the Accused’s responsibility as alleged in the Indictment or represents a “critical” or “pivotal” element of the Prosecution’s case. However, Dražen Erdemović, KDZ039, KDZ063, KDZ065, KDZ122, Mevludin Orić, Mile Simanić, Mirsada Malagić, KDZ186, KDZ229, KDZ284, Mile Janjić, Milenko Pepić, KDZ329, KDZ333, KDZ351, KDZ360, Predrag Drinić, Zoran Petrović-Piroćanac, and KDZ556 do testify to the acts and conduct of Ratko Mladić, who is named as a member of the Srebrenica JCE. Additionally, Srećko Aćimović, KDZ107, KDZ122, Milorad Birčaković, KDZ229, Tanacko Tanić, KDZ284, KDZ285, Mile Janjić, KDZ329, KDZ360, and Zlatan Čelanović testify about the acts and conduct of other possible members of the JCE.

44. While witnesses testified about the actions of Ratko Mladić and other members of the Srebrenica JCE, the Chamber considers that these witnesses, Dražen Erdemović, KDZ063,

²⁸ Decision on Third Motion, para. 10.

KDZ065, Srećko Aćimović, KDZ107, Mevludin Orić, Mile Simanić, Mirsada Malagić, KDZ186, Milorad Birčaković, Tanacko Tanić, KDZ285, Mile Janjić, Milenko Pepić, Predrag Drinić, Zoran Petrović-Piroćanac, or Zlatan Čelanović, either do not testify to any acts or conduct of members of the Srebrenica JCE for which the Accused could be held responsible under the Indictment, or have been sufficiently cross-examined in prior cases to not warrant calling them for cross-examination in the present case.

45. Meanwhile, KDZ039, KDZ122, KDZ229, KDZ284, KDZ329, KDZ333, KDZ351, KDZ360, and KDZ556 all testified about acts and conduct of Ratko Mladić or other members of the Srebrenica JCE, for who the Accused is being charged with responsibility. KDZ039 testified about Ratko Mladić's presence and command during the forceful separation of men and women, and about his presence at a warehouse in Bratunac where Bosnian Muslims were being held before being taken to be executed. KDZ122 testified about Ljubiša Beara and Vujadin Popović bringing a large number of prisoners to Zvornik to be executed and that the orders came from Ratko Mladić. KDZ229 testified about Ratko Mladić's actions during the meetings held at the Hotel Fontana, his presence and command in Potočari during the separation of men and women, and his interactions with DutchBat soldiers. KDZ284 testified about Ratko Mladić filming a propaganda film at a factory in Potočari and threatening to kill KDZ284's Muslim interpreter. KDZ329's position meant that he had high-level contacts with political leaders, and he testified about Ratko Mladić's actions during the meetings held at the Hotel Fontana and the interactions he had with both Ratko Mladić and Miroslav Deronjić, in which it was discussed what to do with the Muslims from Srebrenica. KDZ333 testified about a night that he was detained at a stadium in Nova Kasaba when Ratko Mladić came and gave a speech to all the prisoners and while there a Serb soldier killed a Muslim prisoner as Ratko Mladić stood by and said nothing. KDZ351 testified about Ratko Mladić being in Srebrenica in July 1995 and giving KDZ351 and other Serb soldiers permission to take whatever they wanted. KDZ360 testified about Ratko Mladić and Momir Nikolić's presence in Potočari during the separation and forcible transfer of Muslims. KDZ360 also testified about Ratko Mladić and Momir Nikolić's refusal to take actions against Serb soldiers for using human shields and looting DutchBat operating posts. KDZ556 testified about being detained at his operating post while Ratko Mladić recorded a propaganda film and other Serb soldiers stole the DutchBat soldiers' equipment. As noted above, KDZ556 has also never been cross-examined. The Trial Chamber considers that the actions described in these witnesses' evidence about Ratko Mladić and other possible members

of the Srebrenica JCE is sufficiently proximate to the Accused to require the witnesses to appear for cross-examination. On the basis of the above factors, the Trial Chamber will exercise its discretion to call these witnesses for cross-examination.

46. The written evidence of Dražen Erdemović, KDZ063, KDZ065, KDZ066, KDZ069, KDZ070, Srećko Aćimović, KDZ107, Danko Gojković, Nebojša Jeremić, Mevludin Orić, Cvijetin Ristanović, Damjan Lazarević, Ahmo Hasić, Mile Simanić, Mirsada Malagić, KDZ186, Milorad Birčaković, Rajko Babić, Mitar Lazarević, Dragan Jović, KDZ265, Tanacko Tanić, KDZ285, Mile Janjić, Milenko Pepić, Predrag Drinić, Zoran Petrović-Piroćanac, Zlatan Čelanović, KDZ407, KDZ425, Ostoja Stanišić, Desimir Đukanović, Veljko Ivanović, Jevto Bogdanović, KDZ496, KDZ508, [REDACTED], Slobodan Stojković, Milenko Tomić, Hafiza Salihović, Semija Suljić, Mejra Mešanović, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, Saliha Osmanović, KDZ568, Husein Delić, Šehra Ibišević, Alma Gabeljić, Rahima Malkić, Samila Salčinović, and Amer Malagić 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*.

F. Rule 92 *bis*(B) Requirement

47. The Chamber notes that with regard to 38 of the witnesses whose evidence is admitted, the Prosecution seeks the admission into evidence of transcripts of previous testimony, thus Rule 92 *bis*(B) is not applicable to them. Out of the remaining witnesses, Desimir Đukanović, [REDACTED], and Slobodan Stojković, the Prosecution seeks the provisional admission of their written statements. Therefore, the Trial Chamber will provisionally admit Desimir Đukanović, [REDACTED], and Slobodan Stojković’s written statements until the Prosecution obtains the required attestation in compliance with Rule 92 *bis*(B) of the Rules.

G. Associated Exhibits

48. The Trial Chamber need only evaluate the associated exhibits, if any, for the witnesses whose written evidence the Chamber has admitted as listed in paragraph 46 above. In total, the Prosecution requests the admission of 310 associated exhibits for these witnesses.

49. 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.²⁹

50. As a preliminary matter, the Chamber notes that the transcripts of prior testimony with Rule 65 *ter* numbers 03248, 03253, 03255, 03259,³⁰ 03301, 03308, and 03337, have been tendered by the Prosecution both as the written evidence of witnesses and as associated exhibits. The Chamber has determined above that these transcripts will be admitted as the witnesses' written evidence, and, therefore, will not consider their admission into evidence as associated exhibits.

51. For Cvijetin Ristanović, it seems that the Prosecution has requested the admission into evidence of his testimony from the *Popović et al.* case as his written evidence but his testimony from the *Blagojević* case as an associated exhibit (Rule 65 *ter* number 03285). There are two problems the Chamber encountered with this witness. First, the transcript from *Blagojević* listed with Rule 65 *ter* number 03285 is not uploaded in ecourt, nor was it provided along with the Motion to the Chamber by the Prosecution. Secondly, most of the other associated exhibits for Cvijetin Ristanović, as listed in Appendix B of the Motion, are not discussed in his *Popović et al.* testimony. The Trial Chamber will accordingly deny without prejudice the associated exhibits with Rule 65 *ter* numbers 02159, 02160, 03809, 02158, 03287, 03177, 03180, 03285, and 03286 until the Prosecution uploads the correct exhibit under Rule 65 *ter* number 03285, and can clarify whether the *Blagojević* testimony should be evaluated as written evidence or as an associated exhibit. If it is the latter, the Prosecution should identify the correct exhibit numbers in the *Blagojević* transcript to enable the Chamber to properly evaluate the associated exhibits.

52. In relation to the exhibits with Rule 65 *ter* numbers 02161 and 02163 the Chamber notes that Cvijetin Ristanović discussed these two exhibits during his cross-examination in the *Popović et al.* case and considers that they form an inseparable and indispensable part of his testimony and that failure to admit them would make said testimony and written statements incomprehensible or of lesser probative value. In relation to the exhibit with Rule 65 *ter* number 02162, the Chamber notes that the exhibit on ecourt is a one-page vehicle record, and yet the

²⁹ Decision on Third Motion, para. 11.

³⁰ The Prosecution has requested this transcript as 03259 (unredacted) and 03260 (redacted).

witness was questioned about a two-page record. Thus, this exhibit will be denied without prejudice until the Prosecution uploads both pages discussed during by the witness, and reapplies for its admission.

53. Additionally, in relation to Hafiza Salihović, Semija Suljić, Mejra Mešanović, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, Saliha Osmanović, KDZ568, Husein Delić, Šehra Ibišević, Alma Gabeljić, Rahima Malkić, Samila Salčinović, and Amer Malagić the Prosecution has only listed as their associated exhibits the title “92 *bis* package”. The “92 *bis* package” that was provided by the Prosecution to the Chamber for each witness includes the statements to the Sarajevo or Tuzla Cantonal Court, the ICTY witness statements, and the photographs accompanying the statements the witness statement. Since the Trial Chamber is admitting these witnesses’ “92 *bis* packages” into evidence there is no need to admit them again as associated exhibits. Therefore, the associated exhibits with Rule 65 *ter* numbers 13874, 04187, 04179, 04190, 04182, 04175, 04188, 04173, 04186, 04176, 04185, 04174, and 04178 will be denied.

54. The Chamber notes that the proposed associated exhibits listed for the following witnesses are records, photographs, maps, or sketches that were shown to the witnesses during their testimony in prior cases:

- Dražen Erdemović (Rule 65 *ter* number 03078, 03082);
- KDZ063 (Rule 65 *ter* number 02748);
- KDZ065 (Rule 65 *ter* number 02799,³¹ 03087);
- KDZ107 (Rule 65 *ter* number 02739);
- Mevludin Orić (Rule 65 *ter* number 03192);
- Damjan Lazarević (Rule 65 *ter* number 02882, 02972);
- KDZ186 (Rule 65 *ter* number 02700);
- Milorad Birčaković (Rule 65 *ter* number 02878);
- Vicentius Egbers (Rule 65 *ter* numbers 03065, 03207);
- Milenko Pepić (Rule 65 *ter* numbers 02748, 03207);
- KDZ425 (Rule 65 *ter* numbers 02766, 02767);
- KDZ508 (Rule 65 *ter* number 02655);
- Milenko Tomić (Rule 65 *ter* number 02156).

55. While providing their testimony, the witnesses marked these associated exhibits, and the Prosecution also seeks the admission into evidence of the marked versions of the exhibits. The

³¹ The Prosecution requested the admission of this associated exhibit twice under KDZ065. The Chamber will deny its admission into evidence.

Chamber considers that the testimony of the witnesses is comprehensible without the original versions of the exhibits, and that the admission into evidence of both the unmarked and the marked-up versions of the exhibits is unnecessary. Therefore, the unmarked exhibits will not be admitted into evidence and the marked versions will be assessed below.

56. The Prosecution has tendered the pseudonym sheets for witnesses KDZ063 (Rule 65 *ter* number 03400), KDZ065 (Rule 65 *ter* number 03302), KDZ069 (Rule 65 *ter* number 03307), KDZ070 (Rule 65 *ter* number 03309), KDZ107 (Rule 65 *ter* number 03480), KDZ186 (Rule 65 *ter* number 03314), KDZ285 (Rule 65 *ter* number 14077), KDZ407 (Rule 65 *ter* number 03407), KDZ425 (Rule 65 *ter* number 03313), KDZ496 (Rule 65 *ter* number 14185), and KDZ508 (Rule 65 *ter* number 03338), which were admitted in previous cases where the witnesses had protective measures. The Chamber considers that the 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 will be admitted into evidence under seal.

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

- (i) Stills from videos related to testimony of Dražen Erdemović, KDZ063, Mevludin Orić, Vicentius Egbers, Milenko Pepić, Zoran Petrović-Piroćanac, and KDZ425: Rule 65 *ter* numbers 02844, 03133, 03134, 03136, 03137, 03138, 03140, 03141, 03142, 03143, 03144, 03931, 13594,³² 13596,³³ 14091, 14095, 15791, and 21196;
- (ii) Photographs related to testimony of Dražen Erdemović, KDZ063, KDZ065, KDZ066, KDZ069, KDZ070, KDZ107, Damjan Lazarević, KDZ186, Milorad Birčaković, Vicentius Egbers, Mile Janjić, KDZ407, KDZ425, Ostoja Stanišić, Jevto Bogdanović, and [REDACTED]: Rule 65 *ter* numbers 02749, 02756, 02762,³⁴ 02800, 02822, 02866, 02904, 02905, 02906, 02912, 02914, 02940, 02941, 02942,

³² The Trial Chamber notes that the Prosecution has listed two Rule 65 *ter* numbers for this exhibit (13594 and 14068). In court both numbers show the same photograph. For the purpose of this decision, the Trial Chamber will only refer to Rule 65 *ter* number 13594.

³³ The Trial Chamber notes that the Prosecution has listed two Rule 65 *ter* numbers for this exhibit (13596 and 14067). In court both numbers show the same photograph. For the purpose of this decision, the Trial Chamber will only refer to Rule 65 *ter* number 13596.

³⁴ The Prosecution requested the admission of this associated exhibit in relation to both KDZ063 and KDZ425.

03070, 03071, 03073, 03081, 03098, 03099, 03178, 03179, 03303, 03311,³⁵ 03317, 03766, 03777, 14055, 14057, 14066, 14073, 14082, 14084, 14090, 14097, 14098, 14101, 14110,³⁶ 14121, 14162, 14163, 14209, 14211, 14212, 14246, 14691, 14699, 14701, 14702, and 14904;

- (iii) Sketches related to testimony of KDZ070, Mevludin Orić, and Milenko Tomić: Rule 65 *ter* numbers 03191, 03310,³⁷ and 14113;
- (iv) Maps related to testimony of KDZ066, Vicentius Egbers, Milenko Pepić, Zoran Petrović-Piroćanac, and KDZ508: Rule 65 *ter* numbers 02652, 02657, 03064, 14114, 14698, 14711, 14712, 14713, 14748, 14773, 14818, 14820, 15783, 15825, 15832, and 19505;
- (v) Transportation records related to testimony of Damjan Lazarević, Milorad Birčaković, Ostoja Stanišić, and Milenko Tomić: Rule 65 *ter* numbers 02157, 02162,³⁸ 02163,³⁹ 02595,⁴⁰ 02596, 14723, and 14725;
- (vi) Letters and articles related to testimony of Zoran Petrović-Piroćanac, Zlatan Čelanović, and KDZ508: Rule 65 *ter* numbers 02310, 02616, 02617, 02619, 02620, 02623, 03252, and 03410; and
- (vii) Official reports, orders, logs, notes, and statements related to testimony of KDZ107, Danko Gojković, Nebojša Jeremić, Mevludin Orić, Mile Simanić, Milorad Birčaković, Vicentius Egbers, Mile Janjić, Milenko Pepić, Predrag Drinić, Zoran Petrović-Piroćanac, Zlatan Čelanović, and Ostoja Stanišić: Rule 65 *ter* numbers 01880, 01881, 01895, 01897, 01982, 01987, 02059, 02085,⁴¹ 02111, 02112, 02113,

³⁵ Admitted under seal in the *Popović et al.* case.

³⁶ In KDZ186's testimony, this exhibit was admitted under seal but the Prosecution did not request it to be admitted under seal in the Motion. The Trial Chamber will therefore admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

³⁷ Admitted under seal in the *Popović et al.* case.

³⁸ As tendered under Damjan Lazarević.

³⁹ As tendered under Damjan Lazarević.

⁴⁰ This exhibit is the same document as Rule 65 *ter* 02164, which was also tendered under Ostoja Stanišić. The exhibit with Rule 65 *ter* number 02164 has several pages missing in court while the exhibit with Rule 65 *ter* number 02595 is the complete record. It is therefore only necessary to admit the exhibit with Rule 65 *ter* number 02595.

⁴¹ The Prosecution requested the admission of this associated exhibit in relation to both Milorad Birčaković and Mile Janjić.

02177, 02184,⁴² 02185, 02186, 02187, 02191, 02200, 02202, 02239, 02241, 02244, 02245, 02246, 02247, 02248, 02269,⁴³ 02273,⁴⁴ 02274, 02381,⁴⁵ 02590,⁴⁶ 03292, 03409, 03658, 03743,⁴⁷ and 03837.

58. Having reviewed the proposed evidence, the Trial Chamber notes that the above exhibits 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 the witness's testimony, and failure to admit them would make said testimony incomprehensible or of lesser probative value. The Trial Chamber will therefore admit these exhibits into evidence.

59. The Chamber notes that the Prosecution has tendered several of these associated exhibits twice, with two different witnesses. In addition, a number of these associated exhibits are very large, but only one or two pages of the exhibit were discussed by the witness. In relation to the former, and in order to prevent repetition, the Chamber will only admit those associated exhibits once. In relation to the latter, the Chamber considers that only the pages of the large exhibit that were discussed by the witness form an inseparable and indispensable part of that witnesses testimony. Therefore, and in order to minimise the admission of any unnecessary and irrelevant material, it will only admit those parts actually discussed by the relevant witness.

60. Therefore, the Chamber will admit into evidence only once the associated exhibit with Rule 65 *ter* number 02184, which is listed twice under Ostoja Stanišić, and Rule 65 *ter* 03743, which is listed twice under Danko Gojković. The associated exhibit with Rule 65 *ter* number 02269 is a nine-page "Military Prosecutor's Office, Main Staff of the Armed Forces of Republika Srpska, Guidelines for Determining the Criteria for Criminal Punishment", but Predrag Drinić was only questioned on three paragraphs found on pages 7–9. Therefore, only those three pages will be admitted. The associated exhibit with Rule 65 *ter* number 02273 is a

⁴² The Prosecution requested the admission of this associated exhibit twice under Ostoja Stanišić.

⁴³ The Trial Chamber notes that only pages 7-9 are relevant to the witness's evidence and only those pages will be admitted.

⁴⁴ The Trial Chamber notes that only pages 1-3 are relevant to the witness's evidence and only those pages will be admitted.

⁴⁵ In Predrag Drinić's testimony, this exhibit was admitted under seal but the Prosecution did not request it to be admitted under seal in the Motion. The Trial Chamber will therefore admit it under seal pending confirmation from the Prosecution whether or not the exhibit should be admitted under seal.

⁴⁶ The Prosecution requested the admission of this associated exhibit in relation to both KDZ107 and Milenko Pepić. The Trial Chamber also notes that the B\C\S version on eCourt is a 43-page health log while the English version is two pages. The Prosecution will need to upload the relevant pages of the B\C\S version.

⁴⁷ The Prosecution requested the admission of this associated exhibit twice under Danko Gojković.

44-page Official Gazette, but Zoran Petrović-Piroćanac was only questioned about the first three pages and, therefore, only the first three pages will be admitted. The associated exhibit with Rule 65 *ter* number 03099 is a 78-page photograph compilation book in which the photographs on pages 43 and 60 were discussed by Mile Janjić; only those pages will be admitted. The associated exhibit with Rule 65 *ter* number 03931 is a 76-page “Road Book” of maps and photographs. Zoran Petrović-Piroćanac discussed only the photographs on pages 16, 52, 56, 64, and 65, and thus only those pages will be admitted. The associated exhibit with Rule 65 *ter* number 02156 as tendered in relation to Mitar Lazarević is a 606-page transport record, but Mitar Lazarević was questioned on two pages of this record, and only those two pages should be admitted. However, based on the records in court, the Trial Chamber was unable to accurately determine which two pages were put to the witness. The Prosecution will need to identify and resubmit the relevant two pages.

61. Rule 65 *ter* number 04171 is a sketch by Milenko Tomić. However, in court, the sketch is followed by what looks to be a transportation record. The Trial Chamber will thus deny the exhibit without prejudice until the Prosecution uploads the sketch as a separate exhibit in court, and reapplies for its admission.

62. The exhibits with Rule 65 *ter* numbers 03148 and 03149 are photographs of extremely poor quality. The Trial Chamber will thus deny these exhibits without prejudice until the Prosecution uploads better quality photographs and reapplies for their admission.

63. 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 Trial Chamber has determined do not form an inseparable and indispensable part of the previous testimony or written statements of Dražen Erdemović, KDZ063, KDZ065, KDZ066, KDZ070, Srećko Aćimović, Danko Gojković, Nebojša Jeremić, Mevludin Orić, Cvijetin Ristanović, Damjan Lazarević, Mile Simanić, KDZ186, Mitar Lazarević, Vicentius Egbers, Mile Janjić, Zlatan Čelanović, KDZ425, Ostoja Stanišić, KDZ508, and [REDACTED]. The exhibits with Rule 65 *ter* numbers 01999, 02050, 02051, 02052, 02053, 02054, 02055, 02056, 02057, 02058, 02106, 02156,⁴⁸ 02160,⁴⁹ 02164, 02172,⁵⁰ 02233,⁵¹ 02278, 02597, 02615, 02621, 02735, 02841,

⁴⁸ As tendered under Srećko Aćimović.

⁴⁹ As tendered under Damjan Lazarević.

⁵⁰ The Prosecution requested the admission of this associated exhibit in relation to Srećko Aćimović, Mitar Lazarević, and Milenko Tomić.

02868, 03054, 03072, 03076, 03171, 03339, 03463, 03494, 03507, 03657, 03659, 03745, 03746, 03747, 03748, 03749, 03750, 03751, 03752, 03753, 03754, 03755, 03756, 03757, 03758, 03759, 03760, 03761, 03762, 03763, 03840, 03911, 14117, and 14703 are either not discussed by the relevant witness in his or her written evidence, or were so briefly referred to that the Chamber considers that the associated exhibit does not form an inseparable and indispensable part of that witness's evidence, and the evidence will not become incomprehensible or of lesser probative value if the associated exhibit is not admitted into evidence. Thus, the Prosecution's request to admit these associated exhibits will be denied.

64. The Chamber notes that there are a number of associated exhibits listed in the above paragraph which the Prosecution tendered with multiple witnesses. In those instances, for the reasons provided, the Chamber has determined that these associated exhibits do not form inseparable and indispensable parts of the written evidence of either of the witnesses in relation to which they were tendered. The relevant portions of the associated exhibits with Rule 65 *ter* numbers 02534, 03256, 03257, 03799, and 03800 were read directly into record during the witness's testimony and, thus, the written evidence to which they relate will not become incomprehensible or of lesser probative value without the associated exhibits. The Prosecution seeks the admission of associated exhibits with Rule 65 *ter* numbers 03084, 03085, and 03086 in connection with previous testimony of KDZ065, and associated exhibits with Rule 65 *ter* numbers 14112 and 14115 in connection with the previous testimony of Mevludin Orić. However, the Chamber could not identify these associated exhibits in the relevant witness's testimony, and, thus, the evidence will not become incomprehensible or of lesser probative value if these associated exhibits are not admitted. For the reasons stated above, the Prosecution's request for the admission into evidence of these associated exhibits will be denied.

65. Furthermore, the Chamber has been unable to analyse the contents of several proposed associated exhibits for the following reasons:

- (i) Rule 65 *ter* numbers 03340 and 35009⁵² are exhibits for which there is no English translation in court;

⁵¹ The Prosecution requested the admission of this associated exhibit in relation to both Nebojša Jeremić and Ostoja Stanišić.

⁵² The Trial Chamber notes that the Prosecution has listed two Rule 65 *ter* numbers for this exhibit (03361 and 35009). 03361 does not appear to be uploaded in court, and 35009 is a Notebook written in B\C\S with no

- (ii) Rule 65 *ter* numbers 04761 and 31050 do not appear to have been uploaded into ecourt;
- (iii) Rule 65 *ter* numbers 01894 and 14076 as uploaded in ecourt are not the exhibits discussed during Zlatan Čelanović or KDZ285's testimony, respectively;
- (iv) Rule 65 *ter* number 03192⁵³ is listed in the Motion for Dražen Erdemović as "Video still of Živanović, Mladić and a third man called 'Cico' from 10th Sabotage Unit with UN beret under belt". In ecourt, the exhibit that appears is a hand-drawn sketch done by Mevludin Orić;
- (v) Rule 65 *ter* number 40093 is listed in the Motion under Slobodan Stojković as "Transcript of video shot by Slobodan Stojković". The Rule 65 *ter* number 40093 does not appear to have been uploaded in ecourt;
- (vi) Rule 65 *ter* numbers 40010,⁵⁴ 40012, 40027, 40096, 40206, 40207, and 45236 are videos that cannot be found in ecourt, and the Chamber was not provided with copies of these videos for review;
- (vii) Rule 65 *ter* number 04172 is a "List of conscripts", and the English version does not correspond to the B\C\S version;
- (viii) Rule 65 *ter* number 03199 is a 166-page photograph book. This exhibit was presented to multiple witnesses whose written evidence the Chamber will, as indicated above, admit.⁵⁵ However, the Trial Chamber was unable to determine which of the photographs in the book correspond to each of the witness's evidence because, among other things, neither the page numbers nor the ERN numbers match.

66. 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

English translation. For the purposes of this decision, the Trial Chamber will only refer to Rule 65 *ter* number 35009.

⁵³ This Rule 65 *ter* number is also listed under Mevludin Orić as "Hand-drawn sketch of a map of Bratunac, drawn and signed by the witness", which is the document found in ecourt, and which has already been denied admission into evidence.

⁵⁴ The Prosecution requested the admission of this associated exhibit in relation to Mevludin Orić, Vicentius Egbers, Zoran Petrović-Piroćanac, and KDZ425.

⁵⁵ KDZ039, KDZ070, KDZ107, Damjan Lazarević, Mile Janjić, and Zlatan Čelanović.

and provides the videos to the Chamber so that it can verify whether they meet the requirements for admission. With regard to Rule 65 *ter* number 40093, the Prosecution should identify which associated exhibit relates to that specific Rule 65 *ter* number, and ensure the correct associated exhibit is uploaded in court. With regard to the associated exhibit with Rule 65 *ter* number 03199, the Prosecution should identify the photographs discussed by each witness and upload them individually on court.

III. Disposition

67. 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 as defined in paragraph 7 above;
- B. **GRANTS** the Motion **IN PART** and **ORDERS** that:
 1. Vicentius Egbers' prior testimony is admitted into evidence without requiring the witness to appear for cross-examination and the supplemental statement tendered by the Accused is provisionally admitted subject to the Accused obtaining the required Rule 92 *bis*(B) attestation for the supplemental statement;
 2. The written statements and/or transcripts of prior testimony of Dražen Erdemović, KDZ063, KDZ065, KDZ066, KDZ069, KDZ070, Srećko Aćimović, KDZ107, Danko Gojković, Nebojša Jeremić, Mevludin Orić, Cvijetin Ristanović, Damjan Lazarević, Ahmo Hasić, Mile Simanić, Mirsada Malagić, KDZ186, Milorad Birčaković, Rajko Babić, Mitar Lazarević, Dragan Jović, Vicentius Egbers, KDZ265, Tanacko Tanić, KDZ285, Mile Janjić, Milenko Pepić, Predrag Drinić, Zoran Petrović-Piroćanac, Zlatan Čelanović, KDZ407, KDZ425, Ostoja Stanišić, Veljko Ivanović, Jevto Bogdanović, KDZ496, KDZ508 (under seal), Milenko Tomić, Hafiza Salihović, Semija Suljić, Mejra Mešanović, Mevlida Bektić, Behara Krdžić, Hanifa Hafizović, Razija Pašagić, Saliha Osmanović, KDZ568, Husein Delić, Šehra Ibišević, Alma Gabeljić,

Rahima Malkić, Samila Salčinović, and Amer Malagić are admitted into evidence without requiring the witnesses to appear for cross-examination;

3. 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 Chamber in *Krstić, Blagojević and Jokić*, and *Popović et al*;
4. The written statements of Desimir Đukanović, [REDACTED], and Slobodan Stojković are provisionally admitted into evidence, subject to the Prosecution obtaining the required Rule 92 *bis*(B) attestation for the statements;
5. KDZ039, KDZ122, KDZ229, KDZ284, KDZ329, KDZ333, KDZ351, KDZ360, and KDZ556 shall appear for cross-examination and their evidence presented in accordance with Rule 92 *ter*;
6. The confidential associated exhibits with Rule 65 *ter* numbers 03302, 03307, 03309, 03310, 03311, 03313, 03314, 03338, 03400, 03407, 03480, 14077, and 14185 are admitted into evidence under seal;
7. The associated exhibits with Rule 65 *ter* numbers 02381 and 14110 are admitted under seal pending confirmation from the Prosecution whether or not the exhibits should be admitted under seal;
8. The associated exhibits with Rule 65 *ter* numbers 01880, 01881, 01895, 01897, 01982, 01987, 02059, 02085, 02111, 02112, 02113, 02157, 02161, 02162 (tendered under Damjan Lazarević), 02163, 02177, 02184, 02185, 02186, 02187, 02191, 02200, 02202, 02239, 02241, 02244, 02245, 02246, 02247, 02248, 02269 (pages 7–9 only), 02273 (pages 1–3 only), 02274, 02310, 02590, 02595, 02596, 02616, 02617, 02619, 02620, 02623, 02652, 02657, 02749, 02756, 02762, 02800, 02822, 02844, 02866, 02868, 02904, 02905, 02906, 02912, 02914, 02940, 02941, 02942, 03064, 03070, 03071, 03073, 03081, 03098, 03099 (pages 43 and 60 only), 03133, 03134,

03136, 03137, 03138, 03140, 03141, 03142, 03143, 03144, 03178, 03179, 03191, 03252, 03292, 03303, 03317, 03409, 03410, 03658, 03743, 03766, 03777, 03837 03931 (pages 16, 52, 56, 64, and 65 only), 13594, 13596, 14055, 14057, 14066, 14073, 14082, 14084, 14090, 14091, 14095, 14097, 14098, 14101, 14113, 14114, 14121, 14162, 14163, 14209, 14211, 14212, 14246, 14691, 14698, 14699, 14701, 14702, 14711, 14712, 14713, 14723, 14725, 14748, 14773, 14818, 14820, 14904, 15783, 15791, 15825, 15832, 19505, and 21196 are admitted into evidence;

9. The admission into evidence of associated exhibits with Rule 65 *ter* numbers 03148 and 03149 is denied without prejudice subject to the Prosecution uploading better quality photographs in ecourt, and reapplying for their admission into evidence;
10. The admission into evidence of associated exhibit with Rule 65 *ter* number 04171 is denied without prejudice subject to the Prosecution uploading only the single page sketch in ecourt, and reapplying for its admission into evidence;
11. The admission into evidence of associated exhibit with Rule 65 *ter* number 03192 as tendered with Dražen Erdemović is denied without prejudice subject to the Prosecution identifying the correct Rule 65 *ter* number, and reapplying for its admission into evidence;
12. The admission into evidence of associated exhibit with Rule 65 *ter* number 02156 as tendered with Mitar Lazarević is denied without prejudice subject to the Prosecution identifying the correct two pages used in Mitar Lazarević's prior testimony and uploading those in ecourt, and reapplying for their admission into evidence;
13. The admission into evidence of associated exhibits with Rule 65 *ter* numbers 01894, 02158, 02159, 02160, 02162 (tendered under Cvijetin Ristanović), 03177, 03180, 03199, 03285, 03286, 03287, 03340, 03809, 04172, 04173, 04174, 04175, 04178, 04179, 04182, 04185, 04186, 04187, 04188, 04190, 04761, 13874, 14076, 31050, 35009, 40010 40012, 40027,

40093, 40096, 40206, 40207, and 45236 is denied without prejudice subject to the Prosecution identifying the correct associated exhibits, uploading them in court, and reapplying for their admission into evidence;

- C. **REQUESTS** the Registry to assign exhibit numbers to the exhibits that have been admitted into evidence;
- D. **POSTPONES** the determination of the admission into evidence of the previous transcripts and associated exhibits of KDZ039, KDZ122, KDZ229, KDZ284, KDZ329, KDZ333, KDZ351, KDZ360, and KDZ556 until such time as the witnesses are brought to give evidence before the Chamber; and
- E. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this sixth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]