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08 July 2013



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-09-92-T
Date: 8 July 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 8 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT
EVIDENCE OF MEVLUDIN ORIĆ
PURSUANT TO RULE 92 *BIS***

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 3 May 2013, the Prosecution filed a motion to amend the Rule 92 Status for Orahovac survivors Witness RM-297 and Mevludin Orić (RM-324) (“Motion”).¹ In this Motion, the Prosecution requested to withdraw Mevludin Orić’s Rule 92 *ter* filing and requested leave to present his evidence pursuant to Rule 92 *bis* of the Rules.² On 8 May 2013, the Prosecution re-filed its Motion and, among others, replaced the previously tendered ICTY statement of Mevludin Orić with excerpts of his testimony in the *Prosecutor v. Popović et al.* trial (“*Popović et al. trial*”) (“Re-filed Motion”).³ On 8 May 2013, the Chamber confirmed the status change of Mevludin Orić from Rule 92 *ter* to Rule 92 *bis* of the Rules and noted that this is a separate consideration from a decision on the merits of the Rule 92 *bis* application itself.⁴ On 11 June 2013, the Defence confirmed it did not intend to file a response and that it did not object to admission pursuant to Rule 92 *bis* of the Rules.⁵

2. In its Re-filed Motion, the Prosecution submits that Mevludin Orić’s testimony in the *Popović et al.* trial is reliable as it was given under oath and his tendered evidence was sufficiently tested and subjected to lengthy cross-examination.⁶ It further submits that the excerpts have been redacted to omit any evidence of the Accused’s acts or conduct and that it, as such, only provides crime-base evidence.⁷ The Prosecution also avers that Mevludin Orić’s evidence is cumulative of, and corroborated by evidence of other witnesses.⁸

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.⁹

¹ Prosecution Motion to Amend Rule 92 Status for Orahovac Survivors RM-297 and Mevludin Orić, 3 May 2013 (Confidential).

² Motion, paras 1, 3, 9, 16.

³ Prosecution Re-filing of Prosecution Motion to Amend Rule 92 Status for Orahovac Survivors Witness RM-297 and Witness RM-324, 8 May 2013 (Confidential), paras 1, 10, 17.

⁴ T. 10845.

⁵ T. 12478.

⁶ Motion, para. 14.

⁷ Motion, para. 15.

⁸ Motion, para. 16.

⁹ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012 (“Decision on Third 92 *bis* Motion”), paras 5-8

III. DISCUSSION

i. Preliminary Matters

4. The Chamber notes that while it has expressed a preference for receiving Rule 92 *bis* evidence in the form of witness statements, it has also indicated that transcripts may be admitted in the absence of such statements and with a showing of good cause.¹⁰ Considering that the Defence did not object to the admission of the proffered transcript, as well as its limited number of pages, the Chamber finds that the tendering of transcript complies with the Chamber's guidance.¹¹

ii. Attestation and Declaration

5. The Chamber is satisfied that the evidence Mevludin Orić provided in the *Popović et al.* trial was given under oath pursuant to Rule 92 *ter* of the Rules.¹² In accordance with a previous decision, the Chamber finds that such an in-court attestation is sufficient to meet the requirement of Rule 92 *bis* (B) of the Rules.¹³

iii. Relevance and Probative Value

6. The proffered evidence of Mevludin Orić concerns the alleged detention and execution of Bosnian Muslims from Srebrenica and is therefore relevant to Counts 2 through 8 of the Indictment. In particular, the Chamber considers that the evidence is relevant to Scheduled Incidents E6.2 and E15.3.¹⁴

7. The testimony of Mevludin Orić was given under oath and subjected to cross-examination. Mevludin Orić did not recant his ICTY witness statement, but does not want to attest to it anymore as he will not be called as a live witness. The Chamber therefore finds that this does not impact the reliability of the proffered testimony. Overall, the Chamber considers the proffered evidence to be reliable and probative of the crimes charged in the Indictment. Therefore, the Chamber finds that the requirements set out in Rule 89 (C) of the Rules have been met for the proffered evidence.

¹⁰ T. 528.

¹¹ T. 106-110, 137-138, 194, 315-325, 525-532.

¹² *Prosecutor v Popović et al.*, Case No. IT-08-88-T, Transcript of 28 August 2006, T. 860.

¹³ Decision on Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Hostage Witnesses, 19 October 2012, para. 7.

¹⁴ Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, Public Annex A ("Indictment"), Schedule Incidents E6.2 and E15.3.

iv. Admissibility Pursuant to Rule 92 *bis* of the Rules

8. The proffered evidence does not relate to the acts and conduct of the Accused. Further, the Chamber finds that the evidence of Mevludin Orić relates to the crime-base part of the case, including Scheduled Incidents E6.2 and E15.3.¹⁵ Additionally, the Chamber considers the proffered evidence of Mevludin Orić to be cumulative with respect to evidence that the Chamber has received from other witnesses, including Witnesses RM-297, RM-313, and RM-269.

9. Having taken all of the above factors into consideration, the Chamber finds that the proffered evidence of Mevludin Orić is admissible pursuant to Rule 92 *bis* of the Rules.

IV. DISPOSITION

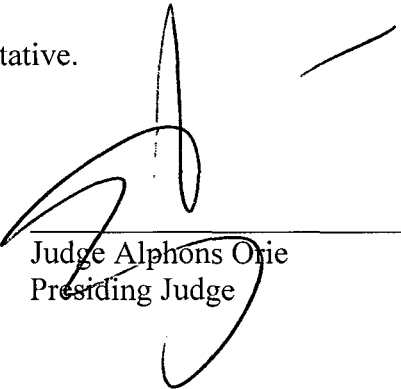
10. For the foregoing reasons, pursuant to Rules 73, 89 and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and admits into evidence the excerpts of the testimony of Mevludin Orić in the *Popović et al.* trial dated 28-30 August 2006, Case No. IT-08-88-T, T. 861:1-862:10, 862:15-25, 863:3-4, 863:16-864:13, 869:3-870:11, 871:23-25, 872:16-873:22, 874:6-15, 875:1-6, 876:11-877:15, 879:10-887:21, 888:10-891:13, 891:22-892:12, 897:21-898:23, 902:13-17, 907:19-912:12, 913:3-916:4, 916:13-917:4, 917:14-918:6, 918:18-919:14, 933:12-935:23, 936:9-939:3, 941:10-18, 942:11-945:3, 945:9-947:2, 947:19-950:5, 950:16-954:6, 954:16-958:18, 959:8-964:23, 967:18-24, and 968:11-970:4;

¹⁵ Indictment, Scheduled Incidents E.6.2 and E.15.3.

INSTRUCTS the Prosecution to upload into eCourt the admitted excerpts of the testimony of Mevludin Orić in the *Popović et al.* trial within two weeks of the date of issue of this decision; and

REQUESTS the Registry to assign an exhibit number to the document admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orić
Presiding Judge

Dated this Eighth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]