

IT-09-92-T
D 66525 - D 66517
23 August 2013

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**UNITED
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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: 23 August 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: 23 August 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION 22nd MOTION TO ADMIT
EVIDENCE 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 26 March 2013, the Prosecution filed a motion ("Motion") tendering the evidence of witnesses RM-001, RM-028, RM-042, RM-706, and RM-708 ("Witnesses") in written form pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules").¹ The Prosecution submits that the tendered material relates to the crime-base part of the case concerning the Sanski Most municipality and presents at least in some instances the relevant historical, political, and military context.² It also submits that the material is relevant, reliable, probative, does not address the acts or conduct of the Accused, and is therefore suitable for admission pursuant to Rule 92 *bis*.³ In addition, their admission pursuant to this Rule would expedite the proceedings, prevent unnecessary reappearances of witnesses and will not cause unfair prejudice to the Accused.⁴ The Prosecution further submits that although the material corresponds to certain adjudicated facts, it nevertheless provides additional information which is necessary to understand the witnesses' narrative and, consequently, no redactions were made.⁵ As to the tendered associated exhibits, the Prosecution contends that they are an inseparable and indispensable part of the tendered material.⁶ Lastly, the Prosecution seeks leave to add to its Rule 65 *ter* exhibit list three associated exhibits, namely, pseudonym sheets for Witnesses RM-001, RM-028, and RM-706.⁷

2. With regard to Witness RM-001 the Prosecution seeks the admission of excerpts of the witness's testimony in the *Brđanin* case, a redacted ICTY statement, and a pseudonym sheet.⁸ Turning to Witness RM-028, the Prosecution tenders excerpts of the witness's testimony in the *Brđanin* and *Karadžić* cases, together with six associated exhibits, including two pseudonym sheets.⁹ For Witness RM-042, the Prosecution tenders an ICTY statement, a supplementary statement, the corresponding Attestation and Declaration, and five photographs as associated exhibits.¹⁰ For Witness RM-706, it tenders excerpts of the witness's testimony in the *Brđanin* case, and three associated exhibits consisting of a pseudonym sheet, a photograph, and a redacted report on the Sanski Most exhumation as associated exhibits.¹¹ For Witness RM-708, it tenders an ICTY statement, a supplementary statement, and the corresponding Attestation and Declaration.¹² As to

¹ Prosecution 22nd Motion to Admit Evidence Pursuant to Rule 92 *bis*, 26 March 2013 (Confidential), paras 1-2, 36.

² Motion, paras 2, 8, 13.

³ Motion, paras 2, 9, 10, 13.

⁴ Motion, para. 2.

⁵ Motion, para. 4.

⁶ Motion, para. 14.

⁷ Motion, para. 17, Confidential Annex C.

⁸ Motion, paras 17-18, Confidential Annexes B and C.

⁹ Motion, paras 17, 21, 23, Confidential Annexes B and C.

¹⁰ Motion, paras 25, 27, Confidential Annex B.

¹¹ Motion, paras 29, 31, Confidential Annexes B and C.

¹² Motion, para. 33, Confidential Annex B.

tendering transcripts as opposed to witness statements, the Prosecution submits that this was done in order to avoid traumatising the witnesses any further.¹³

3. On 9 April 2013, the Defence requested additional time to respond to the Motion, and on 19 April 2013 the Chamber instructed the Defence to respond by 10 June 2013.¹⁴ On 10 June 2013, the Defence filed its response (“Response”).¹⁵

4. The Defence objects to the Motion on three grounds.¹⁶ First, it submits that the tendered transcripts of the prior testimony of Witnesses RM-001 and RM-028 are of considerable length, do not include any of the witnesses’ evidence in cross-examination, and are, as such, unreliable.¹⁷ Second, the material concerning Witnesses RM-001, RM-042, RM-706, and RM-708 contain hearsay and should therefore be subjected to cross-examination.¹⁸ Finally, the Defence argues that the material related to Witness RM-001 contain expert testimony or speculations.¹⁹

II. APPLICABLE LAW

5. The Chamber 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.²⁰ The Chamber also refers to the applicable law related to the admission of associated exhibits, as set out in a previous decision.²¹ Lastly, the Chamber refers to the applicable law on additions to the Prosecution’s Rule 65 *ter* exhibit list which was also set out in a previous decision.²²

III. DISCUSSION

(a) Preliminary matters

6. The Prosecution has tendered extracts of the transcripts of prior testimony of Witnesses RM-001, RM-028 and RM-706, and has not tendered witness statements for Witnesses RM-028 and RM-706. Having reviewed the extracts and taking into consideration that proceeding in this

¹³ Motion, para. 15.

¹⁴ Defence Motion to Enlarge Time to Respond to Prosecution 22nd and 23rd Motions to Admit Evidence Pursuant to Rule 92 *bis*, and Seeking Clarification of the Trial Chamber’s Guidance; T. 10092-10094.

¹⁵ Defence Response to Prosecution 22nd Motion to Admit Evidence Pursuant to Rule 92 *bis*, 10 June 2013 (Confidential).

¹⁶ Response, paras 9-16.

¹⁷ Response, paras 9-10.

¹⁸ Response, paras 11-13.

¹⁹ Response, paras 14-16.

²⁰ 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.

²¹ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

manner would avoid subjecting these witnesses to further traumatising, the Chamber finds them sufficiently focused and is satisfied that they comply with the Chamber's guidance on this matter.²³

7. The Chamber further notes that the material related to Witness RM-708 was tendered under seal. As such, out of an abundance of caution, for the purposes of the present decision the Chamber has not referred to Witness RM-708's name. Since this witness has not been accorded protective measures, the Chamber will instruct the Registry to change the status of the relevant documents into public, unless the Prosecution files a request for protective measures.

8. With regard to tendered material which correspond to adjudicated facts, the Chamber emphasizes the interest in not having unnecessary duplication of evidence.²⁴ In light of this, the Chamber instructs the Prosecution to inform the Chamber within two weeks whether any further redactions are necessary.

(b) Additions to the Prosecution's Rule 65 *ter* Exhibit List

9. The Chamber has reviewed the pseudonym sheets for Witnesses RM-001, RM-028 and RM-706 in previous cases for which the Prosecution seeks leave to add to its Rule 65 *ter* exhibit list and notes that the Prosecution has not shown good cause for their addition at such an advanced stage of the proceedings. The Chamber finds, however, that their addition does not pose any additional burden to the Defence and is, on balance, consistent with the interests of justice.

(c) Witnesses RM-001, RM-028, RM-042, RM-706, and RM-708

10. The Chamber will now assess the admissibility of the Witnesses' evidence in written form under Rule 92 *bis* of the Rules.

i. Attestations and Declarations

11. The statements of Witnesses RM-042 and RM-708 were submitted with the corresponding Attestations and Declarations in accordance with Rule 92 *bis* of the Rules. In contrast, the statement of Witness RM-001 has no corresponding Attestation and Declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.²⁵ In line with this practice, the Chamber will conditionally admit the unattested witness statement of Witness RM-001, pending

²² Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

²³ T. 106-110, 137-138, 194, 319-325, 525-532.

²⁴ Decision in Relation to Prosecution's Rule 92 *ter* Motion for Witness RM-114, 16 August 2012, para. 9.

²⁵ Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

the filing of the required Attestations and Declarations, provided that all other admissibility requirements are met.

ii. Admissibility Pursuant to Rule 89 (C) of the Rules

12. The tendered material provides information on the alleged killing and ethnic cleansing of Bosnian Muslims in Sanski Most, the unlawful detention, beatings, and extermination of Bosnian Muslims at various Bosnian Serb-run detention facilities, and the destruction of residential, religious and cultural property in the Sanski Most municipality. The Chamber therefore finds that the evidence is relevant to Scheduled Incidents A7.1, A7.2, A7.3, A7.4, C1.2, and D13.

13. With respect to the Defence objection that parts of the material related to Witnesses RM-001, RM-042, RM-706, and RM-708 contain hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible in proceedings before the Tribunal and that the weight to be attributed to it by the Chamber will be assessed in light of all the evidence before it.²⁶ With regard to the portions at issue concerning Witnesses RM-001 and RM-042 identified by the Defence, the Chamber finds that the source of knowledge is clear from the portions at issue. As for the portions identified by the Defence which concern Witnesses RM-706 and RM-708, the Chamber finds that the inclusion of these portions will not affect the overall reliability of the evidence. Further, the Chamber finds that the portions identified by the Defence concerning Witness RM-001 do not contain expert evidence and the Chamber will assess the presence of speculative information in light of all evidence on the trial record.

14. As to the Defence objection to the reliability of the material related to Witnesses RM-001 and RM-028 because the tendered extracts of transcripts of their prior testimony were restricted to their evidence in chief, the Chamber recalls its guidance and previous decision that a party should only tender the parts of a transcript upon which it seeks to rely, including any parts necessary for providing the necessary context or clarifications.²⁷ In this context, the Chamber notes that the excerpts of the testimony selected by the Prosecution appear to be internally consistent and presented in a coherent manner. Furthermore, the Defence has not indicated any specific portion of the transcript which should be additionally tendered.

²⁶ See *Prosecutor v. Aleksovski*, Case No. IT-95-14/I-AR73 Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

²⁷ T. 5406-5407; Decision on Prosecution Sixth Motion to Admit Written Statements and Transcripts in Lieu of Oral Testimony Pursuant to Rule 92 *bis*, 19 June 2013, para. 23.

15. In light of the above, the Chamber finds the tendered evidence to be relevant and probative of the crimes charged in the Indictment, and meeting as such the standard for admission under Rule 89 (C) of the Rules.

iii. Admissibility Pursuant to Rule 92 bis of the Rules

16. The tendered material does not relate to the acts and conduct of the Accused, but instead relates to the crime-base part of the case, including Scheduled Incidents A7.1, A7.2, A7.3, A7.4, C1.2, and D13, and provides information on the relevant historical, political, and military context surrounding the crimes alleged in the Indictment. In addition, the Chamber considers the material to be of a largely cumulative nature with evidence the Chamber has received from other witnesses.²⁸ Furthermore, the Chamber sees no need to require these witnesses to appear for cross-examination. The Chamber therefore concludes that the evidence is admissible under Rule 92 bis of the Rules.

iv. Associated Exhibits

17. The Chamber finds that the associated exhibits tendered in support of the evidence of Witnesses RM-001, RM-042, and RM-706 are either addressed in the witnesses' statements or during their testimony, and that each of them forms an inseparable and indispensable part of that evidence. The Chamber notes however that the report by the Federal MUP regarding exhumations in the villages of Hrustovo and Vrhpolje is being tendered in two very similar versions as an associate exhibit related to the evidence of both Witness RM-028 and RM-706 and bearing Rule 65 *ter* numbers 07701a and 07701b. The Prosecution is instructed to upload into e-court a single document covering the content of both versions.

18. As to the Complete Court Record of Exhumation – Hrustovo I, tendered as part of Witness RM-028's Rule 92 bis package, the Chamber finds that the witness only refers to a limited number of pages of the 63-page document. The Chamber will therefore only allow admission of the pages which are addressed in the witness's testimony and the cover page, namely pages 1, 41-43. As for the other five associated exhibits tendered through Witness RM-028, the Chamber is satisfied that they form an inseparable and indispensable part of the evidence of Witness RM-028.

²⁸ In particular, the tendered material related to Witnesses RM-028 and RM-042 is cumulative with respect to the anticipated oral evidence of Witness RM-015 and the material related to Witnesses RM-706 and RM-708 is cumulative with respect to the testimony of Witnesses Rajif Begić, RM-051, and RM-018 as well as the anticipated oral evidence of Witness RM-015.

IV. DISPOSITION

19. For the foregoing reasons, pursuant to Rules 73, 89, and 92 *bis* of the Rules, the Chamber

GRANTS the Motion **IN PART**;

With respect to:

(i) *Witness RM-001*

CONDITIONALLY ADMITS into evidence **UNDER SEAL**, pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules, the ICTY Statement of Witness RM-001, dated 16 March 2000, bearing ERNs 0093-5081-0093-5086;

ADMITS into evidence **UNDER SEAL**

- a) the excerpts of the testimony of Witness RM-001 in the *Brđanin* case, Case No. IT-99-36-T, T. 6403:11-6418:3, 6422:13-15, 6424:1-6436:3; and
- b) the pseudonym sheet of Witness RM-001 from the *Brđanin* case, bearing ERN 0685-2856;

(ii) *Witness RM-028*

Instructs the Prosecution to upload into Ecourt a single version of the report bearing Rule 65 *ter* numbers 07701a and 07701b;

ADMITS into evidence

- a) the new version of the report described above;
- b) the excerpts of the testimony of Witness RM-028 in the *Brđanin* case, Case No. IT-99-36-T, T. 8045:5-8046:16, 8047:1-18, 8048:21-25, 8050-8056, 8058-8069:3;
- c) the excerpts of the testimony of Witness RM-028 in the *Karadžić* case, Case No. IT-95-5/18-T, T. 19074-19076:10, 19079:18-19082:5, 19082:20-19084:6, 19087:6-19088:7;

ADMITS into evidence **UNDER SEAL**

- a) the pseudonym Sheet of Witness RM-028 from the *Brđanin* case, bearing ERN 0358-3872;

- b) the pseudonym Sheet of Witness RM-028 from the *Karadžić* case, bearing ERN 0685-2857; and
- c) the map of Hrustovo-Vrhopolje overview, annotated by Witness RM-028, Rule bearing 65 *ter* no. 18140;

ADMITS into evidence

- a) the Report by the Basic Court in Sanski Most, about on-site investigation of a grave-site, bearing Rule 65 *ter* no. 19953;
- b) the excerpted version of the Complete Court Record of Exhumation – Hrustovo I, bearing Rule 65 *ter* no. 12728, containing pages 1, 41-43 bearing ERNs 0190-5898, 0190-5938-0190-5940;

(iii) *Witness RM-042*

ADMITS into evidence **UNDER SEAL**

- a) the ICTY Statement of Witness RM-042, dated 21 April 2001, bearing ERNs 0202-8512-0202-8519;
- b) the supplementary ICTY Statement of Witness RM-042, dated 11 December 2001, bearing ERNs 0304-5005-0304-5007;
- c) the Corresponding Attestation and Declaration, bearing ERNs 0214-4572-0214-4573, 0214-4589; and
- d) five photographs of a house and the mosque in the Kukavice Hamlet, bearing Rule 65 *ter* no. 14075;

(iv) *Witness RM-706*

ADMITS into evidence **UNDER SEAL**

- a) the excerpts of the testimony of Witness RM-706 in the *Brđanin* case, Case No. IT-99-36-T, T. 7242:16-7275;
- b) the pseudonym Sheet of Witness RM-706 from the *Brđanin* case, bearing ERN 0685-2855;

ADMITS into evidence the photograph of a house, Rule 65 *ter* no. 14067;

(v) *Witness RM-708*

ADMITS into evidence **UNDER SEAL**

- a) the ICTY Statement of Witness RM-708, dated 26 July 1999, bearing ERNs 0083-8032-0083-8039;
- b) the supplementary ICTY Statement of Witness RM-708, dated 28 July 2001, bearing ERN 0302-5673; and
- c) the corresponding Attestation and Declaration, bearing ERNs 0208-2711-0208-2712 and 0302-5674;

INSTRUCTS the Prosecution to file the corresponding Attestation and Declaration to the statement of Witness RM-001 within four weeks of the filing of this decision;

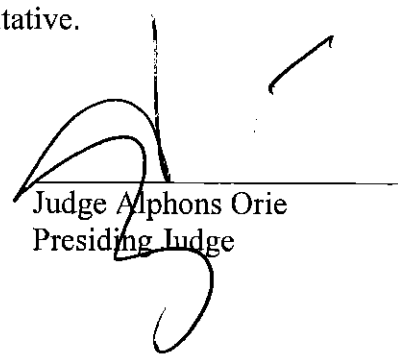
INSTRUCTS the Prosecution to inform the Chamber of any potential further redactions of the admitted documents within two weeks of the filing of this decision;

INSTRUCTS the Registry to change the status of the evidence identified in paragraph v (a-c) above into public, unless the Prosecution files a request for protective measures for Witness RM-708 within 14 days;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within two weeks of the date of issue of this decision; and

REQUESTS the Registry to assign exhibit numbers to the documents 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 Orie
Presiding Judge

Dated this twenty-third day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]