

4-09-92-T
D71901 - D7893
25 September 2013

71901
vs.

**UNITED
NATIONS**



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: 25 September 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: 25 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S 20TH MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92BIS**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 11 March 2013, the Prosecution filed a motion (“Motion”) seeking to admit into evidence, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the evidence in written form of six witnesses, namely Elvedin Nasic, and Witnesses RM-026, RM-027, RM-047, RM-060, and RM-704 (“Witnesses”).¹ On 21 March 2013, the Defence filed a motion to enlarge time to respond to the Motion (“Extension Request”).² On 8 April 2013, the Chamber granted the Extension Request, setting the deadline at 27 May 2013.³ On 27 May 2013, the Defence filed its response (“Response”).⁴ The Prosecution requested leave to reply on 4 June 2013.⁵ The Chamber granted the Request on 12 June 2013 and also granted the Defence the opportunity to sur-reply. The parties were informed through an informal communication. The Chamber considers the reply attached to the Request as validly filed on 4 June 2013 (“Reply”).⁶ On 19 June 2013, the Defence filed its sur-reply (“Sur-Reply”).⁷

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution submits that the proposed evidence is relevant and probative of issues in this case, and reliable and suitable for admission in written form.⁸ According to the Prosecution, admission of the Witnesses’ evidence pursuant to Rule 92 *bis* of the Rules will expedite the proceedings, prevent the unnecessary re-appearance of victim witnesses and will not cause unfair prejudice to the Accused.⁹ The Prosecution submits that the Witnesses provide crime-base evidence, and that the evidence does not relate to the acts or conduct of the Accused.¹⁰ The Prosecution concedes that where parts of the tendered evidence correspond with one or more of the adjudicated facts, in certain instances no redactions have been made because either the evidence

¹ Prosecution 20th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 11 March 2013 (Confidential with Confidential Annexes). The Chamber notes that the material related to Elvedin Nasic was not tendered under seal and he has not been accorded protective measures. Therefore, the Chamber will refer to him by his name.

² Defence Motion to Enlarge Time to Respond to Prosecution 20th Motion to Admit Evidence Pursuant to Rule 92 *bis*, and Prosecution’s 21st Motion to Admit Evidence Pursuant to Rule 92 *bis*: VRS, Dutchbat and Bosnian Muslim Witnesses, 21 March 2013 (Confidential).

³ T. 9521.

⁴ Defence Response to Prosecution 20th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 27 May 2013 (Confidential).

⁵ Prosecution Request for Leave to Reply to Defence Response to Prosecution 20th Rule 92 *bis* Motion, 4 June 2013 (Confidential with Confidential Annex) (“Request”).

⁶ Prosecution Reply to Defence Response to Prosecution 20th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 4 June 2013 (Confidential).

⁷ Defence Sur-Reply to Prosecution 20th Motion to admit evidence pursuant to Rule 92 *bis* (Confidential).

⁸ Motion, paras 2, 7-9.

⁹ Motion, paras 2, 14, 16, 24, 32

¹⁰ Motion, paras 2, 7, 11.

being tendered contains greater detail, or making a redaction would result in the loss of contextual information.¹¹

3. Regarding Witness RM-027, the Prosecution tenders his previous testimony from the *Prosecutor v. Tadić* trial (“*Tadić*”) and four associated exhibits, namely a list of men killed or taken from the village of Jaskići on 14 June 1992 and three photographs.¹² Concerning Elvedin Nasic and Witnesses RM-026 and RM-047, the Prosecution seeks to admit Rule 92 *bis* witness packages comprising a witness statement and associated Attestations and Declarations.¹³ The Prosecution notes that the respective witness’s evidence was admitted into evidence pursuant to Rule 92 *bis* in the *Prosecutor v. Karadžić* trial.¹⁴ Further, the Prosecution seeks leave to tender, for Witnesses RM-026 and RM-047, excerpts from the transcripts of their previous testimony in the *Prosecutor v. Stakić* trial (“*Stakić*”) and for Elvedin Nasic excerpts from his previous testimony in the *Prosecutor v. Brđanin* trial.¹⁵ Further, the Prosecution seeks to tender Witness RM-026’s pseudonym sheet from the *Stakić* trial.¹⁶ With regard to Witness RM-704, the Prosecution seeks to tender a Rule 92 *bis* package, comprising a witness statement and the associated Attestation and Declaration.¹⁷ The Prosecution notes that this package was admitted into evidence in the *Stakić* trial confidentially.¹⁸ Concerning Witness RM-060, the Prosecution tenders approximately 65 pages of the Witness’ testimony of 150 pages in the *Stakić* trial.¹⁹

4. The Defence opposes the Motion with regard to Elvedin Nasic and Witnesses RM-026, RM-047, RM-060, and RM-704.²⁰ The Defence submits that the statements of those witnesses contain extreme hearsay.²¹ Further, the Defence submits that the proffered evidence of those witnesses contains very significant unqualified expert opinion that has not been appropriately tested under Rule 94 *bis* of the Rules.²² Regarding Witnesses RM-026 and RM-060 the Defence submits that there also exist other *indicia* of unreliability since those witnesses admitted to having given false statements in the past.²³

¹¹ Motion, para. 4.

¹² Motion, paras 13-14, 23-26, Annex B (confidential).

¹³ Motion, paras 18-20, 28-29, 37, Annex B (confidential).

¹⁴ Motion, para. 18, 28, 37.

¹⁵ Motion, paras 18-20, 30, 38.

¹⁶ Motion, para. 13.

¹⁷ Motion paras 40-41, Annex B (confidential).

¹⁸ Motion, para. 40.

¹⁹ Motion paras 32-33.

²⁰ Response, paras 11-18.

²¹ Response, paras 9-11.

²² Response, paras 12-15.

²³ Response, paras 16-18, Sur-Reply, paras 11-12.

5. In its Reply, the Prosecution proposes that Witness RM-060's Rule 92 *bis* package be amended to include two other portions of his testimony from the *Stakić* case which also address his alleged false statement to the International Committee of the Red Cross.²⁴

6. The Defence stresses in its Sur-Reply that the alleged false prior statements of Witnesses RM-060 and RM-026 are just one of the problems with regard to the reliability of those witnesses' evidence.²⁵ The Defence submits that the witnesses would need to be cross-examined and confronted on multiple issues.²⁶

III. APPLICABLE LAW

Rule 92 bis

7. 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.²⁷

Admission of Associated Exhibits

8. With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to one of its previous decisions dealing with this matter.²⁸

IV. DISCUSSION

Preliminary matters

9. The Chamber grants the Prosecution's request to exceed the word limit in the Motion considering the number of witnesses that are the subject of the Motion.

10. The Chamber notes that material related to Witnesses RM-027 and RM-704 was tendered under seal. Since, to date, those witnesses have not been accorded protective measures, the Chamber will instruct the Registry to change the status of any admitted documents for those witnesses into public, unless the Prosecution files a request for protective measures. As such, out of an abundance of caution, the Chamber has not referred to the witnesses by their names in this decision, but instead only by pseudonym.

Admissibility Pursuant to Rule 89 (C) of the Rules

²⁴ Reply, paras 4-7.

²⁵ Sur-Reply, paras 8, 11.

²⁶ Sur-Reply, paras 9, 12.

²⁷ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.

11. The Chamber considers that the evidence of the Witnesses relates to Scheduled Incidents A6.2, A6.3, A6.4, A6.5, A6.6, A6.7, A6.8, C1.2, C15.2, C15.3, C15.4 and C15.5 of the Indictment, and more generally, Counts 1 and 3-8 of the Indictment. The Chamber therefore finds that the evidence is relevant pursuant to Rule 89 (C) of the Rules.

12. The Defence does not object to the admission of Witness RM-027's evidence pursuant to Rule 92 *bis*, and the Chamber finds her evidence to be of probative value.

13. With regard to the Defence's objection that portions of the Witnesses' statements are based on hearsay, the Chamber recalls that hearsay evidence is admissible and that the weight to be attributed to it will be assessed in light of all the evidence before it.²⁹ Moreover, the Chamber finds that it is clear, from the portions at issue, that the Witnesses have no direct knowledge of certain subjects about which they testified. The Chamber does not consider that the portions of hearsay evidence affect the overall reliability of the evidence.

14. Having considered the Defence's objection that portions of the Witnesses' statements are based on unqualified expert opinion, the Chamber has not found that the transcript lines indicated by the Defence in its Response require redaction. The portions at issue merely consist of observations of the witnesses. Further, the Chamber sees no need to call the Witnesses to provide testimony in court in this context, as the basis for the conclusions and opinions made by the Witnesses are apparent from their respective statements.

15. Regarding the Defence's submission in relation to Witnesses RM-026 and RM-060, the Chamber notes that the alleged false testimony of Witness RM-026 concerns a theft of company property he was accused of together with a Serb and where he testified in favour of the Serb. This does not in any way relate to the crimes before the Chamber. Further, Witness RM-060 has already been cross-examined on the issue and explained that he was not in a position to give a truthful statement while in detention. Therefore, the Chamber considers that the Defence has not demonstrated, and the Chamber does not find, that the alleged false statements affect the overall reliability of the evidence of Witnesses RM-026 and RM-060.

16. Having taken all of the above factors into consideration the Chamber is satisfied that the Witnesses' evidence meets the requirements of Rule 89 (C) of the Rules.

Admissibility Pursuant to Rule 92 *bis* of the Rules

²⁸ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13.

17. With regard to the admissibility of the Witnesses' evidence pursuant to Rule 92 *bis* of the Rules, the Defence does not argue, and the Chamber does not find that the proffered evidence relates to the acts and conduct of the Accused. The Chamber considers that the evidence relates to specific incidents of the crime-base part of the case and concerns the impact of crimes upon victims. Moreover, the evidence of Witness RM-704 relates to a general analysis of the ethnic composition of the population in the places to which the Indictment relates, a circumstance envisaged by Rule 92 *bis* (A) (i) (c). In addition to Witness RM-026, other witnesses have testified pursuant to Rule 92 *ter* of the Rules regarding similar facts, including Safet Taci, Edward Vulliamy, Idriz Merdžanić, Mevludin Sejmenović, Nusret Sivac, and Nermin Karagić.³⁰ Nermin Karagić also provided evidence related to scheduled incident A6.7 in addition to Elvedin Nasić.³¹ In view of the above the Chamber finds that the requirements of Rule 92 *bis* of the Rules have been met, and that the proffered evidence can be admitted.

Admissibility of Associated Exhibits

18. The Prosecution seeks the admission of a total of seven associated exhibits, consisting of photographs, pseudonym sheets, a map, and a list containing names which were discussed during the witness's testimonies. The Chamber finds that these exhibits form an inseparable and indispensable part of the proffered evidence. For these reasons the Chamber finds that the requirements for admission have been met and, thus, will admit the seven associated exhibits into evidence.

Compliance with Guidance and Overlap with Adjudicated Facts

19. In relation to the admission of transcript evidence under Rule 92 *bis* of the Rules, the Chamber has reviewed the selected portions of Elvedin Nasić and Witnesses RM-026 and RM-047's prior testimony in light of its guidance.³² Considering the Prosecution's tendering of these limited portions of prior testimony to supplement the evidence in the Witnesses' statements, the Chamber considers that the Prosecution has complied with the Chamber's guidance on this matter.

20. In relation to Witness RM-027 and Witness RM-060, the Chamber notes that the Prosecution tenders excerpts from their testimony in prior proceedings instead of witness statements. While the Chamber has a preference for witness statements as opposed to transcripts

²⁹ See Decision on Prosecution's Seventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 6 February 2013, para. 14.

³⁰ Safet Taci, T. 2092-2135; Edward Vulliamy, T. 2577-2745; Idriz Merdžanić, T. 3320-3404; Mevludin Sejmenović, T. 3450-3572; Nusret Sivac, T. 4811-4884; Nermin Karagić, T. 9095-9156.

³¹ Nermin Karagić, T. 9095-9156.

³² T. 106-110, 137-138, 315-325, 525-532.

from prior cases, the Chamber considers that the Prosecution has shown good cause for tendering the excerpts instead of witness statements. Regarding the excerpts of Witness RM-027's testimony in the *Tadić* trial, the Prosecution has submitted that the testimony includes additional issues and further explanation of matters addressed in the statement. Further, the Chamber considers that the testimony is presented in a focussed manner and taking a new statement could risk re-traumatizing the witness. Regarding Witness RM-060, the Chamber considers the circumstance that this witness is highly traumatized and the taking of a new statement would be inappropriate. Therefore, the Chamber will admit the excerpts of Witness RM-027 and Witness RM-060, including the two extra portions in the amended Rule 92 *bis* package for this witness.

21. The Chamber has reviewed the materials tendered by the Prosecution in light of the relevant adjudicated facts. The Chamber considers that, in selecting excerpts of transcripts and redacting overlapping portions within those excerpts, the Prosecution has complied with the Chamber's guidance on this matter.

V. DISPOSITION

22. For the foregoing reasons, pursuant to Rules 54, 89 (C) and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion;

With respect to

(i) *Witness RM-026*

ADMITS into evidence, **UNDER SEAL**,

- a) the Rule 92 *bis* package of Witness RM-026, including a witness statement dated 23 September 1994 and an amendment to that statement, dated 23 September 1994, bearing ERNs 0017-4208-0017-4218, 0302-5590-0302-5591;
- b) excerpts of the testimony of Witness RM-026 from *Prosecutor v. Stakić*, Case No. IT-97-24-T, namely T. 2303:13-2303:16, 2325:16-2325:21, 2334:25-2336:21, 2343:25-2345:10, and 2387:19-2392:9;
- c) the pseudonym sheet for Witness RM-026 from *Prosecutor v. Stakić*, Case No. IT-97-24-T, uploaded in eCourt under Rule 65 *ter* no. 28763;

(ii) *Witness RM-027*

ADMITS into evidence, **UNDER SEAL**,

- a) excerpts of the testimony of Witness RM-027 from *Prosecutor v. Tadić*, Case No. IT-94-1-T, as specified in the Motion;
- b) the list of men killed or taken from the village of Jaskići on 14 June 1992, uploaded in eCourt under Rule 65 *ter* no. 13375;
- c) the photograph of Stojan Župljanin, uploaded in eCourt under Rule 65 *ter* no. 13044;
- d) the copy of the photograph of a house, uploaded in eCourt under Rule 65 *ter* no. 13058;
- e) the copy of a photograph of Duško Tadić and Emir Karabasić, uploaded in eCourt under Rule 65 *ter* no. 13040;
- f) the concordance chart, uploaded in eCourt under Rule 65 *ter* no. 28762³³;

(iii) *Witness RM-047*

ADMITS into evidence, **UNDER SEAL**,

- a) the Rule 92 *bis* package of Witness RM-047, including a witness statement dated 14 March 2000 and a supplementary statement dated 13 June 2002, bearing ERN 0093-5046-0093-5051;
- b) excerpts of the testimony of Witness RM-047 from *Prosecutor v. Stakić*, Case No. IT-97-24-T, namely T. 6203:23-6204:9, 6220:1-6221:7, 6244:21-6246:14, 6252:18-6254:16, and 6306:7-6306:25;

(iv) *Witness RM-060*

ADMITS into evidence, **UNDER SEAL**,

- a) excerpts of the testimony of Witness RM-060 from *Prosecutor v. Stakić*, Case No. IT-97-24-T, namely, T. 6850:8-6909:14, 6929:3-6929:25, 6947:7-13, 6955:22-6957:11, 6959:16-6960:3, 6967:2-6967:8, 6972:17-6973:19, 6983:6-6984:5, and 6991:7-6992:9;
- b) the pseudonym sheet for Witness RM-060 from *Prosecutor v. Stakić*, Case No. IT-97-24-T, uploaded in eCourt under Rule 65 *ter* no. 28764;
- c) the map of Trnopolje-Vlasić Route, uploaded in eCourt under Rule 65 *ter* no. 13620.

³³ The Chamber notes that the Prosecution advised informally that the reference in the Motion to Rule 65 *ter* no. 28761 was incorrect and that Rule 65 *ter* no. 28762 was indeed tendered.

d) the concordance chart, uploaded in eCourt under Rule 65 *ter* no. 28761.

(v) *Elvedin Nasic*

ADMITS into evidence,

- a) the Rule 92 *bis* package of Elvedin Nasic, including witness statements dated 15 January 1995 and 15 March 2000 and a supplementary statement dated 10 January 2002, bearing ERNs 0021-1574-0021-1580, 0092-8857-0092-8861, and 0303-9093-0303-9095;
- b) excerpts of the testimony of Elvedin Nasic from *Prosecutor v. Brđanin*, Case No. IT-99-36-T, namely T. 12686:7-12688:4, 12690:21-12691:14, 12706:15-12707:14, and 12715:15-12715:24;

(vi) *Witness RM-704*

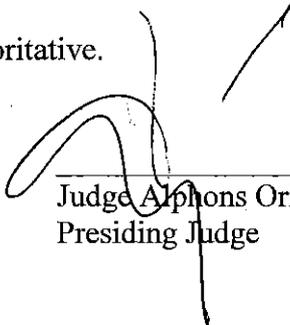
ADMITS into evidence, **UNDER SEAL**, the Rule 92 *bis* package of Witness RM-704, including a witness statement dated 12 October 2001 and a supplementary statement dated 19 November 2001, bearing ERNs 0211-6416-0211-6424 and 0305-3502-0305-3502;

INSTRUCTS the Prosecution to upload into eCourt all the above documents within three weeks of this decision, insofar as it has not done so already;

INSTRUCTS the Registry to change the status of the evidence identified in paragraph *ii* (a-f) and paragraph *vi* above to public, unless the Prosecution files a request for protective measures for Witnesses RM-027 and RM-704 within 14 days 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-fifth day of September 2013
At The Hague
The Netherlands

[Seal of the Tribunal]