

IT-09-92-T
Δ75286-Δ75282
18 December 2013

75286
ML

**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: 18 December 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: 18 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION 30th 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 25 June 2013, the Prosecution filed a motion (“Motion”) tendering evidence of Milan Tupajić (“Witness”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 9 August 2013, after having been granted an extension of time to respond to the Motion, the Defence filed its response (“Response”), objecting to the admission of the evidence in its entirety.² On 16 August 2013, the Prosecution requested leave to reply to the Response.³

II. APPLICABLE LAW

2. 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.⁴ With regard to the applicable law related to the admission of associated exhibits, the Chamber further recalls and refers to one of its previous decisions dealing with this matter.⁵

III. DISCUSSION

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

3. The tendered material provides information in relation to Scheduled Incident A8.1, the destruction of non-Serb cultural sites in Sokolac municipality, the interaction between the Sokolac Crisis Staff and the SDS Main Board, and the activities of the 2nd Romanija Motorised Brigade in Sokolac municipality. The Chamber therefore finds that the evidence is relevant to the Indictment.

4. With respect to the Defence objection that parts of the tendered material contain “extreme hearsay”, the Chamber recalls that hearsay evidence is, in principle, admissible in proceedings

¹ Prosecution 30th Motion to Admit Evidence Pursuant to Rule 92*bis*: RM085, 25 June 2013. For details of the Prosecution’s submissions the Chamber refers to the Motion and the reply.

² T. 14506; Defence Response to Prosecution 30th Motion to Admit Evidence Pursuant to Rule 92*bis*, 9 August 2013. For details of the Defence’s submissions the Chamber refers to the Response.

³ Prosecution Joint Reply to Defence Response to Prosecution 30th Rule 92 *bis* Motion and Defence Response to Prosecution Motion to Admit the Evidence of Herbert Okun Pursuant to Rule 92 *quater*, 16 August 2013. The reply was attached to this filing.

⁴ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

⁵ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13. See also T. 5601-5604; Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

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.⁶ The Chamber finds that the tendered transcript appears to be internally consistent and presented in a coherent manner.⁷

5. In light of the above, the Chamber finds the tendered material to be probative of the crimes charged in the Indictment. The standard for admission under Rule 89 (C) of the Rules has been met.

ii. Admissibility Pursuant to Rule 92 bis of the Rules

6. The tendered material does not relate to the acts and conduct of the Accused. Instead, it relates mainly to the crime-base part of the case. The Defence avers that there is no corroboration of parts of the tendered material, which, coupled with the fact that the previous cross-examination was inadequate for Defence purposes in this case, weighs in favour of calling the witness for cross-examination. The Chamber has reviewed the submissions by the parties and is satisfied that major parts of the tendered evidence are cumulative to other evidence.⁸ Moreover, the witness was cross-examined in his previous testimony. The Chamber acknowledges that this cross-examination may not have covered all points relevant to the Defence in this case. However, the Defence presents this argument in a general way not specifying which areas of the prior cross-examination were insufficient for Defence purposes and for what reason. Considering all of the above, the Chamber is satisfied that the tendered material is admissible under Rule 92 bis of the Rules. The Chamber will determine the weight to be given to this evidence in light of the bases of knowledge of the Witness provided in his prior testimony and in light of the totality of the evidence.

iii. Associated Exhibits

7. The Chamber notes that the Prosecution tenders a large number of associated documents with the Witness's prior testimony. One of the associated documents, Rule 65 ter number 3432, has already been admitted as exhibit P2003. In accordance with its prior decisions, the Chamber analysed whether certain associated documents are needed to properly understand the transcript.⁹

⁶ See *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

⁷ The Chamber notes that the witness's solemn declaration was not interpreted and is thus missing from the transcript, see T. 15320:12. However, as the *Krajišnik* Trial Chamber proceeded without revisiting this issue and considering that the Defence did not raise it as an indicator of unreliability, the Chamber will not further consider this issue.

⁸ E.g. the evidence of Munira Selmanović as well as documentary evidence admitted through her. The Chamber notes that the Prosecution has repeatedly argued that adjudicated facts corroborate certain evidence. Without very detailed submissions and a clear analysis of this issue the Chamber is not inclined to agree with the Prosecution in this respect, see also Decision on Prosecution Twenty-Third Motion to Admit Evidence Pursuant to Rule 92 bis, 25 October 2013, fn. 21.

⁹ See Decision on Prosecution's Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

The Chamber finds that the tendered documents meet this standard and thus form an inseparable and indispensable part of the testimony,¹⁰ with the exception of Rule 65 *ter* numbers 6849¹¹, 20521, and 18191¹².

iv. Guidance

8. The Chamber has reviewed the tendered transcript and finds that despite its length it is a focussed presentation of the evidence of the witness, thus complying with the Chamber's guidance.¹³

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *bis* of the Rules, the Chamber

GRANTS the requested leave to reply to the Response as it pertains to the Witness;

GRANTS the Motion **IN PART**;

ADMITS into evidence

- (i) the redacted portions of the Witness's prior testimony in the Krajišnik case as indicated in Annex A of the Motion,
- (ii) the associated documents bearing Rule 65 *ter* numbers 3317, 8455, 6841, 8929, 6864, 6846, 6860, 3680, 6854, 6858, 3318, 9182, 29013 and 18193;

DEFERS its decision on admission of Rule 65 *ter* numbers 6849 and 18191;

DECLARES MOOT the tendering of Rule 65 *ter* number 3432;

DENIES without prejudice the admission of Rule 65 *ter* number 20521;

¹⁰ The Chamber notes that the reference to the tendered table of concordance is incorrect in Annex A. The Prosecution indicated this through an informal communication and informed that the correct Rule 65 *ter* number is 29013.

¹¹ In paragraph 20 of the Motion the Prosecution tenders this document from the bar table in the alternative. However, the Chamber notes that this document is already part of a separate Prosecution bar table motion pending before the Chamber and will thus defer its decision on admission from the bar table.

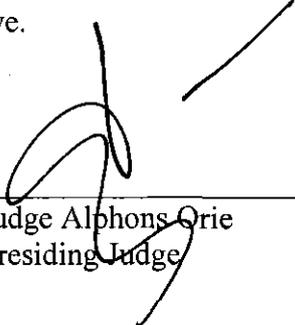
¹² *Ibid.*

¹³ T. 137, 194, 315-325, 525-532.

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 Eighteenth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]