



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: 17 September 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 September 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S MOTION TO ADMIT THE
EVIDENCE OF BOŽO DAVIDOVIĆ PURSUANT TO RULE 92
*BIS***

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 28 July 2015, the Defence filed a Motion pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking provisional admission into evidence the redacted witness statement of Božo Davidović dated 21 March 2014 ("Motion", "Witness", and "Witness Statement", respectively).¹ It submits that the Witness Statement is relevant and of probative value, in particular as it relates to counts 1 to 8 of the indictment.² The Defence further submits that the Witness Statement is admissible under Rule 92 *bis* because it contains relevant historical background about the suffering of Serbs in Ključ as well as the negative atmosphere in Ključ, none of which goes to proof of the acts and conduct of the Accused.³ On 7 August 2015, the Prosecution filed its response ("Response"), not objecting to the Motion.⁴

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.⁵

III. DISCUSSION

A. Preliminary matters

3. The Witness Statement has no corresponding attestation or declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have previously been conditionally admitted by this Chamber pending their formal attestation.⁶ In line with this practice, provided that all other admissibility requirements are met, the Chamber will conditionally admit the unattested witness statement pending the filing of the required attestations and declarations.

B. Admissibility pursuant to Rule 89 (C) of the Rules

¹ Defense Motion to Admit the Evidence of Božo Davidović Pursuant to Rule 92 *bis*, 28 July 2015 ("Motion").

² Motion, para. 4.

³ Motion, paras 19, 23

⁴ Prosecution Response to Defence Motion to Admit the Evidence of Božo Davidović Pursuant to Rule 92 *bis*, 7 August 2015 ("Response"), paras 2-3.

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

⁶ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, para. 27 and references cited therein.

4. The Chamber understands that the proposed material relates to the military and political situation in Ključ during 1992, and finds that it is relevant to the crimes as charged under Counts 1-8 of the Indictment. It further finds the Witness Statement to be of probative value. The Chamber therefore concludes that the Witness's Statement has met the requirements of Rule 89 (C) of the Rules.

C. Admissibility pursuant to Rule 92 bis of the Rules

5. The Chamber, having reviewed the Witness Statement, does not find, and Prosecution does not argue, that it relates to the acts and conduct of the Accused. The Chamber considers that the proposed material concerns the crime base and relates to the historical, political, and military background, and that it is cumulative to that of other witnesses who have already provided testimony in this case, for example Nikola Vračar. The Chamber finds that these factors, which are relevant to Rule 92 *bis* (A) (i) of the Rules, weigh in favour of admission. There are no factors under Rule 92 *bis* (A) (ii) weighing against admission. For these reasons, having already found that it is relevant and has probative value, the Chamber concludes that the Witness Statement is admissible pursuant to Rule 92 *bis* of the Rules.

IV. DISPOSITION

6. For the foregoing reasons, pursuant to Rule 92 *bis* of the Rules, the Chamber

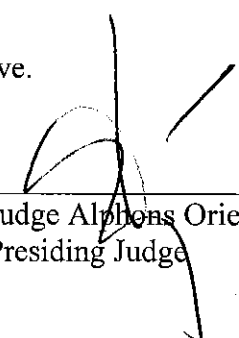
GRANTS the motion;

CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with Rule 92 *bis* of the Rules, the Witness Statement of Božo Davidović dated 21 March 2014, bearing Rule 65 *ter* number 1D01615;

INSTRUCTS the Defence to file the corresponding attestation and declaration to the statement of Božo Davidović within six weeks of the filing of this decision; and

REQUESTS the Registry to assign an exhibit number to the document admitted into evidence.

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



Judge Alphons Orie
Presiding Judge

Dated this seventeenth day of September 2015.
At The Hague
The Netherlands

[Seal of the Tribunal]