



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: 1 October 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 1 October 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF JANKO IVANOVIĆ
PURSUANT TO RULE 92BIS**

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 24 July 2015, the Defence filed a motion (“Motion”) seeking to admit, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the evidence of witness Janko Ivanović.¹ The evidence consists of one witness statement and one associated exhibit (a map of Hrasnica annotated by the witness).² The Defence submits that the proposed evidence is relevant and probative to the crimes alleged in Counts 9 and 10 of the Indictment and does not go to the acts or conduct of the Accused.³ According to the Defence, admission of the proposed evidence will prevent the unnecessary re-appearance of the witness, avoid unnecessary expense, and reduce the length of the trial.⁴ The Defence, moreover, submits that the proposed evidence was admitted into evidence in the *Prosecutor v. Radovan Karadžić* case (“*Karadžić* case”) without the need for cross-examination.⁵

2. On 7 August 2015, the Prosecution filed its response (“Response”).⁶ The Prosecution does not oppose the Motion provided that excerpts of Ivanović’s testimony from the *Karadžić* case are also admitted into evidence.⁷ It submits that the admission of the proffered transcript is necessary for the proper understanding of the proposed evidence and the determination of the witness’s credibility.⁸ Alternatively, the Prosecution seeks to cross-examine the witness.⁹

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, including the admission of exhibits associated with the written statements of witnesses of their prior testimony, as set out in previous decisions.¹⁰

¹ Defense Motion Pursuant to [*sic*] Admit the Evidence of Janko Ivanović Pursuant to Rule 92*BIS*, 24 July 2015.

² Motion, paras 12, 37, Annex B.

³ Motion, paras 2, 14-16, 32.

⁴ Motion, para. 25.

⁵ Motion, para. 28.

⁶ Prosecution Response to Defence Motion to Admit the Evidence of Janko Ivanović Pursuant to Rule 92*bis*, 7 August 2015.

⁷ Response paras 3, 7.

⁸ Response paras 3-5.

⁹ Response paras 6, 8.

¹⁰ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7; Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92

III. DISCUSSION

a) Attestation and Declaration

4. Ivanović's statement was tendered with the corresponding declaration and attestation, taken prior to the witness's testimony in the *Karadžić* case.

b) Admissibility Pursuant to Rule 89 (C) of the Rules

5. The witness's evidence relates to the military and political situation in Ilidža and Sarajevo before and during the war, in particular the digging of trenches and tunnels by Serbs in Hrasnica and the location of positions of Serb and Muslim forces. The Chamber therefore considers Ivanović's statement to be relevant and probative of the crimes as charged in the Indictment under Counts 9 and 10. In relation to any opinions or conclusions expressed by Ivanović, the Chamber recalls the approach it has taken with opinions or conclusions in the evidence of fact witnesses.¹¹ The Chamber also notes that the Prosecution did not oppose the admission of the witness's evidence. Based on the foregoing, the Chamber concludes that the witness's statement meets the requirements of Rule 89 (C) of the Rules.

c) Admissibility Pursuant to Rule 92 *bis* of the Rules

6. The Prosecution has not argued and the Chamber does not find that the proffered evidence relates to the acts and conduct of the Accused. With regard to factors weighing in favour of admitting evidence in the form of a written statement, the Chamber especially considers that the witness's statement provides a historical, political, and military background; and contains a description of the ethnic composition of the population in places to which the Indictment relates. The Chamber finds these factors, which are relevant pursuant to Rule 92 *bis* (A)(i) of the Rules, to weigh in favour of admission. There are no factors under Rule 92 *bis* (A)(ii) weighing against admitting the evidence in written form. In light of the above, the Chamber finds that the statement is admissible pursuant to Rule 92 *bis* of the Rules.

quarter, 23 July 2012, para. 13; 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.

¹¹ Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

d) Associated Exhibits

7. As for the tendered associated exhibit, the Chamber finds that it forms an inseparable and indispensable part of the witness's evidence to the extent that the statement would be incomprehensible or of lesser probative value without it. It will therefore admit it into evidence.

e) Transcript Portions Tendered by the Prosecution

8. Contrary to the Defence's submissions, Ivanović was in fact cross-examined in the *Karadžić* case, and the Prosecution tenders portions of the Transcript. The Chamber recalls its guidance that the responding party may, in order to contextualise or clarify a witness statement, tender transcript portions from previous cases, and, if appropriate, associated exhibits used during that testimony.¹²

9. The Chamber considers the tendered excerpts to be relevant to the understanding of Janko Ivanović's evidence as a whole and therefore finds the excerpts to be admissible pursuant to Rule 92 *bis* of the Rules.

IV. DISPOSITION

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

GRANTS the Motion;

ADMITS into evidence:

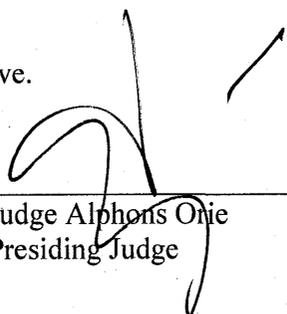
- a) the redacted witness statement of Janko Ivanović dated 26 April 2012, bearing Rule 65 *ter* number 1D04142;
- b) the associated exhibit bearing Rule 65 *ter* number 1D05846;
- c) excerpts of the testimony of Janko Ivanović, dated 17 January 2013, in the *Karadžić* case, namely T. 32058:15-32059:7, 32059:19-32063:16 and 32065:14-32066:9; and

¹² Decision on Defence Motion to Admit the Evidence of Željka Malinović Pursuant to Rule 92*bis*, 8 September 2015, para. 9.

INSTRUCTS the Prosecution within two weeks of the date of this decision to upload into eCourt the above admitted excerpts of the testimony, to the extent this has not been done already;

REQUESTS the Registry to assign exhibit numbers to the documents admitted into evidence.

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



Judge Alphons Orie
Presiding Judge

Dated this first day of October 2015
At The Hague
The Netherlands

[Seal of the Tribunal]