



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 December 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 December 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF DRAGAN GAJIĆ 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 9 November 2015, the Defence filed a motion, pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking the provisional admission into evidence of the written statement of Dragan Gajić dated 14 July 2015 ("Motion").¹ The Defence submits that the proffered evidence is relevant and of probative value, in particular as it relates to Counts 1 to 8 of the Indictment.² It further argues that the statement is admissible under Rule 92 *bis* of the Rules as it relates to the relevant military background, and supports evidence pertaining to circumstances surrounding acts charged in the Indictment.³ Moreover, the Defence submits that the evidence does not pertain to the acts and conduct of the Accused.⁴

2. On 23 November 2015, the Prosecution filed its response, not opposing the provisional admission of the statement pending the attachment of a declaration from the witness in compliance with Rule 92 *bis* (B).⁵

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 as set out in a previous decision.⁶

III. DISCUSSION

A. Preliminary Matters

4. On 14 July 2015, the Defence finalised the witness statement of Gajić.⁷ On 17 August, the Chamber set a deadline that a number of evidentiary motions, including Rule 92 *bis* motions, be filed no later than 18 September.⁸ On 8 October, the Defence filed its motion to add various witness

¹ Defense Motion to Admit the Evidence of Dragan Gajić pursuant to Rule 92 *bis*, 10 November 2015, paras 1, 32 (ii), 33.

² Motion, paras 3, 15.

³ Motion, para. 19.

⁴ Motion, paras 27–28.

⁵ Prosecution Response to Motion to Admit Testimony of Dragan Gajić pursuant to Rule 92 *bis*, 23 November 2015, para. 2.

⁶ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012 ("Decision on Prosecution's Third 92 *bis* Motion"), paras 5-7.

⁷ Motion, Annex A, p. 4.

⁸ T. 37909.

to its 65 *ter* witness list, including Gajić.⁹ The Chamber notes that this motion was filed over seven weeks after the Chamber's instruction of 17 August and almost three weeks after the deadline of 18 September. In addition the Motion was filed over seven weeks after the deadline of 18 September. The Defence submits that on 18 September, Gajić was not on its Rule 65 *ter* witness list and therefore the Motion could not be filed by 18 September.¹⁰ The Chamber finds that the Defence has not demonstrated good cause for the late filing. However, the Chamber considers it in the interests of justice to exceptionally consider the motion on its merits, having also noted that it was filed expeditiously, within two working days, once the Chamber had approved to have Gajić added to the 65 *ter* witness list.

B. Attestation and Declaration

5. The 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.¹¹ 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 attestation and declaration.

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

6. The Chamber understands that the proposed evidence relates to the military situation in Prijedor, Ljubija, and at the Gradačac front during the relevant period of the Indictment, matters that are generally relevant to Counts 1, and 3 to 8 of the Indictment. More specifically, the evidence is related to the work of the engineer battalion within the 343rd Motorised Brigade of the JNA. In this regard, the witness mentions that he and his battalion never participated in the events that took place in Tomašica and Prijedor. The witness signed an acknowledgement attached to his statement stating that it accords with the truth.

7. In relation to any opinions or conclusions expressed by Gajić in his statement, the Chamber recalls the approach it has taken in relation to opinions or conclusions found in the evidence of fact witnesses.¹² Considering also that the Prosecution did not object to admission, the Chamber finds

⁹ Defence Motion Seeking to Add Witnesses to its Rule 65ter List to Address the Prosecution Re-opening as to Tomasic Evidence and Related Matters as to Witnesses not Originally on the Rule 65ter List, 8 October 2015 (Confidential).

¹⁰ Motion, para 2.

¹¹ Decision on Prosecution's Third 92 *bis* Motion, para. 27 and references cited therein.

¹² Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

that the proposed evidence has probative value and that it meets the requirements of Rule 89 (C) of the Rules.

D. Admissibility Pursuant to Rule 92 bis of the Rules

8. The Chamber does not find, and the Prosecution does not argue, that the statement relates to the acts and conduct of the Accused. With regard to the factors weighing in favour of admitting evidence in the form of a written statement, the Chamber considers that the statement concerns the crime base and relates to the relevant military background. In this respect, the evidence is also cumulative to that of other witnesses who have already provided testimony in this case.¹³ 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 other factors under Rule 92 bis (A)(ii) weighing against admitting the evidence in written form. For these reasons, the Chamber concludes that the statement is admissible pursuant to Rule 92 bis of the Rules.

IV. DISPOSITION

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

GRANTS the Motion;

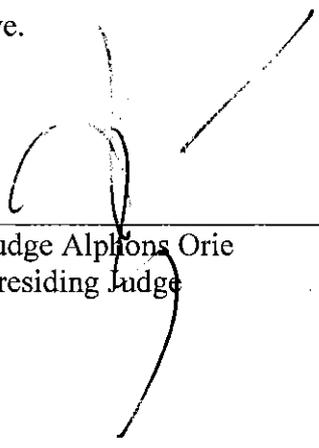
CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with the requirements of Rule 92 bis (B) of the Rules, the witness statement of Dragan Gajić dated 14 July 2015, bearing Rule 65 ter number 1D05816;

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

¹³ For instance, Gajić's evidence is cumulative to the oral evidence of Dragan Vujčić (T. 41510) and Bosko Kelečević (T. 37287).

INSTRUCTS the Registry to assign an exhibit number to the document admitted into evidence 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 seventeenth day of December 2015
At The Hague
The Netherlands

[Seal of the Tribunal]