



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-05-88/2-T

Date: 10 May 2011

Original: English

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**IN TRIAL CHAMBER II**

**Before:** Judge Christoph Flügge, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Prisca Matimba Nyambe

**Registrar:** Mr. John Hocking

**Decision of:** 10 May 2011

**PROSECUTOR**

v.

**ZDRAVKO TOLIMIR**

**PUBLIC**

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**DECISION ON PROSECUTION MOTION TO CONVERT SEVEN *VIVA*  
*VOCE* WITNESSES TO RULE 92 *TER* WITNESSES**

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**Office of the Prosecutor**

Mr. Peter McCloskey

**The Accused**

Zdravko Tolimir

**THIS TRIAL CHAMBER** of the 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 (“Tribunal”) is seised of the “Prosecution Motion To Convert Seven *Viva Voce* Witnesses to Rule 92 *ter* Witnesses,” filed publicly with a confidential Appendix on 23 February 2011 (“Motion”), seeking the admission of the written evidence and associated exhibits of *viva voce* Witnesses Nos. 49, 128, 187, 189, 191, 192 and 193 pursuant to Rule 92 *ter* (“Request”),<sup>1</sup> and hereby renders its decision thereon.

## I. PROCEDURAL BACKGROUND

1. A BCS translation of the Motion was delivered to the Defence on 7 March 2011. On 8 March 2011, Mr. Gajić responded orally on behalf of the Accused with respect to Witness No. 187,<sup>2</sup> and the Chamber disposed of the Motion with respect to Witness No. 187 in a partial decision rendered orally on 10 March 2011.<sup>3</sup> The Chamber also rendered an oral decision with respect to Witness No. 189 on 9 May 2011.<sup>4</sup> The present decision thus concerns the remaining five witnesses.

2. The Accused submitted the written “Response to Prosecution Motion to Convert the Status of Seven Witnesses” concerning the remaining five Witnesses, which was filed in English on 24 March 2011 (“Response”).

## II. APPLICABLE LAW

3. The law relating to the admission of evidence pursuant to Rule 92 *ter* was set out in the Chamber’s decision of 3 November 2009, and therefore shall not be repeated here in full. The Chamber recalls that it may be appropriate to admit the transcript of a witness’s testimony in previous proceedings before the Tribunal where the provisions of Rule 92 *ter* are fulfilled at trial.<sup>5</sup> It is thus within the Chamber’s discretion to admit the written evidence given by a witness in proceedings before the Tribunal provided that the provisions set out in Rule 92 *ter*(A) and the general provisions for the admission of evidence in Rules 89(C) and (D) are met.<sup>6</sup>

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<sup>1</sup> Motion, para. 1.

<sup>2</sup> T. 10912-10914.

<sup>3</sup> T. 11176-11177.

<sup>4</sup> T. 18318-18320.

<sup>5</sup> *Prosecutor v. Tolimir*, Case No. IT-05-88/2, Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 *ter* With Confidential Appendices A–C, 3 November 2009 (“3 November 2009 Decision”), para. 14; *see also* *Prosecutor v. Tolimir*, Case No. IT-05-88/2, Decision on Motions Regarding Rule 65 *ter* Witness and Exhibit Lists, Rule 92 *ter* and Protective Measures, 30 March 2010 (“30 March 2010 Decision”).

<sup>6</sup> *See* 3 November 2009 Decision, para. 8; 30 March 2010 Decision, para. 10; *see also* *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 4.

4. The Tribunal's jurisprudence also provides for the admission of exhibits submitted with the written statement or transcript which form an "inseparable and indispensable part" of the witness's testimony.<sup>7</sup> For this requirement to be satisfied, the exhibit must have been discussed within the testimony and it must be shown that, without the document, the witness' testimony would lose probative value or become incomprehensible.<sup>8</sup>

### III. SUBMISSIONS AND DISCUSSION

5. The Prosecution submits that Witnesses Nos. 49, 128, 187, 189, 191, 192 and 193 (collectively, "Witnesses") testified at length in other cases before this Tribunal concerning matters directly relevant to and probative of material issues arising from the Indictment.<sup>9</sup> It further submits that the admission of the Witnesses' prior testimony and associated exhibits pursuant to Rule 92 *ter* will avoid unnecessary repetition, will reduce the estimated time required to present the Witnesses' evidence in chief from an estimated 11 hours and 30 minutes for *viva voce* testimony to approximately 7 hours and 15 minutes and will thus promote efficiency and expediency in the conduct of the proceedings.<sup>10</sup>

6. The Prosecution asserts that the proposed evidence meets the requirements for admissibility under Rule 92 *ter*, as the Witnesses will be present in court to attest to both the accuracy of the written evidence and that it reflects what they would say if they were examined on the same issues *viva voce* in the instant case. It further submits that all exhibits associated with their prior testimony are necessary for a full comprehension of their evidence.<sup>11</sup>

7. According to the Prosecution, the admission of the Witnesses' evidence pursuant to Rule 92 *ter* would not compromise the rights of the Accused, as he has been on notice of the content of the proposed evidence for a substantial period of time,<sup>12</sup> and he retains the right to cross-examine the Witnesses.<sup>13</sup>

<sup>7</sup> See 3 November 2009 Decision, para. 7; see also *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 *ter* ("Đorđević First Decision"), 10 February 2009, para. 5; *Prosecutor v. Lukić and Lukić*, Case. No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter* ("Lukić Decision"), 9 July 2008, para. 15; *Prosecutor v. Popović, et al.*, Case No. IT-05-88-T, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* ("Popović Rule 92 *bis* Decision"), 12 September 2006, paras. 22-24.

<sup>8</sup> *Đorđević* First Decision, para. 4; *Lukić* Decision, para. 15.

<sup>9</sup> Motion, para. 1.

<sup>10</sup> Motion paras. 1, 6.

<sup>11</sup> Motion, para. 8.

<sup>12</sup> Motion, para. 16. The Prosecution states that the BCS audio files of the proceedings in the *Blagojević and Jokić* and *Popović et al.* trials were provided to the Accused on 19 March 2008, and he has had access to the associated exhibits since 24 February 2010. Motion, para. 16 and fn 19.

<sup>13</sup> Motion, para. 16.

8. In the Response, the Accused acknowledges that the application of Rule 92 *ter* does not compromise his right to a fair trial as he retains the possibility to cross-examine the Witnesses.<sup>14</sup> He submits, however, that while he has had notice of the content of the written evidence for a considerable length of time, he has only had notice of the Prosecution's intent to offer it into evidence in this case since the filing date of the Motion.<sup>15</sup> Additionally, the Accused submits that the process of preparing for the cross-examination of a Rule 92 *ter* witness is significantly more onerous due to the fact that the Accused must review the audio recordings as opposed to the transcripts, as he does not understand English.<sup>16</sup> With a regime of four trial days per week, the Accused claims, the Defence might be faced with insufficient time to prepare for cross-examination.<sup>17</sup>

9. The Accused further submits that admitting evidence pursuant to Rule 92 *ter* can lead to the admission of too large a body of materials into the case record,<sup>18</sup> and notes that, were the Motion to be granted, the resulting time saved would amount to little more than one trial day.<sup>19</sup> The Accused also raises a particular concern regarding witnesses who have testified as Defence witnesses in previous proceedings, since the party that is now calling the witnesses has previously cross-examined them.<sup>20</sup> Finally, the Accused contends that the Prosecution's Rule 65 *ter* summaries for several witnesses do not adequately reflect the extent of the witnesses' prior testimony.<sup>21</sup>

10. As a preliminary matter, the Chamber considers that the degree of detail contained in the Prosecution's Rule 65 *ter* summary of a witness's anticipated testimony is not directly relevant to its analysis for the purposes of this Motion, even where such anticipated testimony includes the witness's testimony in a prior proceeding, since it is the testimony itself rather than the summary which will be admitted pursuant to this Decision. Additionally, the Chamber does not consider the fact that a witness was previously called by either the Prosecution or the Defence to be a substantial factor in its consideration of the propriety of admitting a witness's prior testimony pursuant to Rule 92 *ter*.

11. The Chamber further observes that although admitting evidence pursuant to Rule 92 *ter* ostensibly reduces the amount of time required in court to complete a witness's examination-in-chief, admitting voluminous prior testimony increases the amount of time that the Accused must

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<sup>14</sup> Response, para. 4.

<sup>15</sup> Response, para. 6.

<sup>16</sup> Response, para. 3.

<sup>17</sup> Response, paras. 3, 7.

<sup>18</sup> Response, para. 3.

<sup>19</sup> Response, para. 29.

<sup>20</sup> Response, para. 8.

<sup>21</sup> The Accused raises this argument with respect to the proposed evidence of Witnesses Nos. 128, 189, 192, and 193. Response, paras. 11, 13, 18–21, and 28.

spend reviewing that evidence prior to the witness's appearance in court in order to prepare for cross-examination. Indeed, the Chamber notes that although the Accused may have had notice of the existence and content of the prior testimony since 2008, only the Motion itself put the Accused on notice of the Prosecution's intent to tender that evidence in the instant case. Moreover, the Chamber is mindful of the need to avoid overburdening the record in the instant case with items of uncertain relevance.

12. In light of these circumstances, the Chamber considers that it must balance a number of factors in considering the admission of the Witnesses' prior testimony pursuant to Rule 92 *ter*, including, *inter alia*, (i) the amount of time proposed to be saved by admitting the prior testimony, (ii) the volume of the prior testimony, (iii) the degree of overlap between the topics covered in the prior testimony and the topics anticipated to be covered during the witness's examination in the instant case, and (iv) the timing of the witness's testimony, *i.e.*, the amount of time the Accused will have to review the evidence proffered by the Prosecution through its Motion.

13. As a procedural matter, however, the Chamber notes that none of the transcripts of the prior testimony proffered for admission in the Motion – as well as many of the exhibits listed in Appendix A to the Motion as exhibits associated with the prior testimony – are currently listed on the Prosecution's Rule 65 *ter* Exhibit List. While the Chamber has access to the official transcripts of testimony in prior proceedings, the Chamber notes that the associated exhibits which lack Rule 65 *ter* numbers are not currently available in e-court, and the Chamber has thus not been able to review them. Accordingly, those documents which lack Rule 65 *ter* exhibit numbers will not be considered for admission pursuant to this decision. The Prosecution remains free to renew the portion of the Motion that pertains to their admission once the documents have been uploaded into e-court and have been added to the Rule 65 *ter* Exhibit List.

14. The Chamber will now address the parties' specific submissions with respect to each individual witness.

#### 1. Witness No. 49

15. The Prosecution submits that Witness No. 49's testimony in the *Popović et al.* case, along with the exhibits associated with that testimony, is probative of the material issues between the parties,<sup>22</sup> and will reduce the estimated amount of time required for examination in chief from 45 to 30 minutes.<sup>23</sup> According to the Prosecution, Witness No. 49's proposed evidence covers, *inter alia*,

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<sup>22</sup> Motion, para. 9.

<sup>23</sup> Motion, fn. 10.

Witness No. 49's travel on the last of a convoy of buses going from Žepa towards Kladanj on 27 July 1995; Witness No. 49's detention in a room at Rasadnik farm along with Hamdija Torlak, Hodja Mehmed Hajrić, and Amir Imamović; the Accused's visit to Rasadnik farm around noon on the first day of Witness No. 49's detention; the disappearance of Hajrić and Imamović from the camp; the treatment of the prisoners at the camp; and the visits made to the camp by the International Committee for the Red Cross and General Mladić.<sup>24</sup> The Prosecution contends that, in particular, Witness No. 49's evidence is probative of the Accused's knowledge and participation in the alleged forcible transfer operations in Srebrenica and Žepa.<sup>25</sup>

16. The Accused suggests that, given the relatively short amount of time saved and the fact that the time proposed for *viva voce* examination-in-chief is brief and reasonable, the Prosecution's request to admit the transcript of Witness No. 49's prior testimony pursuant to Rule 92 *ter* should be dismissed.<sup>26</sup>

17. The Chamber has reviewed the transcript of Witness No. 49's testimony in the *Popović et al.* case, as well as his witness statement, which was admitted pursuant to Rule 92 *ter* in that case, and notes that his testimony covers the situation in Žepa leading up to and including the evacuation of the population of Žepa between 24–27 July 1995. The prior testimony of Witness No. 49, a former resident of Žepa, covers his evacuation with the last convoy leaving from Žepa on 27 July 1995 and his transfer to the Rasadnik farm prison camp in Rogatica, where he was held between 28 July 1995 and January 1996.<sup>27</sup> Witness No. 49 recalled that the Accused was present at the time of the evacuation of the population of Žepa,<sup>28</sup> as well as at a checkpoint where the wounded men on Witness No. 49's bus were transferred to another bus,<sup>29</sup> The witness also testified that he encountered the Accused upon his arrival at the Rasadnik farm prison camp.<sup>30</sup> Although the Chamber considers that the criteria for admission set out in Rules 89 (C) and (D) are met with respect to the proposed evidence of Witness No. 49, the Chamber notes that the prior testimony does not include discussion of several topics anticipated to be covered during the witness's examination in the instant case, including visits by Mladić to the camp or the disappearances of Mehmed Hajrić and Amir Imamović from the camp.<sup>31</sup> The Chamber also observes that the prior testimony lacks detail regarding Witness No. 49's encounters with the Accused.<sup>32</sup>

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<sup>24</sup> Motion, para. 9.

<sup>25</sup> Motion, para. 9.

<sup>26</sup> Response, para. 9.

<sup>27</sup> Rule 65 *ter* 01753, paras. 8, 10.

<sup>28</sup> Rule 65 *ter* 01753, para. 6.

<sup>29</sup> Rule 65 *ter* 01753, para. 10.

<sup>30</sup> Rule 65 *ter* 01753, para. 11.

<sup>31</sup> Motion, para. 9.

<sup>32</sup> Motion, para. 9.

45. The Chamber further notes that the transcript of Witness No. 49's prior testimony numbers 113 pages and that the proposed time to be saved by admitting the transcript is only 15 minutes of court time. Considering the centrality of the topics that are anticipated to be covered during Witness No. 49's testimony to the instant case, the length of the transcript of the prior testimony, and the relatively short amount of time which would be saved by admitting the transcript of Witness No. 49's testimony in the *Popović et al.* case, the Chamber is of the view that it would be in the interest of justice for Witness No. 49 to testify *viva voce*.

## 2. Witness No. 128

18. With regard to Witness No. 128, the Prosecution submits that the proposed evidence, which consists of the transcript of Witness No. 128's testimony in the *Popović et al.* case and exhibits associated with that testimony, is probative of the Accused's knowledge of the alleged forcible transfer operation in Srebrenica, the disposition of the Muslim prisoners detained at Nova Kasaba on 13 July 1995 and their subsequent murder.<sup>33</sup> The Prosecution highlights that Witness No. 128's evidence addresses the Accused's proposal to General Mladić that the Muslim prisoners be kept out of sight from the air and the ground.<sup>34</sup> According to the Prosecution, the admission of Witness No. 128's written evidence would reduce the estimated testimony on direct examination from three hours and 45 minutes to two hours.<sup>35</sup>

19. The Accused does not object in principle to Witness No. 128 testifying pursuant to Rule 92 *ter*,<sup>36</sup> but expresses concern regarding whether, in light of the fact that one of the exhibits associated with Witness No. 128's prior testimony is vigorously disputed, admitting the transcript of such testimony pursuant to Rule 92 *ter* would actually save court time.<sup>37</sup>

20. The Chamber considers that the vast majority of topics covered in Witness No. 128's prior testimony in the *Popović et al.* case are relevant to and probative of the material issues contained in the Indictment. As Commander of the 65<sup>th</sup> Protection Regiment Witness No. 128 testified, *inter alia*, about the command, organization and functions of the 65<sup>th</sup> Protection Regiment in July 1995, including the Military Police Battalion and its Military Police Companies;<sup>38</sup> the general role and tasks of the Security Administration of the Main Staff and the relationship of the Security Administration of the Main Staff with the Military Police Battalion of the 65<sup>th</sup> Protection

<sup>33</sup> Motion, para. 10.

<sup>34</sup> Motion, para. 10 (referring in particular to Ex. P00125, which is an order type-signed by Witness No. 128).

<sup>35</sup> Motion, fn. 10.

<sup>36</sup> Response, para. 11.

<sup>37</sup> Response, para. 11 (referring to Ex. P00125).

<sup>38</sup> PT. 15229, 15232–15237, 15242, 15301 (11–12 September 2007)

Regiment;<sup>39</sup> the prisoners of war held at Nova Kasaba;<sup>40</sup> and the Accused's alleged proposal to General Mladić that the Muslim prisoners detained at Nova Kasaba shall be placed in an area protected from observation from the ground or the air.<sup>41</sup> Witness No. 128's prior testimony thus meets the criteria set out in Rules 89(C) and (D) for the admission of evidence.

21. The Chamber observes that the admission of the 165 pages of Witness No. 128's prior testimony in the *Popović et al.* case would reduce the amount of time required for the Prosecution's examination in chief by one hour and 45 minutes. It also notes that Witness No. 128 is currently scheduled to testify during the latter half of May 2011.<sup>42</sup> In light of the large degree of overlap between the topics addressed in Witness No. 128's prior testimony and the topics relevant to the instant case, the fact that the Accused may address his concerns regarding the contested associated exhibit during cross-examination, and the fact that Witness No. 128 will not testify until the latter half of May, the Chamber is of the view that the Motion should be granted with respect to the transcript of Witness No. 128's prior testimony and the exhibits associated with it.

### 3. Witness No. 191

22. The Prosecution submits that the transcript of Witness No. 191's testimony in the *Popović et al.* case, as well as the exhibits associated with it, relate to the organisation and operation of the VRS Main Staff and addresses the use of artillery during the attacks on Žepa and Srebrenica, and are therefore relevant to the material issues in this case.<sup>43</sup> The Prosecution further claims that the admission of the written evidence of Witness No. 191 will reduce the estimated time required for examination in chief from three hours to one hour.<sup>44</sup>

23. The Accused has not provided any submissions with respect to Witness No. 191.

24. The transcript of Witness No. 191's testimony in the *Popović et al.* case reveals that the topics covered therein are relevant to and probative of material issues contained in the Indictment. As Commander of the Visegrad tactical group and Chief of Artillery in the Main Staff of the VRS, Witness No. 191 testified, *inter alia*, about the organisation and operation of the VRS, the demilitarisation of the protected zones and the situation within these zones, in particular Žepa and Gorazde,<sup>45</sup> checkpoint inspections of UNHCR, UNPROFOR and humanitarian convoys,<sup>46</sup> as well

<sup>39</sup> PT. 15240–15241, 15270–15272, 15287 (12 September 2007).

<sup>40</sup> PT. 15249–15259, 15273–15275, 15292–1929 (12 September 2007).

<sup>41</sup> PT. 15261–15267 (12 September 2007).

<sup>42</sup> *Prosecution v. Tolimir*, Case No. IT-05-88/2, Prosecution's Submission of Prosecution Witnesses for the Month of May 2011, 15 April 2011, Appendix A.

<sup>43</sup> Motion, para. 13.

<sup>44</sup> Motion, fn. 10.

<sup>45</sup> PT. 29013–29034 (28 November 2008).

as the drafting procedure of reports and directives,<sup>47</sup> and the planning and preparation of operations, including Operation Spreca.<sup>48</sup> Accordingly, the Chamber is satisfied that the criteria set out in Rules 89 (C) and (D) for the admission of evidence are met.

25. The Chamber observes that the admission of the 163 pages of Witness No. 191's prior testimony would reduce the amount of time required for the Prosecution's estimated direct examination by two hours. In addition, according to the most recent estimate of the Prosecution, Witness No. 191 will not testify until July 2011.<sup>49</sup> In light of the large degree of overlap between topics addressed in Witness 191's prior testimony and topics relevant to the present case, the relatively significant amount of time expected to be saved, that the witness is not expected to testify until July, the Chamber considers that the Motion should be granted with respect to the transcript of Witness No. 191's prior testimony and related exhibits.

#### 4. Witness No. 192

26. According to the Prosecution, the transcript of Witness No. 192's testimony in the *Popović et al.* case and the exhibits associated thereto concern the role of the VRS in implementing the strategic objectives of the RS political leadership.<sup>50</sup> The Prosecution also claims that Witness No. 192's prior testimony is probative of the Accused's knowledge to the extent that the prior testimony addresses the standard procedures applied by the intelligence and security sectors in handling prisoners of war.<sup>51</sup> According to the Prosecution, admitting the transcript of Witness No. 192's prior testimony would reduce the time required for examination in chief from two hours to one hour.<sup>52</sup>

27. The Accused submits that the topics listed in the Prosecution's Rule 65 *ter* summary for Witness No. 192 are so central to the case that Witness No. 192 should be required to testify *viva voce*.<sup>53</sup> In light of the voluminous nature of the prior testimony and the fact that the estimated time for examination in chief contained in the Prosecution's Rule 65 *ter* summary is only reduced by an hour, the Accused submits that the record should not be overburdened by admitting the prior transcript and that Witness No. 192 should be required to testify *viva voce*.<sup>54</sup>

<sup>46</sup> PT. 29034–29040 (29 November 2008); PT. 29041– 29049 (1 December 2008)

<sup>47</sup> PT. 29049–29052, 29054–29056; 29068–29073 (1 December 2008).

<sup>48</sup> PT. 29056–29060 (1 December 2008).

<sup>49</sup> The Chamber was notified informally on 13 March 2011 that the Prosecution did not intend to call Witness No. 191 until July 2011.

<sup>50</sup> Motion, para. 14.

<sup>51</sup> Motion, para. 14.

<sup>52</sup> Motion, fn. 10.

<sup>53</sup> Response, para. 26.

<sup>54</sup> Response, para. 27.

28. The Chamber notes that Witness No. 192 testified extensively during the *Popović et al.* case. As the Commander of the East Bosnia Corps, his testimony addresses such topics as the command structure of the VRS, including coordination as an element of the command function,<sup>55</sup> daily and periodical reporting,<sup>56</sup> combat-readiness analysis and reporting,<sup>57</sup> and the process drafting of directives.<sup>58</sup> Witness No. 192 also gave testimony regarding the six Strategic Objectives,<sup>59</sup> as well as the restriction of humanitarian aid<sup>60</sup> and various events surrounding the fall of the Srebrenica and Žepa enclaves in July and August 1995.<sup>61</sup>

29. These topics are relevant to and probative of material issues in the instant case, however, the Chamber notes that the transcript of this prior testimony numbers 276 pages and that the proposed time to be saved by admitting the transcript is only one hour of court time. Considering the centrality of the issues covered during the prior testimony, the length of the transcript of the prior testimony, and the amount of time which would be saved by admitting Witness No. 192's testimony in the *Popović et al.* case, the Chamber is of the view that it would be in the interest of justice to hear Witness No. 192 testify *viva voce*.

#### 5. Witness No. 193

30. With regard to Witness No. 193, the Prosecution submits that the proposed evidence, namely the transcript of Witness No. 193's prior testimony in the *Popović et al.* case and associated exhibits, concerns Witness No. 193's participation in the preparation for Operation Krivaja 95; General Živanović's formulation of the Drina Corps order for the operation on Directive No. 7; the common understanding among VRS officers of the goal of the military campaign; and VRS relations with UNPROFOR.<sup>62</sup> The Prosecution submits that the admission of the written evidence of Witness No. 193 will reduce the estimated time required for examination in chief from two hours to 30 minutes.<sup>63</sup>

31. The Accused points out that Witness No. 193 testified as a witness of Colonel Vujadin Popović's defence.<sup>64</sup> He further takes issue with the content of the Prosecution's Rule 65 *ter*

<sup>55</sup> PT. 28528–28529 (20 November 2008).

<sup>56</sup> PT. 28491, 28496 (19 November 2008).

<sup>57</sup> PT. 28497–28499, 28500–28502 (19 November 2008).

<sup>58</sup> PT. 28497–28498, 28512–28514 (19 November 2008).

<sup>59</sup> PT. 28651–28654 (21 November 2008).

<sup>60</sup> See e.g. PT. 28546–28549 (20 November 2008).

<sup>61</sup> See e.g. PT. 28560–28569, 28707–28708, 28730–28733 (24 November 2008).

<sup>62</sup> Motion, para. 15.

<sup>63</sup> Motion, fn. 10.

<sup>64</sup> Response, para. 17.

summary for Witness No. 193, suggesting that it omits key aspects and incorrectly presents Witness No. 193's evidence in the *Popović et al.* case.<sup>65</sup>

32. The Chamber has reviewed Witness No. 193's prior testimony in the *Popović et al.* case. Having held the positions of Deputy Chief of Operations in the Main Staff and Chief of Operations and Training in the Drina Corps, Witness No. 193 testified during the *Popović et al.* case on such topics as his participation in the preparation of Operation Krivaja 95,<sup>66</sup> the Drina Corps Order No. 03/277-2 for defence and active combat operations, Operative No. 7,<sup>67</sup> and the Drina Corps Command Order 04/156-2, Operations Order No. 1 "Krivaja-95".<sup>68</sup> In addition, Witness No. 193 was questioned during cross-examination by the Prosecution on the objectives of the VRS and the Bosnian Serb Government in the upper and middle Podrinje region.<sup>69</sup> The Chamber is therefore satisfied that the transcript of Witness No. 193's prior testimony meets the criteria set out in Rules 89(C) and (D).

33. The Chamber notes, however, that in the instant case, Witness No. 193 is expected to testify on the common understanding among VRS officers of the goal of the military campaign,<sup>70</sup> and specifically that the understanding among VRS officers was that the goal of the military campaign was the ethnic separation of the national communities in Bosnia, as reflected in Witness No. 193's Rule 65 *ter* summary.<sup>71</sup> Although the Chamber is mindful that the admission of Witness No. 193's prior testimony numbering 189 pages is expected to save one hour and 30 minutes of estimated direct examination, the Chamber is mindful of the importance of the topics covered during the prior testimony, and is sceptical of the feasibility of reducing the time required for examination-in-chief from two hours to 30 minutes. Accordingly, the Chamber considers that it would be in the interest of justice for Witness No. 193 to testify *viva voce*.

## 6. Conclusion

34. Having reviewed the transcripts of the prior testimony of Witnesses Nos. 128 and 191, the Chamber is persuaded that they should be admitted pursuant to Rule 92 *ter* once the Prosecution has provided Rule 65 *ter* exhibits numbers for the transcripts and the conditions set out in Rule 92 *ter*(A) are met upon the witnesses' appearances at trial.

<sup>65</sup> Response, paras. 18–21. The Chamber has already addressed this argument and will not deal with it further. *See supra* paras. 9–10.

<sup>66</sup> PT. 21726–21735, 21757–21762 (4 June 2008).

<sup>67</sup> PT. 21809–21821, 21824–21827 (5 June 2008).

<sup>68</sup> PT. 21730–21735, 21757–21762 (4 June 2008).

<sup>69</sup> PT. 21825, 21833–21386 (5 June 2008).

<sup>70</sup> Motion, para. 20.

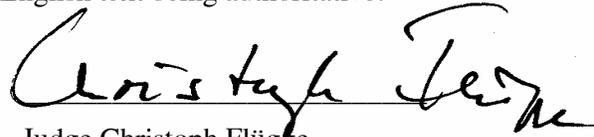
35. With respect to the remaining exhibits listed in Appendix A, the Chamber considers that those exhibits which were admitted into evidence during the witness's prior testimony are an "inseparable and indispensable" part of the witness's testimony and shall be admitted into evidence once the requirements under Rule 92 *ter*(A) are met.<sup>72</sup> Exhibits that were shown to the witness but admitted through other witnesses in the previous cases, as well as exhibits shown to the witness but not admitted into evidence in the previous cases will not be admitted absent an additional showing of their necessity for understanding the transcripts of the prior testimony.

#### IV. DISPOSITION

For these reasons, pursuant to Rules 73 and 92 *ter* of the Rules, the Trial Chamber hereby

- (1) **GRANTS** the Motion with respect to the prior testimony of Witnesses Nos. 128 and 191;
- (2) **DECLARES** the Request moot with respect to Witnesses Nos. 187 and 189; and
- (3) **DENIES** the Motion in all other respects.

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



Judge Christoph Flügge

Presiding Judge

Dated this 10th day of May 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>71</sup> *Prosecutor v. Tolimir*, Case No. IT-05-88/2, Notice and Motion Concerning Prosecution's Submission of its Updated Rule 65*ter* Exhibit List, Witness List, and Witness Summaries, With Confidential Appendices A, B, and C, confidential, Appendix C, 10 May 2010.

<sup>72</sup> See 3 November 2009 Decision, paras. 45–47.