

UNITED
NATIONS

IT-98-32/1-R77.2
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05 December 2011

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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-98-32/1-R77.2
Date: 5 December 2011
Original: English

IN THE TRIAL CHAMBER

Before: Judge Howard Morrison, Presiding
Judge Burton Hall
Judge Guy Delvoie

Registrar: Mr. John Hocking

Decision of: 5 December 2011

PROSECUTOR

v.

JELENA RAŠIĆ

PUBLIC

**DECISION ON PROSECUTION'S
MOTION FOR ADMISSION OF EVIDENCE
PURSUANT TO RULE 92 *BIS***

Office of the Prosecutor

Mr. Paul Rogers

Counsel for the Accused

Ms. Mira Tapusković

TRIAL CHAMBER III (“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”);

BEING SEISED of the “Prosecution’s motion for admission of evidence pursuant to Rule 92 *bis*”, filed publicly with public Annex A and confidential Annex B on 1 July 2011 (“Motion”), whereby the Prosecution requests the Trial Chamber to dispense with the attendance of Donald King, Zbigniew Wojdyla, Shahzada Sultan and Rijad Topalović (“four witnesses”) and to admit into evidence their statements and therewith associated documents;¹

RECALLING that on 7 September 2011 the Trial Chamber, *inter alia*, ordered the Prosecution to correct Annexes A and B and file amended versions thereof, and decided to remain seized of the Motion;²

NOTING the Prosecution’s “Submission pursuant to order for more information [*sic*] in respect of Prosecution’s 92 *bis* motion”, filed publicly on 21 September 2011 (“Submission”), whereby the Prosecution provides an amended Annex A setting out the Rule 92 *bis* statements of the four witnesses and the particular documents which are associated therewith, notifies the Trial Chamber that “each 92*bis* statement (with attestation) and associated 65*ter* exhibit is now available to both the Chamber and the Defence in eCourt”, and “withdraws Annex B to its earlier 92*bis* motion”;³

NOTING that the Defence of Jelena Rašić did not respond to the Motion or the Submission;

NOTING the Prosecution’s submission that the proposed evidence is relevant to and probative of issues in the case and that its admission will expedite the proceedings without causing unfair prejudice to the Accused;⁴

NOTING the Prosecution’s submission that the proposed evidence meets the criteria of Rule 92 *bis*(B) for admission into evidence;⁵

¹ Donald King (Rule 65 *ter* nos. 89 and 109), Zbigniew Wojdyla (Rule 65 *ter* nos. 94 and 107), Shahzada Sultan (Rule 65 *ter* nos. 97 and 110), and Rijad Topalović (Rule 65 *ter* no. 108).

² Order for more information in respect of Prosecution’s motion for admission of evidence pursuant to Rule 92 *bis*, 7 Sep 2011.

³ Submission, para. 2. The Trial Chamber notes the Prosecution’s correction in respect of the Rule 92 *bis* statement of Zbigniew Wojdyla under Rule 65 *ter* no. 94 and associated exhibits, *id*, para. 3. It is also noted that the Prosecution has included in Annex A to the Submission two documents, Rule 65 *ter* nos. 1 and 2, which were not previously mentioned in Annex A to the Motion, but which are relevant to Donald King’s statement in Rule 65 *ter* no. 89.

⁴ Motion, paras 2, 9, 10.

⁵ *Id*, para. 3.

NOTING the Prosecution's submission that the proposed evidence "does not relate to proof of the acts and conduct of the Accused as charged in the Indictment" and that none of the statements mentions actions of the Accused;⁶

NOTING the Prosecution's submission in respect of Rule 92 *bis*(A) that the proposed evidence does not concern "proof of a critical element of the Prosecution's case against the Accused", but mainly relates to the authentication of relevant documents without touching upon their substantive content, and that the statements, therefore, provide "relevant foundational context" for each of the associated documents;⁷

NOTING the Prosecution's submission in respect of Rule 92 *bis*(C) and the Trial Chamber's discretion to order that a witness appear for cross-examination, that "[b]ecause none of the comments made in these written statements implicate[s] a pivotal element of the Prosecution's case [...] there is no overriding interest in oral presentation of this evidence";⁸

CONSIDERING that the statements of the four witnesses meet the criteria of Rule 92 *bis* and that it is not necessary to call the witnesses for cross-examination pursuant to Rule 92 *bis*(C);

CONSIDERING that the documents associated with the statements form inseparable and indispensable parts thereof, do not go to the acts and conduct of the accused, and may, therefore, be admitted into evidence pursuant to Rule 92 *bis*;⁹

CONSIDERING that the statements and associated documents are relevant to and probative of issues in the case pursuant to Rule 89;

NOTING that in Annex A to the Submission the Prosecution lists two documents – Rule 65 *ter* nos. 79 and 80 – as associated both with Zbigniew Wojdyla's statement in Rule 65 *ter* no. 107 and with Donald King's statement in Rule 65 *ter* no. 109;

CONSIDERING that, in view of their contents, Rule 65 *ter* nos. 79 and 80 will be admitted as associated with Zbigniew Wojdyla's statement in Rule 65 *ter* no. 107;

CONSIDERING that the Defence has not stated any objections to the admission of the evidence of the four witnesses;

⁶ Motion, para. 6, with further descriptions of the witness statements.

⁷ *Id.*, paras 13, 14.

⁸ *Id.*, para. 17.

⁹ *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Written reasons for oral decision of 4 September 2009 admitting evidence of 24 witnesses pursuant to Rule 92 *bis*, public, 2 Nov 2010, para. 35 with further references.

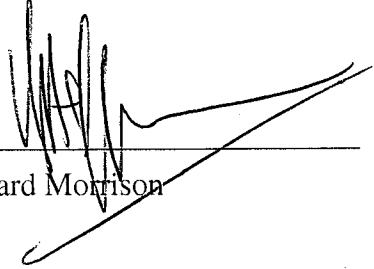
PURSUANT TO Rules 54, 89 and 92 *bis*;

GRANTS the Motion;

ADMITS INTO EVIDENCE the statements of the four witnesses and therewith associated documents as listed in Annex A to the Submission with the variation that Rule 65 *ter* nos. 79 and 80 are admitted as associated with Zbigniew Wojdyla's statement in Rule 65 *ter* no. 107; and

ORDERS the Registry to assign exhibit numbers to the material once trial proceedings in this case have commenced.

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



Judge Howard Morrison
Presiding

Dated this fifth day of December 2011
At The Hague
The Netherlands

[Seal of the Tribunal]