



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-R.77.2
Date: 7 September 2011
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 7 September 2011

PROSECUTOR

v.

JELENA RAŠIĆ

PUBLIC

**ORDER FOR MORE
INFORMATION IN RESPECT OF
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 moves pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) to dispense with the attendance of witnesses Donald King, Shahzada Sultan, Zbigniew Wojdyla and Rijad Topalović and seeks to have admitted into evidence their statements and associated exhibits;¹

NOTING that the Defence of Jelena Rašić (“Defence”) did not respond to the Motion;

NOTING the Prosecution’s submission that the proposed evidence is relevant and probative of issues in the case and meets the criteria of Rule 92 *bis*(B) for admission into evidence, including formal attestation with the exception of one statement which has not been formally attested to;²

CONSIDERING that the Prosecution has not included with the Motion or in its annexes the actual statements or attestations of the witnesses and that the Trial Chamber, therefore, is unable to assess whether the conditions of Rule 92 *bis* have been met;³

CONSIDERING that a) several associated exhibits in Annex A, and b) several Rule 65 *ter* numbers of associated exhibits in Annex A are repeated in respect of more than one witness and that the Prosecution must, therefore, 1) choose through which one witness it seeks to admit a particular exhibit that may be associated with more than one witness, and 2) assign new Rule 65 *ter* numbers to associated exhibits which form part of a longer associated exhibit;⁴

¹ Rule 65 *ter* nos 89 and 109, statements of Donald King, Rule 65 *ter* nos 97 and 110, statements of Shahzada Sultan, Rule 65 *ter* no. 107 (erroneously referred to as 110 in Motion, para. 6), statement of Zbigniew Wojdyla, and Rule 65 *ter* no. 108, statement of Rijad Topalović.

² Motion, paras 2, 3, 9, 10, referring to Rule 65 *ter* 109, a statement of Donald King.

³ Rule 65 *ter* nos. 89, 97, 107, 108, 109 and 110, as listed in Annex A.

⁴ This is evident in the ERN ranges of the associated exhibits. Rule 65 *ter* no. 48 is listed as associated 1) twice with Donald King’s statement in Rule 65 *ter* no. 109, but with differing ERN; one as 0649-8467 to 0649-8468 and one as a one-page document 0649-8469), and 2) with Shahzada Sultan’s statement in Rule 65 *ter* no. 110 (ERN 0649-8469). Rule 65 *ter* nos 75, 79, 80, 101 and 102 are all listed as associated 1) with Donald King’s statement in Rule 65 *ter* no. 109, and 2) with Zbigniew Wojdyla’s statement in Rule 65 *ter* no. 107. In addition to this duplication of Rule 65 *ter* numbers, there are discrepancies in the ERN of Rule 65 *ter* nos 79, 80 and 102, as associated with Donald King’s statement in Rule 65 *ter* no. 109 versus as associated with Zbigniew Wojdyla’s statement in Rule 65 *ter* no. 107; the versions associated with the former statement are one-page documents taken from the ERN range of the versions associated with the latter statement. Moreover, Rule 65 *ter* nos 62 and 66 are listed as associated with Zbigniew Wojdyla’s statement in Rule 65 *ter* no. 107 and with Rijad Topalović’s statement in Rule 65 *ter* no. 108. Rule 65 *ter* no. 62, as associated with the latter statement (ERN 0647-6535 to 0647-6536), forms part of the ERN range of Rule 65 *ter* no. 62 as associated with the former statement (ERN 0647-6535 to 0647-6539). Conversely, Rule 65 *ter* no. 66, as associated with Zbigniew Wojdyla’s statement in Rule 65 *ter* no. 107 (ERN 0647-6540 to 0647-6548) forms part of the ERN range of Rule 65 *ter* no. 66 as associated with Rijad Topalović’s statement in Rule 65 *ter* no. 108 (ERN 0647-6540 to 0647-6556).

CONSIDERING that there are discrepancies in respect of the video exhibits associated with Shahzada Sultan's statement in Rule 65 *ter* no. 110;⁵

PURSUANT TO Rules 54, 65 *ter* and 92 *bis*, the Trial Chamber;

ORDERS the Prosecution by 21 September 2011 to replace on the record Annex A and Annex B by filing corrected versions thereof, which are to:

- include the witness statements in Rule 65 *ter* nos 89, 97, 107, 108, 109 and 110, as well as attestations pursuant to Rule 92 *bis*(B) of the four witnesses;
- indicate, without duplication of either documents, videos or Rule 65 *ter* numbers, which particular associated exhibit is sought to be admitted into evidence through which particular witness;
- identify the material sufficiently in order to enable the Registry to upload the material, sufficiently described, into the Judicial Database, including by providing an index of the material contained on the CD-ROM in Annex B;

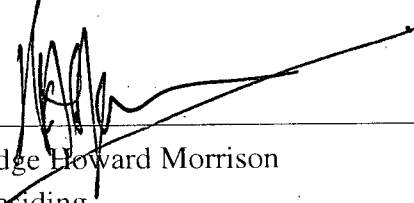
ORDERS the Prosecution to liaise with the Registry with respect to the descriptions of the material in Annex A and Annex B to enable upload of the material into the Judicial Database;

GRANTS the Prosecution leave to amend its Rule 65 *ter* list by assigning to the associated exhibits any new Rule 65 *ter* numbers as required to be able to comply with this Order;

ORDERS the Prosecution to file an updated Rule 65 *ter* exhibit list by 21 September 2011;

REMAINS SEISED of the Motion.

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



Judge Howard Morrison
Presiding

Dated this seventh day of September 2011

At The Hague

The Netherlands

[Seal of the Tribunal]

⁵ Rule 65 *ter* no. 42 is listed in Annex A as ERN V000-8058 to V000-8060 but is identified in Annex B (that is, on the attached CD-ROM) as V000-8058-1-A. The video under ERN V000-8059 to V000-8060, which thus overlaps with the just-mentioned Rule 65 *ter* no. 42, is listed in Annex A as having both Rule 65 *ter* no. 40 and 41. Moreover, Annex B only contains a video named V000-8059-1-A. Lastly, the video in ERN V000-8061 to V000-8062 is listed in Annex A as having both Rule 65 *ter* no. 104 and 105. In Annex B, the last video is called V000-8061-1-A.