

**UNITED
NATIONS**



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-04-75-T
Date: 7 February 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 7 February 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
PURSUANT TO RULE 92 *quater* (MILAN BABIĆ)**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **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 for Admission of Evidence Pursuant to Rule 92 *quater* (Milan Babić)”, filed on 21 August 2012 with confidential annex A and public annexes B and C (“Motion”). On 11 September 2012, the Defence filed its confidential “Response to Prosecution Motion for the Admission of Evidence Pursuant to Rule 92 *quater* (Milan Babić)” (“Response”).¹ On 18 September 2012, the Prosecution filed confidentially the “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for the Admission of Evidence Pursuant to Rule 92 *quater* (Milan Babić)” (“Reply”).

2. On 25 September 2012, the Prosecution filed the confidential “Corrigendum to Prosecution Motion for the Admission of Evidence Pursuant to Rule 92 *quater* (Milan Babić)” with confidential annex A (“Corrigendum”). The Defence filed a confidential “Response to Corrigendum to Prosecution Motion for the Admission of Evidence Pursuant to Rule 92 *quater* (Milan Babić)” on 8 October 2012 (“Response to Corrigendum”).

3. On 9 October 2012, the “Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*”, was filed publicly with a confidential annex (“Supplement”).² On 23 October 2012, the Defence filed confidentially its “Response to Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*.” On 30 October 2012, the “Prosecution Request for Leave to Reply and Reply to Response to Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*”, was filed confidentially (“Reply to the Supplement”).

A. Submissions

4. In the Motion, the Prosecution requests that Milan Babić’s prior testimony and associated exhibits in the *S. Milošević*, *Krajišnik*, and *Martić* trials be admitted into evidence, in accordance with Rules 89 and 92 *quater* of the Rules of Procedure and Evidence (“Rules”).³ The Prosecution submits that Babić is unavailable to testify within the meaning of Rule 92 *quater* (A) due to his death on 5 March 2006.⁴ The Prosecution submits that Babić’s evidence is relevant, probative, and

¹ The Pre-Trial Judge granted a Defence request to extend the time for the Response. Decision on Defence Request for Extension of Time to Respond to Rule 92 *quater* Motions Concerning Babić and Okun, 31 August 2012.

² The Trial Chamber notes that the Supplement’s only relevance in relation to the Motion is that the Prosecution provides, through the filing, the video it seeks to tender in annex B of the Motion with Rule 65 *ter* number 03395. See Supplement, para. 5; Motion, annex B, p. 4.

³ Motion, para. 1.

⁴ Motion, para. 3.

reliable and therefore admissible under Rule 92 *quater*.⁵ The Prosecution argues that Babić was a central actor in the same joint criminal enterprise as Hadžić, thereby possessing relevant and probative insider’s knowledge of alleged members of the joint criminal enterprise, including Hadžić, and the workings of the highest echelons of power within the Republic of Serbian Krajina (“RSK”) and the Republic of Serbia.⁶ The Prosecution asserts that it has identified the relevant and probative portions of Babić’s testimony in the *S. Milošević*, *Krajišnik*, and *Martić* cases,⁷ which contain detailed information touching on multiple issues in the present proceedings.⁸ The Prosecution submits that Babić was subject to extensive cross-examination in the *S. Milošević*, *Krajišnik*, and *Martić* cases⁹ and that Babić’s evidence is corroborated in this case by other witnesses and documents.¹⁰ The Prosecution submits that, where Babić’s tendered evidence touches upon Hadžić’s acts and conduct, it does not do so to any substantial extent and should therefore be admitted.¹¹

5. The Prosecution asserts that Babić’s evidence from the *S. Milošević*, *Krajišnik*, and *Martić* cases complement each other to form a complete picture that is probative, relevant, and reliable.¹² The Prosecution further submits that the relevant documents accompanying the transcripts of Babić’s prior testimony, as set out in annex B of the Motion, form an integral part of Babić’s evidence and should therefore be admitted into evidence.¹³ The Prosecution accordingly requests that the relevant portions of Babić’s testimony outlined in confidential annex A, together with the associated exhibits listed in annex B, be admitted pursuant to Rule 92 *quater* of the Rules.¹⁴

6. The Defence responds that portions of Babić’s testimony and related documentary evidence tendered by the Prosecution are unsuitable for admission without an opportunity for cross-examination.¹⁵ The Defence asserts that the reliability of Babić’s testimony is very low because Babić sought to mischaracterise his removal from office as part of a conspiracy spearheaded by Slobodan Milošević, rather than as a consequence of his unpopularity arising from his opposition to the Vance Plan.¹⁶

⁵ Motion, paras 4, 5-7, 8-11, 12.

⁶ Motion, paras 6-7.

⁷ Motion, para. 4.

⁸ Motion, para. 7.

⁹ Motion, para. 9.

¹⁰ Motion, para. 11.

¹¹ Motion, para. 13.

¹² Motion, para. 14.

¹³ Motion, para. 15.

¹⁴ Motion, paras 15-16.

¹⁵ Response, para. 1.

¹⁶ Response, para. 7.

7. The Defence also makes the following objections to specific portions of Babić's prior testimony: (a) the claim that Hadžić was completely under the control of certain alleged members of the joint criminal enterprise is insufficiently reliable relative to its prejudicial effect;¹⁷ (b) reference to an alleged agreement between RSK armed forces and the Republika Srpska ("RS") armed forces in relation to operations in the Bihać Pocket is irrelevant, vague, and unreliable;¹⁸ (c) the descriptions in confidential annex A of two excerpts do not match the actual contents of the excerpts at the relevant transcript pages;¹⁹ (d) portions of testimony relating to anti-Croat propaganda lack proper contextualisation or explanation;²⁰ (e) an excerpt concerning the faxing of an unsigned law from Milošević's office is unreliable;²¹ and (f) insufficient context, foundation, or explanation is provided for a number of other excerpts.²²

8. In relation to associated exhibits, the Defence submits that intercepts that are not authenticated by Babić—except by way of identifying the voice of one of the interlocutors—fail to meet the minimum threshold of reliability for admission.²³ The Defence further submits that indictments and judgments of other cases at the Tribunal should not be admitted as they are not based on evidence that has been admitted in this case.²⁴

9. The Prosecution replies that the Defence conflates the standard for admission of evidence with the analysis of its ultimate weight and thereby mischaracterises the evidence.²⁵ The Prosecution submits that Babić laid sufficient foundation for his observations regarding Hadžić's relationship with Milošević and Stanišić through (a) his leadership positions that resulted in frequent interactions with other Serb leaders, including Hadžić, Milošević, and Stanišić; (b) conversations he had with individuals who provide information about Hadžić, and (c) review of documents detailing Hadžić's relationship with Serb leaders.²⁶ The Prosecution likewise notes that Babić was subject to extensive cross-examination by defendants similarly situated to Hadžić.²⁷ The Prosecution submits that Hadžić's relationship with Milošević and Stanišić will be corroborated by witnesses in the present case.²⁸

¹⁷ Response, paras 5-11.

¹⁸ Response, para. 12.

¹⁹ Response, para. 13.

²⁰ Response, para. 14.

²¹ Response, para. 15.

²² Response, paras 16-18.

²³ Response, para. 19.

²⁴ Response, para. 20.

²⁵ Reply, pp. 1-2, 4.

²⁶ Reply, p. 2.

²⁷ Reply, p. 2.

²⁸ Reply, p. 3.

10. The Prosecution submits that, contrary to the Defence's arguments in the Response, (a) Babić provided sufficient clarity concerning Hadžić's participation in the 9 February 1992 meeting;²⁹ (b) agreements between RSK and RS forces are relevant to the Indictment based on the involvement of alleged members of the joint criminal enterprise in the RSK and RS forces;³⁰ (c) Babić's comments regarding anti-Croat propaganda are explained with context in his testimony in the *S. Milošević* and *Martić* cases;³¹ (d) the Prosecution provided both Babić's examination-in-chief and corresponding cross-examination concerning his acquisition of the Law on Defence of the Republic of Serbia from Milošević's office;³² (e) Babić provided sufficient foundation for three letters by verifying the authenticity of each letter during his testimony before the Tribunal;³³ and (f) events subsequent to Milan Martić's arrest in Otoka illustrate the relationship, coordination, and cooperation among alleged members of the joint criminal enterprise.³⁴

11. The Prosecution asserts that the intercepts and "judicial conclusions" disputed by the Defence were integral parts of Babić's tendered testimonies and should be admitted as associated exhibits. The Prosecution submits that the tendered transcripts in which Babić is not an interlocutor, but identifies the parties participating in the intercepts, are reliable and admissible.³⁵

12. Finally, in the Corrigendum and the Reply, the Prosecution corrects the citation to an excerpt concerning a taped conversation between Hadžić and Mladić discussed on page 24 of annex A to the Motion, which it notes should be cited as Rule 65 *ter* 04446, transcript page 14005.³⁶ In the Response to the Corrigendum, the Defence argues that the excerpt should not be admitted because the taped conversation in question has not been tendered as an associated exhibit and because Babić was not cross-examined on this issue.³⁷

B. Applicable Law

13. Rule 92 *quater*, entitled "Unavailable Persons", reads as follows:

(A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:

²⁹ Reply, p. 3.

³⁰ Reply, p. 3.

³¹ Reply, p. 3.

³² Reply, p. 3.

³³ Reply, p. 4.

³⁴ Reply, p. 4.

³⁵ Reply, pp. 4-5.

³⁶ Corrigendum, para. 3; Reply, p. 5.

³⁷ Response to Corrigendum, paras 1-2.

- (i) is satisfied of the person's unavailability as set out above; and
 - (ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
- (B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

It follows from a plain reading of these provisions that evidence pertaining to the acts and conduct of an accused can be admitted under Rule 92 *quater* and that a witness's evidence need not be admitted in its entirety, it being for the Trial Chamber to decide which parts, if any, should be excluded. Evidence going to the acts and conduct of the accused is evidence that concerns the deeds and behaviour of that accused, rather than of anyone else for whose actions he is alleged to be responsible.³⁸

14. In assessing the reliability of the proposed evidence, a Trial Chamber can look at the circumstances in which it was obtained and recorded, such as: whether a written statement was given under oath; whether it was signed by the witness with an acknowledgement of the truth of its contents; whether it was given with the assistance of a Registry approved interpreter; and whether it has been subject to cross-examination. In addition, other factors, such as whether the evidence relates to events about which there is other evidence, or whether there is an absence of manifest or obvious inconsistencies in the evidence, may be considered.³⁹ If one or more of these indicia of reliability is absent the evidence can still be admitted, and the Trial Chamber will take this into consideration in determining the appropriate weight to be given to it in its overall consideration of all the evidence in the case.⁴⁰

15. In addition, the Trial Chamber must ensure that the general requirements for the admissibility of evidence set out in Rule 89 of the Rules are met, namely that the proffered evidence

³⁸ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 *quater*, 20 August 2009 ("Karadžić Decision"), para. 4; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92 *bis*, 21 March 2002, para. 22; *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002, para. 9.

³⁹ *Karadžić Decision*, para. 5; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on Beara's and Nikolić's Interlocutory Appeals Against Trial Chamber's Decision of 21 April 2008 Admitting 92 *quater* Evidence (confidential), 18 August 2008, para. 30. See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Redacted Version of "Decision on Motion on Behalf of Drago Nikolić Seeking Admission of Evidence pursuant to Rule 92 *quater*" filed confidentially on 18 December 2008, 19 February 2009, para. 32.

⁴⁰ *Karadžić Decision*, para. 5; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, paras 28-32. See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 February 2009, para. 24.

is relevant and has probative value, and that the probative value is not substantially outweighed by the need to ensure a fair trial.⁴¹

16. When the testimony of an unavailable person is admitted under Rule 92 *quater*, exhibits which accompany that evidence can also be admitted. Such exhibits should form an “inseparable and indispensable part” of the testimony, meaning that they should not merely have been mentioned during the course of that testimony, but rather have been used and explained by the witness.⁴² It follows that such exhibits should also satisfy the requirements of relevance and probative value contained in Rule 89 of the Rules, and that their probative value must not be substantially outweighed by the need to ensure a fair trial.

C. Discussion

1. Unavailability of Milan Babić

17. The Defence does not challenge Babić’s status as “unavailable” pursuant to Rule 92 *quater* (A)(i) of the Rules. The Trial Chamber accepts that Babić is in fact deceased, as indicated in the proffered copy of the witness’s death certificate,⁴³ and therefore unavailable, within the meaning of Rule 92 *quater*, to appear before the Trial Chamber to give evidence.

2. Reliability and relevance of the tendered evidence

18. The Trial Chamber has reviewed Babić’s testimony in the *S. Milošević, Krajišnik*, and *Martić* cases and finds it *prima facie* reliable. The testimony was given under oath, with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal, and subject to cross-examination and re-examination. The Defence asserts that Babić’s prevarication regarding his own opposition to the Vance Plan and his desire to paint his removal as President “as part of undemocratic conspiracy spearheaded by Milošević” makes his testimony unreliable.⁴⁴ The Defence’s objections largely go to the weight that the Trial Chamber should ascribe to the evidence. The Defence may raise these arguments in its final trial submissions. Furthermore, the Trial Chamber notes that these topics were subject to extensive cross-examination by accused with substantially similar interests as Hadžić and accordingly their reliability has been tested. The Trial Chamber therefore finds that the tendered transcripts and their associated exhibits have a sufficient degree of reliability.

⁴¹ *Karadžić* Decision, para. 6. See *Prosecutor v. R. Delić*, Case No. IT-04-83-PT, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater* (confidential), 9 July 2007, p. 4.

⁴² *Karadžić* Decision, para. 7; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.4, Decision on the Prosecution Motion for Admission of Evidence pursuant to Rule 92 *quater*, 21 April 2008, para. 65.

19. The Trial Chamber finds that Babić's testimony in the *S. Milošević, Krajišnik, and Martić* cases address issues relevant to the present proceedings, including (a) the Republic of Serbia's military and financial assistance of to the RSK; (b) Slobodan Milošević's control over events in the RSK; (c) the presence of Vojislav Šešelj's volunteers in areas Vojislav Šešelj referenced as "Greater Serbia"; (d) Vojislav Šešelj's relationship to other alleged members of the joint criminal enterprise; and (e) Jovica Stanišić's role in the Krajina.⁴⁵

20. However, the Trial Chamber finds that the subject matter for which the Prosecution seeks to tender the transcripts in the *Krajišnik* case, namely testimony about Vojislav Šešelj, Šešelj's volunteers, the Serbian Radical Party, and the notion of "Great Serbia", is discussed in the transcript pages it seeks to tender in the *S. Milošević* and *Martić* cases and is therefore redundant.⁴⁶ In addition, the Prosecution has indicated that it will call a corroborating witness to testify to the same matters.⁴⁷ The Trial Chamber further notes that the Prosecution has not tendered the corresponding cross-examination in the *Krajišnik* case or the portions of testimony referenced in the last entry of annex A.⁴⁸ The Trial Chamber therefore decides not to admit the tendered transcripts from the *Krajišnik* case.⁴⁹

3. Specific objections to the tendered evidence

21. The Defence objects to portions of Babić's testimony relating to Hadžić's relations with Milošević, Stanišić, "Badža", and "Jajo".⁵⁰ This evidence is relevant and possesses probative value because it relates to Hadžić's alleged cooperation with members of the joint criminal enterprise. The evidence does not directly implicate Hadžić in any of the crimes alleged in the Indictment and thus is not unduly prejudicial. In addition, the Prosecution has indicated that it will provide corroborating evidence.⁵¹ The Defence will therefore have an opportunity to cross-examine corroborating witnesses on this matter. The Trial Chamber notes that it cannot and will not base a conviction solely on the uncorroborated evidence of a deceased witness. The Trial Chamber therefore finds that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial.

⁴³ Motion, annex C.

⁴⁴ Response, para. 7.

⁴⁵ See Corrigendum, annex A (confidential).

⁴⁶ See, e.g., Rule 65 *ter* number 04437, T. 13012-13019, 13052-13054 (private session); Rule 65 *ter* number 04445, T. 13877-13879; Rule 65 *ter* number 04449, T. 1415, 1493-1494.

⁴⁷ Corrigendum, annex A (confidential), pp. 39-40.

⁴⁸ Corrigendum, annex A (confidential), pp. 1, 40. The Trial Chamber notes that T. 3454-3468 are not contained in Rule 65 *ter* number 04433.

⁴⁹ Rule 65 *ter* numbers 04432 and 04433.

⁵⁰ Response, paras 5-8, 10-11, *referring to* Rule 65 *ter* number 04439, T. 13230-13235.

⁵¹ Corrigendum, annex A (confidential), p. 14. GH-015 and GH-016 have already testified in this case and have been subjected to cross-examination.

22. The Defence objects to the admission of portions of testimony concerning Hadžić's alleged presence at a 9 February meeting in which Babić's removal from office was discussed. The Defence objects on the basis that the discussion regarding this meeting recorded at the relevant transcript pages is ambiguous and prejudicial.⁵² The Defence's objections largely go to the weight that the Trial Chamber should ascribe to the evidence. The Defence may raise these arguments in its final trial submissions. This evidence is relevant and has probative value because it relates to Hadžić's alleged cooperation with members of the joint criminal enterprise. The evidence does not directly implicate Hadžić in any of the crimes alleged in the Indictment and thus is not unduly prejudicial. In addition, the Prosecution has indicated that it will provide corroborating evidence.⁵³ The Defence will have the opportunity to cross-examine corroborating witnesses the Prosecution intends to call. The Trial Chamber notes that it cannot and will not base a conviction solely on the uncorroborated evidence of a deceased witness. The Trial Chamber therefore finds that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial.

23. The Defence objects to the admission of portions of testimony concerning an alleged agreement between the RSK armed forces and RS forces in respect of operations in the "Bihać Pocket" in the summer of 1992.⁵⁴ The Defence objection that Babić's response was vague largely goes to the weight that the Trial Chamber should ascribe to the evidence. The Defence may raise these arguments in its final trial submissions. This evidence is relevant and has probative value because it relates to the Bosnian Serb leadership who led RS forces and who are alleged members of a joint criminal enterprise with Hadžić.⁵⁵ The evidence does not implicate Hadžić's acts and conduct. In addition, the Prosecution has indicated that it will provide corroborating evidence.⁵⁶ The Trial Chamber finds that the excerpt is relevant and has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

24. In relation to portions of testimony referenced by the Prosecution that describe parallel structures in SAO Krajina "and the Accused's involvement in it", the Defence notes that the content of the excerpt at relevant transcript pages does not correspond to the description provided by the Prosecution in the Motion. The Defence simply makes a note of this discrepancy and does not object to the admission of this excerpt.⁵⁷ The Trial Chamber notes that the description of the relevant transcript portion provided by the Prosecution in the Motion is misleading as the reference to "the Accused" is not a reference to Hadžić and the cited transcript pages do not relate to Hadžić's

⁵² Response, para. 9, *referring to* Rule 65 *ter* number 04443, T. 13620.

⁵³ Corrigendum, annex A (confidential), p. 18.

⁵⁴ Response, para. 12, *referring to* Rule 65 *ter* number 04439, T. 13244-13246.

⁵⁵ *See* Reply, p. 3.

⁵⁶ Corrigendum, annex A (confidential), p. 14.

⁵⁷ Response, para. 13.

acts and conduct.⁵⁸ Nevertheless, the Trial Chamber finds that the excerpt is relevant and has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

25. The Defence requests that admission be denied to a portion of testimony relating to a taped conversation between Hadžić and Ratko Mladić, in which Hadžić speaks of “the difficult situation of the people in the garrisons” while under siege. The Defence objects on the basis that (a) the Prosecution does not seek to tender the taped conversation as an associated exhibit; (b) the relevant transcript portion lacks context; and (c) the excerpt is prejudicial because it goes to Hadžić’s acts and conduct.⁵⁹ The Trial Chamber finds that this evidence is relevant and has probative value. The evidence does not directly implicate Hadžić in any of the crimes alleged in the Indictment and thus is not unduly prejudicial. In addition, the Prosecution has indicated that it will provide corroborating evidence.⁶⁰ The Trial Chamber therefore finds that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial.

26. In relation to a number of excerpts discussing anti-Croat propaganda, the Defence requests that admission be denied on the basis that Babić’s testimony provides limited explanation or context for the issue.⁶¹ The Trial Chamber notes that the Defence objections largely go to the weight that the Trial Chamber should ascribe to the evidence. The Trial Chamber further notes that the Defence will have an opportunity to further contextualise Babić’s testimony in relation to anti-Croat propaganda, should it wish to do so, by cross-examining the corroborating witness the Prosecution intends to call.⁶² The Trial Chamber finds that the excerpt is relevant and has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

27. The Defence objects to portions of Babić’s testimony in relation to the Law of Defence of the Republic of Serbia on the basis that the Prosecution only seeks to tender the direct examination and not the corresponding cross-examination.⁶³ The Trial Chamber notes that the Prosecution does indeed seek to tender the corresponding cross-examination.⁶⁴ The Trial Chamber therefore finds that the Defence’s objection is without merit. The Trial Chamber finds that the excerpt is relevant and has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

⁵⁸ Corrigendum, annex A (confidential), p. 17, referring to Rule 65 *ter* number 04442, T. 13490-13501.

⁵⁹ Response to Corrigendum, para. 2.

⁶⁰ Corrigendum, annex A (confidential), pp. 19-20.

⁶¹ Response, para. 14, referring to Rule 65 *ter* number 04436, T. 12878-12898, 12926-12938; Rule 65 *ter* number 04437, T. 12991-12995, 13011-13019; Rule 65 *ter* number 04449, T. 1467-1473.

⁶² See Corrigendum, annex A (confidential), pp. 8, 28 (indicating that GH-154 will be a corroborating witness).

⁶³ Response, para. 15.

⁶⁴ Corrigendum, annex A (confidential), p. 1.

28. The Defence objects to an excerpt concerning the procurement of weapons “for Serbs in Krajina” on the basis that “Serbs in Krajina” is not defined.⁶⁵ The Trial Chamber notes that the Defence objection largely goes to the weight that the Trial Chamber should ascribe to the evidence rather than the requirements for admission under Rule 92 *quater*. The Trial Chamber finds that the excerpt is relevant and has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

29. The Defence contends that portions of testimony regarding Martić’s arrest are irrelevant.⁶⁶ The Trial Chamber finds that this portion of transcript is relevant to the issue of cooperation among alleged members of the joint criminal enterprise. The excerpt also has probative value and therefore meets the threshold for admission under Rules 89 and 92 *quater*.

30. The Defence objects to portions of testimony regarding a letter written by Hadžić asking for military personnel because the excerpt is incoherent without the letter. The Defence further argues that, even if the relevant document is tendered for admission, Babić’s lack of knowledge of the letter should preclude admission of the corresponding excerpt.⁶⁷ The Trial Chamber notes that, although Babić testified in respect of the document that he did not know about the request alleged to have been made by Hadžić, the Prosecution is seeking to tender the relevant exhibit through witnesses other than Babić.⁶⁸ The excerpt is coherent without the letter, is relevant, has probative value, and is not unduly prejudicial. The Trial Chamber therefore finds that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial.

4. Associated documents and materials

31. The document with Rule 65 *ter* number 01363⁶⁹ consists of notes of a 12 November 1992 meeting between Milošević and members of the RSK government, including Hadžić. The Defence objects to the document and the corresponding transcript pages in which the document is discussed on the basis that Babić states that he was not aware of the meeting.⁷⁰ Babić was nevertheless able to authenticate the stamp on the document and corroborate its content.⁷¹ The Trial Chamber is satisfied that the document forms an inseparable and indispensable part of Babić’s testimony, that it meets

⁶⁵ Response, para. 17, *referring to* Rule 65 *ter* number 04440, T. 13273-13275 and associated exhibit with Rule 65 *ter* number 02087.

⁶⁶ Response, para. 17, *referring to* Rule 65 *ter* number 04440, T. 13280-13282 (private session).

⁶⁷ Response, para. 18, *referring to* Rule 65 *ter* number 04440, T. 13379.

⁶⁸ The relevant document is Rule 65 *ter* number 01662. Prosecution Notice of Rule 65 *ter* (E) Filings, 20 June 2012, confidential annex E, p. 54.

⁶⁹ The Defence refers to this document as Rule 65 *ter* number 1103. Response, para. 16. However, at the referenced excerpt (Rule 65 *ter* number 04437, T. 12979), Rule 65 *ter* number 01363 is discussed. The Trial Chamber has presumed that the Defence is objecting to Rule 65 *ter* number 01363.

⁷⁰ Response, para. 16.

⁷¹ Rule 65 *ter* number 04437, T. 12978-12982.

the requirements of relevance and probative value, and that its probative value is not substantially outweighed by the need to ensure a fair trial.

32. The Prosecution seeks to tender for admission a number of intercepted conversations along with Babić's prior testimony.⁷² The Trial Chamber notes that all of the intercepts were substantively discussed with Babić and therefore form an indispensable and inseparable part of his prior testimony. Babić was able to authenticate three of the proposed intercepts because Babić himself was one of the interlocutors.⁷³ With respect to the remaining intercepts, Babić simply identified the voices of the participants by listening to the intercepted conversations, but fails to provide any indicia of their authenticity or reliability. The Trial Chamber will therefore only admit the intercepts with Rule 65 *ter* numbers 03547 and 00279 through Babić, pursuant to Rule 92 *quater*. The remaining intercepts⁷⁴ shall be marked for identification until such time as they are authenticated by another witness.

33. The Prosecution seeks to tender for admission the indictment issued by this Tribunal against Babić, his plea agreement, and the sentencing judgement against him.⁷⁵ The Trial Chambers finds that these documents have little probative value and do not form an inseparable and indispensable part of Babić's testimony. Accordingly, these documents will not be admitted into evidence.

34. The Prosecution seeks to tender for admission a number of articles from various news agencies. Babić does not comment on the content of every article in his prior testimony. With respect to Rule 65 *ter* numbers 00127, 03516, 03517, and 03519 Babić simply states that the articles are consistent with what he had heard in the media at that time.⁷⁶ The Trial Chamber finds that such exhibits do not form an "inseparable and indispensable part" of Babić's prior testimony. For these reasons, the Trial Chamber will not admit Rule 65 *ter* numbers 00127, 03516, 03517, and 03519.

35. The Trial Chamber notes that Rule 65 *ter* number 04728 does not seem to be referenced or admitted in the *S. Milošević* or *Martić* cases and accordingly does not form an inseparable and indispensable part of Babić's testimony. The Trial Chamber will not admit this document into evidence.

⁷² Motion, annex B. The intercepts have the following Rule 65 *ter* numbers: 02972, 02973, 03547, 03325, 03326, 00280, 00279, 03512, 00287, 00289, 00288, 03539, 00316, 00379, 03546, 03329, 03511, 00825, 03510, and 03509.

⁷³ Rule 65 *ter* numbers 03539, 03547, and 00279.

⁷⁴ Rule 65 *ter* numbers 02927, 02973, 03325, 03326, 00280, 03512, 00287, 00289, 00288, 00316, 00379, 03546, 03329, 03511, 00825, 03510, and 03509.

⁷⁵ Rule 65 *ter* numbers 05864, 03556, and 03554, respectively.

⁷⁶ Rule 65 *ter* number 04450, T. 1535, 1548-1549, 1569-1571.

36. The Trial Chamber notes that the associated documents with Rule 65 *ter* numbers 00013, 00044, 00073, 00205, 00141, 03467, 00950, 01363, 01456, 01585, 01613, and 01624 have already been admitted into evidence.

37. The Trial Chamber finds that the remaining associated documents in annex B to the Motion are relevant, have probative value, and are appropriate for admission pursuant to Rules 89 and 92 *quater*.

D. Disposition

38. Accordingly, the Trial Chamber, pursuant to Rules 54, 89, 92 *quater*, 126 *bis* of the Rules, hereby,

- (a) **GRANTS** the Prosecution leave to file the Reply;
- (b) **GRANTS** the Prosecution leave to file the Reply to the Supplement;
- (c) **GRANTS** the Motion, in part;
- (d) **DECIDES** that the transcripts of Milan Babić in the *S. Milošević* case with Rule 65 *ter* numbers 04436, 04437, 04438, 04439, 04440, 04441, 04442, 04443, 04444, 04445, 04446, and 04447 are appropriate for admission;
- (e) **DECIDES** that the transcripts of Milan Babić in the *Martić* case with Rule 65 *ter* numbers 04448, 04449, 04450, 04451, 04452, 04453, and 04454 are appropriate for admission;
- (f) **ORDERS** the Prosecution—by no later than 26 February 2013—(i) to upload to and release in eCourt both public redacted and confidential unredacted versions of the transcripts referenced in subsections (d) and (e) above, where necessary; and (ii) to notify, via a written filing, the Trial Chamber, Defence, and Registry that this has been completed, after which the transcripts shall be deemed admitted into evidence;
- (g) **ORDERS** that the transcripts of Milan Babić in the *Krajišnik* case with Rule 65 *ter* numbers 04432 and 04433 shall not be admitted into evidence;
- (h) **ORDERS** that intercepted conversations with Rule 65 *ter* numbers 03539, 03547, and 00279 shall be admitted into evidence;
- (i) **ORDERS** that intercepted conversations with Rule 65 *ter* numbers 02927, 02973, 03325, 03326, 00280, 03512, 00287, 00289, 00288, 00316, 00379, 03546, 03329, 03511, 00825,

03510, and 03509 shall be marked for identification until such time as they are authenticated and until further order of the Trial Chamber;

- (j) **ORDERS** that associated documents and materials with Rule 65 *ter* numbers 05864, 03556, 03554, 00127, 03516, 03517, 03519, and 04728 shall not be admitted into evidence;
- (k) **NOTES** that associated documents with Rule 65 *ter* numbers 00013, 00044, 00073, 00141, 00205, 03467, 00950, 01363, 01456, 01585, 01613, and 01624 have already been admitted into evidence;
- (l) **ORDERS** that associated documents and materials with Rule 65 *ter* numbers 02810, 04895.2,⁷⁷ 03462, 03007, 03394, 03532, 03550, 03533, 03508, 00038, 00039, 03549, 03507, 00049, 03531, 03530, 00059, 03525, 00080, 03395, 00089, 00091, 00090, 00092, 03526, 03529, 00108, 00111, 03535, 00120, 00122, 03477, 03523, 00125, 03522, 00132, 00140, 00138, 03503, 03520, 00150, 03483, 00171, 00168, 00172, 00161, 00170, 00162, 00164, 00160, 00158, 03527, 03442, 03514, 00182, 00187, 00193, 03518, 00204, 03439, 03440, 03437, 03438, 03521, 00223, 00224, 00222, 00228, 00229, 00231, 00233, 00237, 03471, 00249, 03515, 03436, 03413, 03513, 03435, 03400, 00301, 03434, 03433, 00305, 03432, 03426, 03469, 03427, 03429, 00342, 03430, 03431, 03428, 03409, 03424, 03425, 00398, 00463,⁷⁸ 03403, 03402, 00508, 00507, 03423, 03418, 03422, 03419, 03420, 03421, 03410, 03417, 03416, 03536, 03499, 03537, 03538, 00710, 00725, 00737, 00744, 00812, 03534, 00830, 00846, 03466, 03465, 00925, 00938, 02915, 01059,⁷⁹ 01103, 01171, 01711, 01763, 01868, 01932, 01948, 03455, 03456, 02087, 03489, 02129, 03482, 02175, and 03524 shall be admitted into evidence; and

⁷⁷ The Office of the Prosecutor informed the Trial Chamber, by an email dated 15 January 2013, that the proper Rule 65 *ter* number for the video referenced as Rule 65 *ter* number 04895 in annex B of the Motion is in fact Rule 65 *ter* number 04895.2.


⁷⁸ Duplicate of Rule 65 *ter* number 00464. The Trial Chamber notes that Rule 65 *ter* number 00464 seems to be a blank sheet.

⁷⁹ Duplicate of Rule 65 *ter* number 01060. The Trial Chamber notes that Rule 65 *ter* number 01060 seems to be a blank sheet.

(m) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

Done this seventh day of February 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]