



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-95-5/18-PT

Date: 15 October 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 15 October 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S THIRD MOTION FOR ADMISSION
OF STATEMENTS AND TRANSCRIPTS OF EVIDENCE
IN LIEU OF *VIVA VOCE* TESTIMONY PURSUANT TO RULE 92 *BIS*
(WITNESSES FOR SARAJEVO MUNICIPALITY)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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 seized of the “Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)”, filed on 29 May 2009 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of witness statements and the previous testimony of seven witnesses pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”),¹ two of whom have previously testified in proceedings before the Tribunal,² and the remainder who have given statements with attestations in accordance with the Rule.³ The Prosecution submits that the proposed evidence is relevant to its case and has probative value, primarily to the crimes charged in Counts 3–8 of the Third Amended Indictment (“Indictment”), and that it is reliable and suitable for admission in written form.⁴ According to the Prosecution, admission of the written evidence in this manner will: (i) substantially expedite these proceedings; (ii) in many cases, ensure that witnesses who have already testified before this Tribunal are not unnecessarily required to come to the Tribunal again; and (iii) cause no unfair prejudice to the Accused.⁵

2. Following the Accused’s request for an extension of time to respond, *inter alia*, to the Motion, the Chamber granted him two extensions of time, and ordered him to respond to the Motion on or before 16 July 2009.⁶ However, on 8 July 2009, the Accused filed his “Omnibus Response to all Rule 92 *bis* Motions”, opposing the Prosecution’s Rule 92 *bis* applications for every witness, requesting to cross-examine each witness, and suggesting that the Chamber defer its decisions on all Rule 92 *bis* issues until the end of the Prosecution’s case.⁷ At the 23 July 2009 Status Conference, the Pre-trial Judge indicated to the Accused that decisions on the Rule 92 *bis* motions would be made by the Trial Chamber, but that the Accused could respond to each

¹ Motion, para. 30.

² Motion, para. 5.

³ Motion, para. 6.

⁴ Motion, paras. 12–13.

⁵ Motion, para. 2.

⁶ Motion for Extension of Time to Respond to Rule 92 *bis* Motions, 8 June 2009, para. 5; Order Following Upon Rule 65 *ter* Meeting and Decision on Motions for Extension of Time, 18 June 2009, paras. 4, 18(b); Decision on the Accused’s Application for Certification to Appeal Decision on Extension for Time, 8 July 2009, para. 18.

⁷ Omnibus Response to Rule 92 *bis* Motions, paras. 3, 6.

respective motion any time before the decisions had been made.⁸ During the Pre-trial Conference on 6 October 2009, the Pre-trial Judge informed the Accused that decisions on the Rule 92 *bis* motions would be issued in the coming few weeks, and added that, should the Chamber admit the evidence of a witness under Rule 92 *bis*, whose evidence the Accused would wish to supplement with his own Rule 92 *bis* statement, he may file a motion to that effect.⁹ No further response to the Motion has yet been filed by the Accused.

3. On 31 August 2009, the Prosecution filed the “Prosecution Submission Pursuant to Rule 73 *bis*(D)” (“Rule 73 *bis* Submission”), in which it proposes reducing the number of witnesses it will call, and designates certain other witnesses as “reserve” witnesses.¹⁰ Pursuant to the Rule 73 *bis* Submission, three of the seven witnesses in the Motion have now been labelled as “reserve” witnesses.¹¹ The “Prosecution Second Submission Pursuant to Rule 73 *bis*(D)”, filed on 18 September 2009, does not alter the status of any of the witnesses contained in the Motion.¹² At the Pre-trial Conference, the Chamber delivered its decision on the application of Rule 73 *bis*, in which it accepted the Prosecution’s proposals for the reduction of its case, and ordered, pursuant to Rule 73 *bis*(D) of the Rules, that the Prosecution may not present evidence in respect of the crime sites and incidents that it had identified.¹³ The oral decision was followed by a written decision on 8 October 2009.¹⁴ As a consequence of this decision, the Trial Chamber need only determine if the evidence of four of the seven witnesses included in the original Motion, i.e. KDZ246 (Ramiz Dupovac), KDZ325 (Mustafa Fazlić), KDZ330 (Bego Selimović), and KDZ400 (Mirsad Smajš), is admissible pursuant to Rule 92 *bis*.

II. Applicable Law

4. Rule 92 *bis* of the Rules governs the admissibility of written witness statements and transcripts from previous proceedings in lieu of *viva voce* testimony. Any evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admission of evidence, as set out in Rule 89(C) and (D) of the Rules, namely, the evidence must be relevant and have probative value, and its probative value must not be substantially outweighed by the need to ensure a fair trial.¹⁵ Thus, the Trial Chamber must find that the evidence contained in the proposed

⁸ Status Conference, T. 370 (23 July 2009).

⁹ Pre-trial Conference, T. 489–490 (6 October 2009).

¹⁰ Rule 73 *bis* Submission, paras. 6, 11.

¹¹ KDZ019, KDZ375, and KDZ462; see Appendix A to Rule 73 *bis* Submission.

¹² See Prosecution Second Submission Pursuant to Rule 73 *bis* (D), 18 September 2009, confidential Appendix A.

¹³ Pre-trial Conference, T. 467–468 (6 October 2009).

¹⁴ Decision on Application of Rule 73 *bis*, 8 October 2009.

¹⁵ *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*, 7 June 2002 (“*Galić* Appeal Decision”), para. 12; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on

statements and transcripts is relevant to the charges in the Indictment. It is for the Prosecution to demonstrate the relevance and probative value of the evidence of which it seeks admission.¹⁶

5. For written evidence to be admissible pursuant to Rule 92 *bis*, it must not relate to the acts and conduct of the accused as charged in the indictment. The phrase “acts and conduct of the accused” has been interpreted in the Tribunal’s jurisprudence as an expression that must be given its ordinary meaning: “deeds and behaviour of the accused”.¹⁷ Furthermore, a clear distinction must be drawn between: (i) the acts and conduct of those others who commit the crimes for which the accused is alleged to be responsible, and (ii) the acts and conduct of the accused as charged in the indictment, which establish his responsibility for the acts and conduct of those others.¹⁸ Evidence pertaining to the latter is inadmissible under Rule 92 *bis*, and includes that evidence which the Prosecution seeks to rely to establish that the accused:

- (a) committed (that is, that he personally physically perpetrated) any of the crimes charged;
- (b) planned, instigated or ordered the crimes charged;
- (c) otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes;
- (d) was a superior to those who actually committed the crimes;
- (e) knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or
- (f) failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.¹⁹

6. In addition, where the Prosecution case is that the accused participated in a joint criminal enterprise (“JCE”), and is therefore liable for the acts of others in that JCE, Rule 92 *bis*(A) also excludes any written statement which goes to proof of any act or conduct of the accused upon which the Prosecution relies to establish that the accused either: (i) participated in that JCE, or (ii)

Prosecution’s Request to Have Written Statements Admitted under Rule 92 *bis*, 21 March 2002 (“*S. Milošević* Trial Decision”), para. 6; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Rule 92 *bis* Motion, 4 July 2006 (“*Milutinović* Trial Decision”), para. 5; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 22 August 2008 (“*Lukić* Trial Decision”), para. 15; *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 2 October 2008 (“*Perišić* Trial Decision”), para. 15.

¹⁶ *Prosecutor v. Boškoski and Tarčuloski*, Case No. IT-04-82-PT, Decision on Prosecution’s First Revised Motion pursuant to Rule 92 *bis* and on Prosecution’s Motion pursuant to Rule 92 *ter*, 30 March 2007 (“*Boškoski* Decision”), para. 95, citing *S. Milošević* Trial Decision, para. 8; *Lukić* Trial Decision, para. 15.

¹⁷ *Boškoski* Decision, para. 8.

¹⁸ *Galić* Appeal Decision, para. 9. See also *Milutinović* Trial Decision, para. 6; *Lukić* Trial Decision para. 17; *Perišić* Trial Decision, para. 11; both referring to the *Galić* Appeal Decision. Similarly before the *Galić* Appeal Decision, *S. Milošević* Trial Decision, para. 22.

¹⁹ *Lukić* Trial Decision, para. 17, citing *Galić* Appeal Decision, para. 10.

shared with the person who actually did commit the crimes charged the requisite intent for those crimes.²⁰

7. Even if a written statement or the transcript of prior testimony is admissible pursuant to Rule 92 *bis*, it is for the Chamber to determine whether to exercise its discretion and admit the evidence in written form.²¹ Rule 92 *bis*(A)(i)–(ii) sets out non-exhaustive lists of factors in favour of and against the admission of a piece of evidence in written form. Pursuant to Rule 92 *bis*(A)(i), factors in favour of admission include whether the evidence: (i) is of a cumulative nature; (ii) relates to relevant historical, political or military background; (iii) consists of a general or statistical analysis of the ethnic composition of the population; (iv) concerns the impact of crimes upon victims; (v) relates to issues of the character of the accused; or (vi) relates to factors to be taken into account in determining sentence. By contrast, pursuant to Rule 92 *bis*(A)(ii), factors against admission include whether: (i) there is an overriding public interest in the evidence in question being presented orally; (ii) a party objecting demonstrates that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or (iii) there are any other factors which make it appropriate for the witness to attend for cross-examination.

8. Additionally, in exercising its discretionary power, the Chamber may consider whether: (i) the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility;²² and (ii) the evidence in question relates to a “live and important issue between the parties, as opposed to a peripheral or marginal issue”,²³ and/or is “pivotal” or “critical” to the Prosecution’s case.²⁴ If the Chamber considers that the evidence fits into one of these categories, it may decide to exercise its discretionary power not to admit the evidence in question pursuant to Rule 92 *bis*, to admit it in full or in part, or to admit the evidence but require the witness to appear for cross-examination.²⁵

9. Moreover, when the evidence sought to be admitted pursuant to Rule 92 *bis* consists of a written statement, the formal requirements set out in Rule 92 *bis*(B) must be fulfilled. However, various Chambers have taken the approach in the past that, in order to expedite the proceedings, it

²⁰ *Galić* Appeal Decision, para. 10.

²¹ *Milutinović* Trial Decision, para. 7.

²² *Galić* Appeal Decision, para. 13; *cf. S. Milošević* Trial Decision, para. 22; *Milutinović* Trial Decision, para. 7; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 3 April 2007, p. 4; *Lukić* Trial Decision, paras. 19–20.

²³ *S. Milošević* Trial Decision, paras. 24–25; *Martić* Trial Decision, para. 15.

²⁴ *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on the Admission of Rule 92 *bis* Statements, 1 May 2002, para. 14; *Lukić* Trial Decision, para. 19.

²⁵ *Galić* Appeal Decision, para. 13.

is permissible for a party to propose written statements for provisional admission pending their certification under Rule 92 *bis*(B).²⁶

10. Should the Chamber consider that the written evidence is admissible, the Chamber may order the witness to be brought for cross-examination pursuant to Rule 92 *bis*(C), and under the conditions set out in Rule 92 *ter* of the Rules. In making this determination, the Chamber should always take into consideration its obligation to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal (“Statute”).²⁷ Furthermore, there are a number of criteria established in the case-law of the Tribunal, which should be taken into account when making such a determination, including: (i) the cumulative nature of the evidence;²⁸ (ii) whether the evidence is “crime-base” evidence;²⁹ (iii) whether the evidence touches upon a “live and important issue between the parties, as opposed to a peripheral or marginally relevant issue”;³⁰ and (iv) whether the evidence describes the acts and conduct of a person for whose acts and conduct the accused is charged with responsibility (subordinate, co-perpetrator) and how proximate the acts and conduct of this person are to the accused.³¹ Moreover, a general factor to be taken into consideration in relation to written evidence in the form of a transcript of previous testimony is whether the witness was extensively cross-examined, and whether there is a “common interest” between the Defence in the previous case and the present case.³²

11. In addition to the admission of a witness’s written evidence, documents accompanying the written statements or transcripts which “form an inseparable and indispensable part of the testimony” can also be admitted pursuant to Rule 92 *bis*.³³ Not every document referred to in a witness’s written statement and/or transcript from a prior proceeding automatically forms an “inseparable and indispensable part” of the witness’s testimony. Rather, a document falls into this category if the witness discusses the document in his or her written statement or transcript, and if

²⁶ *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*, 12 September 2006 (“*Popović* Trial Decision”), paras. 19–21; *Prosecutor v. Martić*, Case No. IT-95-11-T, Decision on Prosecution’s Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006 (“*Martić* Trial Decision”), paras. 11, 37.

²⁷ *Lukić* Trial Decision, para. 20.

²⁸ *Lukić* Trial Decision, para. 20, citing *Prosecutor v. Mrksić et al.*, Case No. IT-95-13/1-T, confidential Decision on Prosecution’s Motion for Admission of Transcripts and Written Statements pursuant to Rule 92 *bis*, 21 October 2005 (“*Mrksić* Decision”), para. 9.

²⁹ *Lukić* Trial Decision, para. 20, citing *Mrksić* Decision, para. 8; see also *Boškovski* Decision, para. 19.

³⁰ *Lukić* Trial Decision, para. 20, citing *S. Milošević* Trial Decision, paras. 24–25.

³¹ *Galić* Appeal Decision, para. 13.

³² *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 27.

³³ *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *ter*, 22 February 2007, p. 3; *Perišić* Trial Decision, para. 16; *Lukić* Trial Decision, para. 21.

that written statement or transcript would become incomprehensible or have lesser probative value without the admission of the document.³⁴

III. Discussion

12. The Prosecution seeks, pursuant to Rule 92 *bis*, the admission of written statements of witnesses Ramiz Dupovac, Mustafa Fazlić, and Mirsad Smajš, and the admission of a transcript of witness Bego Selimović's prior testimony given in the *Krajišnik* case. The evidence of each of the four witnesses is summarised and examined below.

A. Summary of Proposed Evidence

13. Ramiz Dupovac is a Bosnian Muslim man from Hadžići municipality. He was the commander of the Hadžići municipality Territorial Defence ("TO") before the war. In his written statement, dated 16 January 1998, Ramiz Dupovac discusses generally the establishment and structure of the TOs, including in Sarajevo and Hadžići, as well as events that took place in the Hadžići municipality, primarily in 1991 and 1992. In particular, he describes the takeover of the municipality by the Serb population and Serb forces, the outbreak of conflict, and the subsequent expulsion and mistreatment of the Bosnian Muslim population.

14. Mustafa Fazlić is a Bosnian Muslim man who lived in the village of Lješevno, Ilijaš municipality, prior to the conflict. In his written statement, dated 22 June 1997, Mustafa Fazlić generally discusses events in and around his village in 1992, and his experiences while being a prisoner at Podlugovi and Semizovac. In particular, he describes the presence of Serb forces around his village from March 1992, the establishment of checkpoints, the outbreak of conflict, the surrendering of weapons to the Serb police by his fellow villagers, and the fleeing of Muslims from his village. Mustafa Fazlić also describes the attack on his village by Serb forces in June 1992, and his subsequent imprisonment for 73 days at Podlugovi and Semizovac, during which time he was used as a human shield, together with other prisoners, some of whom were injured or killed, including the witness's brother.

15. Bego Selimović is a Bosnian Muslim man who lived in the village of Gornja Bioča, a predominantly Muslim village in the Ilijaš municipality, prior to the conflict. He testified over one day in the *Krajišnik* case, describing, *inter alia*, events in Gornja Bioča and the Ilijaš and Vogošća municipalities that took place during the Indictment period. Specifically, Bego Selimović

³⁴ *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*, 9 July 2008, para. 15; *Perišić* Trial Decision, para. 16; *Lukić* Trial Decision, para. 21.

described the takeover of his village, establishment of barricades, destruction of houses belonging to Muslims, and the outbreak of conflict in April 1992. He also discussed his capture by Serb forces, his imprisonment at Gorna Bioča's elementary school, his subsequent transfer to, and imprisonment in, Podlugovi, Planjo's House, Semizovac (where he suffered mistreatment, was forced to work at the frontline, and was used as a human shield), and Kula, and the conditions of his release.

16. Mirsad Smajš is a Bosnian Muslim man who lived in Grbavica II, Sarajevo, prior to the conflict. He gave a statement to the Sarajevo Security Services Centre on 18 December 1993, and another to the Prosecution on 14 January 1998, describing, *inter alia*, events that took place prior to his arrest and subsequent detention. In particular, Mirsad Smajš refers to the arrival of armed men at Grbavica II in late March 1992, the laying of mines in the area, and the restriction of movement and mistreatment of the civilian population. He also describes the circumstances surrounding his arrest, his transfer to various locations, his imprisonment at Kula and at a gymnasium in Pale (and the mistreatment he witnessed while at these places), and his exchange.

B. Analysis pursuant to Rule 92 bis(A) and (B)

17. The Chamber considers that Ramiz Dupovac's evidence is relevant to the charges of persecutions (Count 3), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it specifically relates to the takeover of Hadžići municipality, and the imposition and maintenance of restrictive and discriminatory measures against the Muslim population in that municipality. Mustafa Fazlić, Bego Selimović, and Mirsad Smajš's evidence is relevant to the charges of persecutions (Count 3), extermination (Count 4), and murder (Counts 5 and 6), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it specifically relates to the takeover of municipalities, the imposition and maintenance of restrictive and discriminatory measures against the Muslim population in those municipalities, the unlawful detention at detention facilities (such as in Podlugovi, Semizovac, Vogošća, Kula, and Pale), the establishment and perpetuation of inhumane living conditions in detention facilities, and killings related to the detention facilities. The Chamber also considers that the evidence pertaining to the four witnesses has probative value.

18. The Chamber is satisfied that the evidence of Ramiz Dupovac, Mustafa Fazlić, Bego Selimović, and Mirsad Smajš does not go to proof of the acts and conduct of the Accused, or any acts or conduct which go to establish that the Accused participated in a JCE, as charged in the Indictment, or shared with the person who actually did commit the crimes charged in the Indictment the requisite intent for those crimes. Furthermore, while the Chamber is not in a position, at this stage, to fully assess the extent to which the witnesses' evidence is cumulative to

that of other witnesses, the Chamber has reviewed the Prosecution's Rule 65 *ter* Witness List, and is satisfied that Ramiz Dupovac's evidence is cumulative of part of KDZ319's evidence relating to the takeover of Hadžići municipality and the imposition and maintenance of restrictive and discriminatory measures against the Muslim population. Similarly, Mustafa Fazlić's evidence relating to detention facilities is cumulative of the evidence of KDZ061, KDZ147, KDZ193, and Bego Selimović. Moreover, Bego Selimović's evidence relating to the attack on and takeover of Gornja Bioča is cumulative of KDZ061's evidence, and his evidence relating to various detention facilities is cumulative of the evidence of KDZ061, KDZ193, Mustafa Fazlić, and KDZ416. Finally, Mirsad Smajš's evidence in relation to events in and around Grbavica is cumulative of KDZ310's evidence, and his evidence pertaining to detention facilities is cumulative of KDZ319 and KDZ439's evidence. Additionally, the evidence of the four witnesses concerns the impact of crimes upon victims, that is, it is "crime-base" evidence, and is thus appropriate for admission pursuant to Rule 92 *bis*.

19. The Trial Chamber notes that Ramiz Dupovac's evidence contains the names of various individuals who, in terms of paragraph 12 of the Indictment, could have been members of a JCE with the Accused, as they were part, *inter alia*, of the "Bosnian Serb Political and Government Organs", the Bosnian Serb Ministry of Internal Affairs, and the Bosnian Serb TO in Hadžići municipality. The Chamber has carefully analysed whether this aspect of Ramiz Dupovac's evidence describes the acts and conduct of persons for whose acts and conduct the Accused is charged with responsibility, and the proximity of the Accused to the acts and conducts described. The Chamber is satisfied that there is not sufficient proximity between the Accused and the acts and conduct, and it would not be unfair to the Accused to admit this written evidence. The Chamber will not, therefore, exercise its discretionary power to deny admission of Ramiz Dupovac's evidence on this basis.

20. Thus there are factors in favour of admitting into evidence the written evidence of Ramiz Dupovac, Mustafa Fazlić, and Mirsad Smajš, and the transcript of Bego Selimović's previous testimony, and none of the factors that may go against its admission as set out in Rule 92 *bis*(A)(ii) apply. The Chamber further considers that the written statements of Ramiz Dupovac, Mustafa Fazlić, and Mirsad Smajš satisfy the formal requirements set out in Rule 92 *bis*(B) of the Rules. For the foregoing reasons, the Chamber will admit the four witnesses' evidence pursuant to Rule 92 *bis*.

21. As a related matter, the Chamber notes that the Prosecution seeks the admission into evidence of two statements given by Mirsad Smajš. The Chamber has expressed its view that

presenting more than one statement or transcript for a witness may add unnecessary procedural and evidentiary complexity to the trial which should be avoided, if at all possible.³⁵ In that regard, the Chamber is prepared to deny admission of multiple statements should the statements be found to deal essentially with the same subject matter, and will keep this in mind when issuing its decisions on the remaining Rule 92 *bis* Motions filed by the Prosecution in this case. The Chamber has paid special attention to the content of both of Mirsad Smajš's statements, and to whether admitting both of them would be in the interests of justice. However, on this occasion, the Chamber considers that the statements sought to be admitted for this witness are sufficiently distinct.

C. Analysis pursuant to Rule 92 *bis*(C)

22. With regard to whether the witnesses should appear for cross-examination, the Chamber stresses that the Statute guarantees to each accused the right to "examine, or have examined, the witnesses against him".³⁶ However, Rule 92 *bis*(C) gives discretion to the Chamber to decide if cross-examination is appropriate under the circumstances.³⁷ In making this assessment, the Chamber has considered the various applicable criteria established in the case-law, and discussed above.

23. Specifically, the Chamber notes that Ramiz Dupovac, Mustafa Fazlić, and Mirsad Smajš have never been cross-examined, and that Bego Selimović's cross-examination during his testimony in the *Krajišnik* case was very limited, as it only concerned the way in which the witness and other villagers from Gornja Bioča kept guard during May 1992, and the weapons they possessed. However, the Chamber does not consider this fact to, *per se*, necessitate the witnesses to appear for cross-examination. Furthermore, the Chamber notes that none of the evidence bears directly upon the Accused's responsibility as alleged in the Indictment.

24. As noted above, Ramiz Dupovac's written statement contains the names of various individuals who, in terms of paragraph 12 of the Indictment, could have been members of a JCE with the Accused. The Trial Chamber considers that there is not sufficient proximity between the Accused and the acts and conduct described in the written statement to justify the Chamber to exercise its discretion pursuant to Rule 92 *bis*(C), and to require the witness to appear for cross-examination.

³⁵ See Pre-trial Conference, T. 478–479 (6 October 2009).

³⁶ Article 21(4)(e) of the Statute.

³⁷ See Lukić Decision, para. 24.

25. Similarly, both Mustafa Fazlić's and Bego Selimović's statements discuss the visit at Podlugovi of a man who introduced himself as the "Serb Minister of Justice" or "the Minister of Justice", and who told the prisoners they would be transferred to Semizovac, where allegedly the living conditions would be better. While the witnesses mention the presence of this figure, neither of them state his name or otherwise provide any details that would allow his identification; it cannot be determined from these statements who this person was in fact. Given that the identity of this individual is unknown, there is no issue of proximity of the acts and conduct of this person to the Accused, and the two witnesses are not required to appear for cross-examination in relation to this evidence.

26. Furthermore, Ramiz Dupovac, Bego Selimović and Mirsad Smajš's evidence contains the names of various individuals who the witnesses say are individually responsible for the commission of crimes in their municipalities. However, upon a review of the evidence, the Chamber is satisfied that none of these individuals appears to have been sufficiently linked to the Accused to require the appearance of the witnesses for cross-examination.

27. Thus, on the basis of the above, the Chamber considers that the written statements and transcript of Ramiz Dupovac, Mustafa Fazlić, Bego Selimović, and Mirsad Smajš do not contain evidence that make it necessary for these witnesses to appear for cross-examination.

D. Associated Exhibits

28. The Prosecution has tendered four exhibits associated with the evidence of Bego Selimović. The Chamber has reviewed these exhibits in order to determine whether they form an "inseparable and indispensable part" of Bego Selimović's evidence. The Prosecution has not tendered any exhibits in relation to the other three witnesses.

29. The document with Rule 65 *ter* number 11792 is a written statement of the Ilijaš Municipality Commission for Crime Investigation, Republic of Bosnia and Herzegovina, dated 5 April 1993, and the document with Rule 65 *ter* number 09003 is an ICTY witness statement, dated 21 June 1997. Both documents were admitted into evidence in the *Krajišnik* case. Bego Selimović's testimony in the *Krajišnik* case revolved around these documents, and thus they clearly form an inseparable and indispensable part of the testimony. Both documents also satisfy the requirements of relevance and probative value.

30. The document with Rule 65 *ter* number 11793 is a map of Ilijaš municipality marked by the witness during his testimony in the *Krajišnik* case, and was used to provide the Chamber with the

exact location of the witness's village and another places referred to in his statements. The document with Rule 65 *ter* number 01616 is a report from the Vogošća prison, dated 29 August 1992, naming Bego Selimović as one of eight prisoners taken to work at Žuč. It was admitted through him in the *Krajišnik* case, and was discussed in court when the witness explained that all of the people mentioned in the report were detained at Vogošća, and were taken to work together. The Chamber is satisfied that both these documents form an inseparable and indispensable part of Bego Selimović's testimony, and that they meet the requirements of relevance and probative value.

31. Therefore, the Chamber is satisfied that all the associated exhibits along with the transcript of the testimony of Bego Selimović fulfil the requirements for admission into evidence, and will therefore be admitted in this case, with exhibit numbers to be assigned by the Registry.

IV. Disposition


32. For these reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Trial Chamber hereby **GRANTS** the Motion and:

ORDERS that:

- (a) The written statements for Ramiz Dupovac, Mustafa Fazlić, and Mirsad Smajš shall be admitted into evidence;
- (b) The transcript of the testimony of Bego Selimović in the *Krajišnik* case shall be admitted into evidence; and
- (c) The associated exhibits tendered for admission along with the transcript of the testimony of Bego Selimović in the *Krajišnik* case, and which bear Rule 65 *ter* numbers 01616, 09003, 11792, and 11793, shall be admitted into evidence in their entirety; and

REQUESTS the Registry to assign exhibit numbers to these exhibits.

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



Judge O-Gon Kwon,
Presiding

Dated this fifteenth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]