



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-T
Date: 10 November 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: 10 November 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL ANNEX A

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

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 seised of the “Prosecution’s First Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities)”, 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 transcripts of previous testimony of 33 witnesses pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), 16 of whom have previously testified in proceedings before the Tribunal, and 12 others who have given statements with attestations in accordance with the Rule. The Prosecution also seeks the admission of 105 associated exhibits together with the written evidence of the witnesses.¹

2. The Prosecution submits that the proposed evidence is relevant to its case, primarily, to the crimes charged in Counts 1 and 3–8 of the Third Amended Indictment (“Indictment”), has probative value, is reliable, and is suitable for admission in written form.² It argues that the proposed evidence does not go to the acts and conduct of the Accused, including his participation in the alleged joint criminal enterprises, and that it is “crime-base” evidence, describing events that occurred in the witnesses’ municipalities in North Eastern Bosnia and in the Drina Valley area.³ Furthermore, in relation to the Chamber’s discretionary power pursuant to Rule 92 *bis*, the Prosecution submits that there are factors in favour of admitting the proposed evidence pursuant to Rule 92 *bis*, and that none of the witnesses should be required to appear for cross-examination by the Accused.⁴ With regard to the proposed associated exhibits, the Prosecution states that it has only selected associated exhibits which “it deems relevant and probative”.⁵

3. 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

¹ Motion, paras. 1, 4–5, Appendix A.

² Motion, paras. 2, 16–17.

³ Motion, paras. 11–13.

⁴ Motion, paras. 21, 25–28.

⁵ Motion, para. 31.

testified before this Tribunal are not unnecessarily required to come to the Tribunal again; and (iii) cause no unfair prejudice to the Accused.⁶

4. The Prosecution acknowledges that the witness statements of five of the witnesses in the Motion do not have the attestations required by Rule 92 *bis*(B) of the Rules,⁷ It however seeks the provisional admission of the statements and associated exhibits, and will “re-submit [the] statements in compliance with all formalities of Rule 92 *bis* once the Trial Chamber issues an order granting the provisional admission of these statements.”⁸

5. 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 30 July 2009.⁹ However, on 8 July 2009, the Accused filed his “Omnibus Response to all Rule 92 *bis* Motions”, opposing the 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.¹⁰ 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 such motion at any time before the decisions had been made.¹¹ 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.¹² No further response to the Motion has yet been filed by the Accused.

6. 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.¹³ Pursuant to the Rule 73 *bis* Submission, nine of the 33 witness in the Motion have been dropped,¹⁴ and four have been

⁶ Motion, para. 2.

⁷ Motion, para. 6.

⁸ Motion, para. 6.

⁹ 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.

¹⁰ Omnibus Response to Rule 92 *bis* Motions, paras. 3, 6.

¹¹ Status Conference, T. 370 (23 July 2009).

¹² Pre-trial Conference, T. 489–490 (6 October 2009).

¹³ Rule 73 *bis* Submission, paras. 6, 11.

¹⁴ KDZ004, KDZ034, KDZ046, KDZ077, KDZ091, KDZ177, KDZ256, KDZ339, and KDZ362; *see* Appendix A to Rule 73 *bis* Submission.

labelled as “reserve” witnesses.¹⁵ The “Prosecution Second Submission Pursuant to Rule 73 bis(D)”, filed on 18 September 2009, does not alter the status of any of the other witnesses contained in the Motion.¹⁶ 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.¹⁷ The oral decision was followed by a written decision on 8 October 2009.¹⁸ As a consequence of this decision, the Trial Chamber need only determine if the evidence of 20 of the 33 witnesses included in the Motion, i.e. KDZ010, KDZ023, KDZ027, KDZ057, KDZ059, KDZ072, Fadil Banjanović (“KDZ141”), Sakib Husrefović (“KDZ190”), Elvir Pašić (“KDZ191”), Ferid Spahić (“KDZ210”), KDZ216, Mersudina Saim-Hodžić (“KDZ337”), Nedžad Hadžiefendić (“KDZ389”), Mirsad Kuralić (“KDZ442”), Džemail Bećirević (“KDZ443”), Muhamed Hećo (“KDZ464”), KDZ533, Osman Krupinac (“KDZ535”), Muharem Mujanović (“KDZ536”), and Safeta Hamzić (“KDZ553”), is admissible pursuant to Rule 92 bis.

II. Discussion

7. On 15 October 2009, the Trial Chamber issued the “Decision on 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)” (“Decision on Third Motion”), in which it outlined the law applicable to motions made pursuant to Rule 92 bis. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Motion.¹⁹

8. The evidence of each of the 20 witnesses proposed in the Motion for admission into evidence is summarised and examined below. With regard to KDZ010, KDZ023, KDZ027, KDZ057, KDZ059, KDZ072, and KDZ216, who have been granted protective measures,²⁰ the summaries of their proposed evidence are set out in Confidential Annex A to this Decision. Furthermore, the Chamber notes that KDZ533, who has no protective measures in place in these proceedings, indicated in his written statement that it would be difficult for him to testify before the Tribunal for fear of his brother’s safety, and that he would only testify if he was given full

¹⁵ KDZ146, KDZ169, KDZ170, and KDZ483; see Appendix A to Rule 73 bis Submission.

¹⁶ See Prosecution Second Submission Pursuant to Rule 73 bis (D), 18 September 2009, confidential Appendix A.

¹⁷ Pre-trial Conference, T. 467–468 (6 October 2009).

¹⁸ Decision on Application of Rule 73 bis, 8 October 2009.

¹⁹ Decision on Third Motion, paras. 4–11.

²⁰ Order on Chart of Protective Measures for Witnesses, 14 August 2009, Annex A.

protection.²¹ In light of this, the summary of KDZ533's proposed evidence is also set out in Confidential Annex A to this Decision, until such time the Prosecution verifies that KDZ533 does not need the granting of protective measures by the Chamber.

A. Summary of Proposed Evidence

9. Fadil Banjanović is a Bosnian Muslim man who was the mayor of Kozluk in Zvornik municipality from 1984 to 1992. During his testimony in the *Slobodan Milošević* case on 9 and 19 May 2003, and in his written statement dated 14 March 2001 and 30 March 2002, tendered by the Prosecution as an associated exhibit, Fadil Banjanović described the political situation in Zvornik in early 1992, and the events surrounding the expulsion of Bosnian Muslims from Kozluk and the neighbouring village of Skočić in April 1992. Specifically, he discussed orders given to Bosnian Muslims by high-ranking politicians in the municipality (including the then Serbian Democratic Party ("SDS") president in Zvornik), such as orders to relinquish their weapons and to leave their villages. He also discussed how Bosnian Muslims were forced by Serb forces to sign statements giving up their property before they were expelled.

10. Sakib Husrefović is a Bosnian Muslim man from the town of Brčko. In his written statement dated 26 and 27 May 1995, he described generally events in Brčko in 1992 and, in particular his detention at the Wooden Mosque (where he was used as a human shield), at Luka camp (where he witnessed the mistreatment and killing of prisoners), and at Batković camp (where he was repeatedly beaten, and forced to harvest vegetables on private farms in Bijeljina and to work at a sugar factory), as well as the killing incident at the Laser Bus company on or about 5 May 1992, listed in Schedule B of the Indictment.

11. Elvir Pašić is a Bosnian Muslim who was a policeman in Rogatica. During his testimony in the *Tadić* case on 20 May 1996, he testified about the events surrounding the attack on Rogatica on 22 May 1992 and, in particular, the division of the Rogatica police force and the occasion when he stopped a car in which Rajko Kušić (the head of the Serb Crisis Committee in Rogatica) was a passenger, and which had many weapons in it. Elvir Pašić also testified about his arrest and subsequent detention at Vlahović's Secondary School, Sušica camp, and Batković camp (where he observed beatings and killings of detainees, and was forced to dig trenches on the front lines).

12. Ferid Spahić is a Bosnian Muslim from the village of Smriječe in Višegrad municipality. During his testimony in the *Vasiljević* case on 12 and 13 September 2001 and the *Lukić et al.* case on 26 August 2008, and in his witness statement dated 20 February 2003, Ferid Spahić testified,

²¹ KDZ533's ICTY Witness Statement, dated 20–22 October 1997 (under seal).

inter alia, on events that took place in Višegrad municipality in early 1992, on his eventual departure in a convoy in June 1992 (after having been warned that “ethnic cleansing” was occurring), on the killing of more than 40 men from the convoy by Serb forces, and on his eventual escape after being fired upon.

13. Nedžad Hadžiefendić is a Bosnian Muslim man from Begsuja in Zvornik municipality. In his written statement, dated 30 January 2003, he described the events surrounding the attack on Zvornik in April 1992, his detention at the Standard Shoe Factory, a farm at Ekonomija, and a brick factory in Novi Izvor (where he was frequently beaten, and forced to work and to assist in the looting of homes belonging to Bosnian Muslims in Zvornik), and his eventual escape.

14. Mirsad Kuralić is a Bosnian Muslim from Kalesija municipality who was drafted into the Army of Bosnia and Herzegovina (“ABiH”) in April 1992, and served on the front line. During his testimony in the *Krajišnik* case on 25 April 2005, Mirsad Kuralić described how he was captured by Serb soldiers and detained in Serb-run camps at Mimići (where guards beat him and inflicted injuries on him), Vlasenica (where guards beat him daily for one month), Batković (where he was beaten three times a day, and forced to beat and engage in sexual intercourse with other prisoners), and at Doboj (where he was subjected to beating and forced labour).

15. Džemail Bećirević was the chief of the National Secretariat for Defence in Bratunac municipality during the takeover of Bratunac by Serb forces. He served in the ABiH from April 1992 to 1995. During his testimony in the *Slobodan Milošević* case on 9 May 2003, he testified, *inter alia*, on the organisation and functioning of the SDS and Crisis Staff in Bratunac (which were then led by Miroslav Deronjić), and the takeover of the municipality. Džemail Bećirević specifically described how members of the SDS in Bratunac would travel to Sarajevo to receive instructions from the Accused, and how the SDS in Bratunac caused tensions between Bosnian Muslims and Serbs. He also testified about the distribution of weapons and secret training given to Serb members of the community, on the heavy offensive launched by Serb forces in Bratunac and Srebrenica in early 1993, and on the fall of Srebrenica in 1995.

16. Muhamed Hećo is a Bosnian Muslim man from the village of Kozadre in Rogatica municipality. In his written statements, dated 12 January 1994 and 25 January 1995, he described events leading to the attack on Rogatica in early 1992, and his detention in Sokolac and at a prison in the “Rasadnik or Nursery at Factory Farm of *Borike*” where he and other prisoners were frequently beaten. Muhamed Hećo also discussed an incident when Serb soldiers took him and other detainees to the woods and fired upon them, and on how he was able to survive the attack.

17. Osman Krupinac and Muharem Mujanović are Bosnian Muslim men from the village of Snagovo in Zvornik municipality. In their written statements,²² both witnesses described how tanks began shelling their village, forcing the villagers to run into the nearby forest, and how Serb soldiers captured them and took the villagers to a garage in Rašidov Han. Both witnesses described how women and children were placed in the garage while the men were lined up along its outside wall, and how the Serb soldiers fired upon the villagers, killing 36 people.

18. Safeta Hamzić is a Bosnian Muslim woman from the village of Liplje in Zvornik municipality. In her written statement, dated 17 July 1996, she described her detention at “Duza’s House”, and discussed how women were frequently raped there, how she was raped by two soldiers, and how her husband and two other men were likely killed after being beaten.

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

19. As a preliminary matter, the Chamber notes that the Prosecution has tendered into evidence a witness statement given by Mersudina Saim-Hodžić to the Tribunal on 21 September 2002, and a written statement given by KDZ027 to the Tribunal on 13–17 October 1994. However, the Chamber has not been provided with an English translation of either of these documents and is therefore unable to analyse, at this point, this proposed evidence to determine whether it is admissible pursuant to Rule 92 bis. KDZ027’s proposed evidence also consists of a supplement to the witness’s 1994 statement, dated 25 June 2002, which is available in English. However, the exact content of this supplement is incomprehensible without the content of the original statement. The Chamber will therefore deny the Motion for these two witnesses, without prejudice to the Prosecution re-submitting the proposed evidence, and providing an English translation of their statements.

20. The Chamber further notes that the Prosecution has only tendered into evidence the first ten pages of the transcript of KDZ010’s testimony in the *Jelisić* case,²³ of a total of 110 pages.²⁴ In light of the limited amount of evidence provided in those ten pages, it seems that the Prosecution may have mistakenly tendered only this portion of KDZ010’s testimony. Consequently, the Chamber will deny the Motion for KDZ010, without prejudice to the Prosecution clarifying whether it is indeed its intention to only tender those first ten pages, or whether this was a mistake, in which case it will have to submit the whole transcript of KDZ010’s testimony in the *Jelisić* case.

²² Osman Krupinac’s written statement is dated 16 November 2001; Muharem Mujanović’s written statements are dated 18 February 1997 and 8 October 1997.

²³ *Prosecutor v. Jelisić*, T. 51–60 (30 November 1998).

²⁴ *See Prosecutor v. Jelisić*, T. 51–160 (30 November 1998 and 1 December 1998).

21. With regard to the admissibility of the written evidence of the remaining 17 witnesses in the Motion, the Trial Chamber is satisfied that the proposed evidence of 15 witnesses, namely KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Džemail Bećirević, Muhamed Hećo, Osman Krupinac, Muharem Mujanović, and Safeta Hamzić, is relevant to a number of charges against the Accused, namely, genocide (Count 1), persecutions (Count 3), extermination (Count 4), murder (Counts 5 and 6), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it specifically relates to the takeovers of municipalities, the killing of members of the Bosnian Muslim population, the causing of serious bodily or mental harm to Bosnian Muslims, the imposition and maintenance of restrictive and discriminatory measures against the Bosnian Muslim population in those municipalities, the unlawful detention of Bosnian Muslims at detention facilities (such as in Batković, Luka, and Sušica camps, Ekonomija Farm, Alhos Factory, Karakaj Technical School, Novi Izvor Company, the Drinjaća building, the Standard Factory, and the Laser Bus Company), the establishment and perpetuation of inhumane living conditions in detention facilities, and killings related to the detention facilities.

22. Furthermore, the Chamber considers that Mirsad Kuralić's proposed evidence is relevant to the charges of persecutions (Count 3), extermination (Count 4), murder (Counts 5 and 6), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it pertains to his cruel treatment at detention facilities in Mimići, Vlasenica, Batković and Doboј. The Chamber also considers that the proposed evidence of Fadil Banjanović is relevant to the charges of persecutions (Count 3), deportation (Count 7), and inhumane acts (forcible transfer) (Count 8), as it relates to the expulsion of people from Kozluk and Skočić. The Chamber is also satisfied that the proposed evidence of these 17 witnesses has probative value.

23. The Chamber considers that the following factors weigh in favour of admitting the evidence through Rule 92 *bis*. First, the Chamber is satisfied that the evidence of the 17 witnesses is "crime base" evidence, as it recounted experiences of the witnesses during the takeover of their municipalities, and described the impact of crimes committed on them and other victims. Furthermore, the Chamber is satisfied that the evidence of KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Mirsad Kuralić, Muhamed Hećo, Osman Krupinac,²⁵ Muharem Mujanović, and Safeta Hamzić does not pertain to the acts and conduct of the Accused, or any acts or conduct

²⁵ The Chamber notes that KDZ535's statement makes a reference to having seen the Accused speaking on television. The Chamber is satisfied, however, that this very minor and generalised reference has no bearing on the Accused's acts and conduct as charged in the Indictment, or could be said to be a factor against admission of this evidence pursuant to Rule 92 *bis*.

which go to establish that the Accused participated in a joint criminal enterprise (“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.

24. The Chamber notes, however, that certain parts of Džemail Bećirević’s evidence relate to the acts and conduct of the Accused, as the witness described how the Accused would give instructions to the SDS in Bratunac, and would confirm the appointment of the members of the War Presidency for the Serbian Municipality of Bratunac. Džemail Bećirević’s evidence also described in detail the acts and conduct of Miroslav Deronjić (the then President of the SDS in Bratunac, whose prior testimony has been tendered into evidence by the Prosecution pursuant to Rule 92 *quater*,²⁶ and who may be considered proximate to the Accused in terms of Rule 92 *bis*) who received orders from the SDS in Sarajevo, which was led by the Accused. Although parts of Džemail Bećirević’s evidence pertain to the takeover of Bratunac and are “crime-base”, the Chamber considers that admitting only those portions of the testimony would make the evidence confusing and unreliable, and that the particular references that relate to the acts and conduct of the Accused and Miroslav Deronjić are sufficient to render Džemail Bećirević’s evidence as a whole inadmissible pursuant to Rule 92 *bis*.

25. Similarly, the Trial Chamber notes that KDZ023, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Nedžad Hadžiefendić, and Muharem Mujanović’s evidence described the activities of a number of people who held various positions in the Bosnian Serb political and military structures in the municipalities, such as, the men of Željko Ražnatović (also known as “Arkan”) and/or Šešelj. Further examples include: KDZ023’s evidence, in which Dragan Nikolić is mentioned, and which, along with KDZ059’s evidence, described the acts and conduct of Arkan; Elvir Pašić and Muhamed Hećo’s evidence described the acts and conduct of Rajko Kušić (leader of Serb crisis committee in Rogatica) and Tomo Veselinović (president of the SDS in Rogatica); KDZ023, KDZ059 and Fadil Banjanović’s evidence described the activities of Brano Grujić (president of the SDS in Zvornik); and Fadil Banjanović’s evidence described the activities of Jovo Mijatović (deputy in the National Assembly and Serb leader in Zvornik).

26. The Chamber notes that both Arkan and Vojislav Šešelj are identified in paragraph 11 of the Indictment as members of a JCE, along with the Accused, and that Rajko Kušić, Tomo Veselinović, Brano Grujić, and Jovo Mijatović may be considered members of the JCE as provided for in paragraph 12 of the Indictment as “members of SDS and Bosnian Serb government bodies at the republic, regional, municipal, and local levels”. However, the testimony and/or statements of

²⁶ Prosecution’s Motion for Admission of the Evidence of KDZ297 pursuant to Rule 92 *quater*, 10 June 2009.

the witnesses indicate neither that the Accused participated in the alleged JCE, nor that he shared the intent of any of the individuals named by KDZ023, KDZ059, KDZ072, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Nedžad Hadžiefendić, Muhamed Hećo, and Muharem Mujanović for the acts of these individuals as described by the witnesses. The Chamber does not consider that the identification alone of Arkan, Rajko Kušić, Tomo Veselinović, Brano Gurjić, and Jovo Mijatović in the witnesses' evidence is sufficient to render it inadmissible in terms of Rule 92 *bis*, and will not exercise its discretionary power to deny admission of their evidence on this basis.

27. Furthermore, while the Chamber is not in a position, at this stage, to fully assess the extent to which the witnesses' evidence is cumulative of other witnesses' evidence that the Prosecution intends to present, the Chamber has reviewed the Prosecution's Rule 65 *ter* Witness List, and is satisfied of the following:

- With regard to evidence relating to the fall of Zvornik, KDZ072's evidence is cumulative of the evidence of KDZ340 and KDZ473; KDZ059's evidence is cumulative of the evidence of KDZ023, KDZ067, KDZ248, KDZ340, and KDZ473; KDZ023's evidence is cumulative of the evidence of KDZ059 and KDZ534; Nedžad Hadžiefendić's evidence is cumulative of the evidence of KDZ067, KDZ340, and KDZ473; and, the evidence of KDZ059, KDZ072, and Nedžad Hadžiefendić is cumulative.
- With regard to evidence relating to detention facilities, Mirsad Kuralić's evidence is cumulative of the evidence of KDZ010, KDZ027, KDZ044, KDZ067, KDZ230, KDZ411, KDZ579, Sakib Husrefović, and Elvir Pašić; KDZ533's evidence is cumulative of the evidence of KDZ346 and Nedžad Hadžiefendić; and Muhamed Hećo's evidence is cumulative of the evidence of KDZ390 and KDZ420;
- KDZ533's evidence about the police and military activities in Zvornik is cumulative of the evidence of KDZ511, KDZ534, and KDZ582;
- KDZ057's evidence relating to detention at Luka camp and the takeover of Brčko is cumulative of the evidence of KDZ010, KDZ159, KDZ296, KDZ334, KDZ364, KDZ410, and Sakib Husrefović;
- KDZ216's evidence relating to rapes and fighting that took place in Kalinovik and Foča is cumulative of the evidence of KDZ125 and KDZ298;
- Fadil Banjanović's evidence on forced transfers of Bosnian Muslims is cumulative of the evidence of KDZ461;

- Sakib Husrefović's evidence relating to detention facilities and the takeover of Brčko is cumulative of the evidence of KDZ010, KDZ027, KDZ057, KDZ159, KDZ230, KDZ296, KDZ334, KDZ364, KDZ410, KDZ579, Elvir Pašić, and Mirsad Kuralić;
- Elvir Pašić's evidence about detention facilities and the attack on Rogatica is cumulative of the evidence of KDZ051, KDZ230, and KDZ411.
- Muhamed Hećo's evidence relating to guards firing on 27 detainees outside Rogatica is cumulative of the evidence of KDZ420;
- Muharem Mujanović's evidence relating to paramilitaries in Snagovo is cumulative of the evidence of KDZ385;
- Safeta Hamzić's evidence relating to the detention of Bosnian Muslims at "Duza's house" is cumulative of the evidence of KDZ385; and
- The evidence of both Osman Krupinac and Muharem Mujanović relating to the attack in the garage at Rašidov Han is cumulative.

28. Thus, the Chamber considers that there are factors in favour of admitting into evidence the written statements and/or transcripts of previous testimony of KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Mirsad Kuralić, Muhamed Hećo, Osman Krupinac, Muharem Mujanović, and Safeta Hamzić. None of the factors that may go against their admission as set out in Rule 92 *bis*(A)(ii) apply.

29. The Chamber further considers that the written statements of Sakib Husrefović, Ferid Spahić, Nedžad Hadžiefendić, Muhamed Hećo, and Osman Krupinac satisfy the formal requirements set out in Rule 92 *bis*(B) of the Rules. The Chamber notes, however, that the written statements of KDZ533, Muharem Mujanović, and Safeta Hamzić do not conform to the formal requirements set out in Rule 92 *bis*(B) of the Rules.

30. On the basis of these factors, the Chamber considers that the evidence of KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Mirsad Kuralić, Muhamed Hećo, Osman Krupinac, Muharem Mujanović, and Safeta Hamzić is admissible pursuant to Rule 92 *bis*(A).

C. Analysis pursuant to Rule 92 bis(C)

31. The Chamber once again recalls that, with regard to written evidence that is admissible pursuant to Rule 92 bis, the Chamber has discretion to require witnesses to appear for cross-examination; if it does so decide, the provisions of Rule 92 ter shall apply. In making this assessment, the Chamber has taken into account the criteria pertaining to Rule 92 bis(C) established in the case-law of the Tribunal, and described in detail in the Decision on Third Motion.²⁷ In particular, the Chamber has considered whether the evidence: (i) is cumulative; (ii) is crime-base; (iii) touches upon a “live and important issue between the parties”; and (iv) describes the acts and conduct of a person for whose acts and conduct the Accused is charged with responsibility, and how proximate the acts and conduct of this person are to the Accused.

32. First, the Chamber notes that KDZ533, Sakib Husrefović, Nedžad Hadžiefendić, Muhamed Hećo, Osman Krupinac, Muharem Mujanović, and Safeta Hamzić have never been cross-examined. Furthermore, KDZ072’s cross-examination during his testimony in the *Šešelj* case was limited, as it mostly concerned the witness’s distinction between Šešelj’s men, Arkan’s men, and “Chetniks”, as well as the death of the witness’s grandfather. Mirsad Kuralić’s cross-examination during his testimony in the *Krajišnik* case was similarly limited, as it only concerned the witness’s medical records and his understanding of the term “prisoners of war”. Additionally, although KDZ216 was cross-examined during her testimony in the *Kunarac et al.* case, the Prosecution has not tendered the section of the transcript containing such cross-examination, so its content is unknown. Thus, of the 16 witnesses in the Motion whose evidence will be admitted into evidence, only KDZ023, KDZ057, KDZ059, Fadil Banjanović, Elvir Pašić, and Ferid Spahić have previously been thoroughly cross-examined. However, the Chamber does not consider this fact to, *per se*, necessitate the witnesses to appear for cross-examination.

33. The Chamber is satisfied that none of the evidence bears directly upon the Accused’s responsibility as alleged in the Indictment or represents a “critical” or “pivotal” element of the Prosecution’s case. However, as noted above, the evidence of KDZ023, KDZ059, KDZ072, KDZ533, Fadil Banjanović, Sakib Husrefović, Nedžad Hadžiefendić, Osman Krupinac, and Muharem Mujanović described the activities of a number of people who held various positions in the Bosnian Serb political and military structures in the municipalities. While these individuals are mentioned in the evidence, the Chamber does not consider that their acts and conduct, as described by KDZ023, KDZ059, KDZ072, KDZ533, Fadil Banjanović, Sakib Husrefović, Nedžad Hadžiefendić, Osman Krupinac, Muharem Mujanović, Elvir Pašić, and Muhamed Hećo, are

²⁷ Decision on Third Motion, para. 10.

sufficiently proximate to the Accused to require the witnesses to appear for cross-examination on this ground.

34. However, the Chamber considers that, given the fact that Muhamed Hećo has never been cross-examined, and that his evidence relates in part to the activities of Rajko Kušić and the SDS in Rogatica, it is appropriate for the Chamber to exercise its discretion to call him for cross-examination. Similarly, the evidence of Muharem Mujanović, who has also never been cross-examined, discusses the acts and conduct of Šešelj's men and Arkan's men launching an offensive against Zvornik, and describes soldiers killing 36 civilians in one incident at Rašidov Han. Thus, the Chamber will exercise its discretion to call Muharem Mujanović for cross-examination.

35. Thus, on the basis of the above, the Chamber considers that Muhamed Hećo and Muharem Mujanović should be called for cross-examination. Having carefully considered the written statements or transcripts of prior testimony of KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Mirsad Kuralić, Osman Krupinac, and Safeta Hamzić, the Chamber is satisfied that these witnesses do not need to appear for cross-examination.

D. Associated Exhibits

36. The Prosecution seeks the admission into evidence of a number of associated exhibits in relation to 12 of the witnesses in the Motion, namely KDZ023, KDZ057, KDZ059, KDZ072, KDZ216, KDZ533, Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, and Mirsad Kuralić. As set out in the Decision on Third Motion, only those documents that "form an inseparable and indispensable part of the testimony" are admissible as associated exhibits. To fall into this category, the witness must have discussed the document in his or her transcript or written statement, and that transcript or written statement would become incomprehensible or of less probative value if the document is not admitted.²⁸

37. As a preliminary matter, the Chamber notes that the statements or transcripts of prior testimony with Rule 65 *ter* numbers 07487, 14827, 14833, and 14834 have been tendered by the Prosecution both as the written evidence of witnesses and as associated exhibits. The Chamber has determined above that these statements or transcripts will be admitted, and as there is no reason for the Chamber to admit two copies of the same pieces of evidence, the request for them to also be admitted as associated exhibits shall be denied.

²⁸ Decision on Third Motion, para. 11.

38. Similarly, the Chamber notes that the proposed associated exhibit with Rule 65 *ter* number 14843 is an English translation of the proposed associated exhibit with Rule 65 *ter* number 07523, which already has an attached English translation, and that the proposed associated exhibit with Rule 65 *ter* number 21183 is a witness statement given by Sakib Husrefović to the Tuzla “SDB”, and is largely repetitive to the witness’s ICTY witness statement. The Chamber considers that the proposed associated exhibits with Rule 65 *ter* numbers 14843 and 21183 are largely repetitive and, therefore, shall not be admitted into evidence.

39. The Prosecution has tendered the pseudonym sheets for witnesses KDZ023 (Rule 65 *ter* number 12137), KDZ057 (Rule 65 *ter* number 14989), KDZ059 (Rule 65 *ter* number 12151), and KDZ072 (Rule 65 *ter* number 12148) which were admitted in previous cases where the witnesses had protective measures. The Chamber considers that the pseudonym sheets are necessary for the identification of KDZ023, KDZ057, KDZ059, and KDZ072, and that they form an inseparable and indispensable part of the witnesses’ testimony. These associated exhibits shall be admitted into evidence under seal.

40. The Chamber further notes that each of these witnesses: KDZ023, KDZ057, KDZ059, KDZ072, KDZ533, Fadil Banjanović, Sakib Husrefović, Ferid Spahić, Nedžad Hadžiefendić, and Mirsad Kuralić, discussed in their written statements or prior testimony one of the following proposed associated exhibits bearing Rule 65 *ter* numbers 07127, 08874, 12146, 12156 (witness statements); 07798, 12138 (addenda or supplemental information sheets to witness statements); 07289, 08339, 12139, 12140, 12150, 14851, 21198 (photographs); 00662, 00665, 07523, 12144 (lists); 12149, 12164, 14836 (maps marked by witnesses); 00559, 00626, 00663, 12153 (official documents and reports); 12165, 21180 (passport or registration card); and 12155, 14828, 14829, 21181, and 21182 (hand-drawn maps or sketches). The Chamber considers that all of these exhibits form an inseparable and indispensable part of the witnesses’ testimony, and that failure to admit them would make KDZ023, KDZ057, KDZ059, KDZ072, KDZ533, Fadil Banjanović, Sakib Husrefović, Ferid Spahić, Nedžad Hadžiefendić, and Mirsad Kuralić’s prior testimony or written statements incomprehensible or of lesser probative value. It will therefore admit these exhibits into evidence.

41. The Chamber notes, however, that paragraph six of Mirsad Kuralić’s witness statement (proposed associated exhibit bearing Rule 65 *ter* number 07127 and discussed in the previous paragraph) places the Accused in April 1992 at the Holiday Inn Hotel in Sarajevo, from where Serb snipers were shooting at people, and considers that the admission of this evidence could be prejudicial to the Accused. However, having carefully analysed the witness statement in its

entirety, the Chamber if of the view that it is comprehensible without paragraph six, and will, in the interests of justice, deny admission of this paragraph.

42. The Chamber also considers that, even though KDZ216's ICTY witness statement (Rule 65 *ter* number 11787) was not discussed by the witness during her prior testimony, failure to admit it would lessen the probative value of such testimony. Thus, the Chamber considers this witness statement to be an inseparable and indispensable part of KDZ216's testimony, and will admit it into evidence.

43. The Prosecution also requests the admission into evidence of two associated exhibits with Rule 65 *ter* numbers 00666 and 12163 in relation to Fadil Banjanović's written evidence, and an associated exhibit with Rule 65 *ter* number 11784 in relation to KDZ216's written evidence. Given that these documents were not discussed by the witnesses in their prior testimony, the Chamber considers that they do not form an inseparable and indispensable part of their testimony, and will not admit them into evidence. Similarly, the Prosecution requests the admission into evidence of a photograph with Rule 65 *ter* number 11785. Although KDZ216 discussed in court the man in the photograph, the photograph itself was not discussed, and the identity of the man in the photograph does not appear to be in question. The Chamber considers that this document is not an inseparable and indispensable part of KDZ216's testimony, and it will not admit the photograph into evidence.

44. The associated exhibits bearing Rule 65 *ter* numbers 08126, 08502, 14822, and 11795, are maps which may have been discussed by either Elvir Pašić, Ferid Spahić, or KDZ216, but were not marked by them during their testimony. The Chamber considers that the evidence of these witnesses will not become incomprehensible or of lesser probative value should these maps not be admitted into evidence. Consequently, they Chamber will not admit them into evidence. Further, the associated exhibit bearing Rule 65 *ter* number 12160 is a summary of Fadil Banjanović's background and *curriculum vitae* which was not discussed in any detail during his testimony in the *Slobodan Milošević* case. Therefore, the Chamber considers that this document does not form an inseparable and indispensable part of the witness's testimony, and will not admit it into evidence.

45. Finally, the Chamber has been unable to analyse the contents of the proposed associated exhibits with Rule 65 *ter* numbers 11788 and 14835, as no English translation has been provided, and of the proposed associated exhibits with Rule 65 *ter* numbers 11782 and 40542, which are videos that have not been made available to the Chamber. The Prosecution's request for their admission is therefore denied without prejudice to the Prosecution providing the Chamber English translations of the first two documents, as well as the videos, to enable verification by the Chamber.

46. The Chamber is thus satisfied that the proposed associated exhibits with Rule 65 *ter* numbers 00559, 00662, 00663, 00665, 07798, 12155, 12164, 12165, 14828, 14829, 14836, 21180, 21181, and 21182 fulfil the requirements for admission into evidence, and will therefore be admitted in their entirety in this case, with exhibit numbers to be assigned by the Registry. The proposed associated exhibit with Rule 65 *ter* number 07127 shall be admitted into evidence in its entirety with the exception of paragraph six. Due to protective measures in place for various witnesses, the proposed associated exhibits with the following Rule 65 *ter* numbers shall be admitted into evidence under seal: 00626, 07289, 07523, 08339, 08874, 11787, 12137, 12138, 12139, 12140, 12144, 12146, 12148, 12149, 12150, 12151, 12153, 14851, and 14989. In addition, the exhibit with Rule 65 *ter* number 12156, was previously admitted under seal in the *Slobodan Milošević* case, and has been tendered as an associated exhibit of the evidence of Fadil Banjanović, who is not a protected witness. Given that it is unclear why this document should remain under seal, the Chamber will provisionally admit the statement, and will order the Prosecution to file a public redacted version of the document. Finally, pending confirmation from the Prosecution that witness KDZ533 does not require protective measures, the proposed associated exhibit with Rule 65 *ter* number 21198, shall also be provisionally admitted under seal.

IV. Disposition

47. For the above stated reasons, the Trial Chamber, pursuant to Rules 54, 89, and 92 *bis* of the Rules, hereby **GRANTS** the Motion **IN PART** and:

1. **ORDERS** that:

- (a) Fadil Banjanović, Sakib Husrefović, Elvir Pašić, Ferid Spahić, Nedžad Hadžiefendić, Mirsad Kuralić, and Osman Krupinac's written statements and/or transcripts of prior testimony shall be admitted into evidence;
- (b) KDZ023, KDZ057, KDZ059, KDZ072, and KDZ216's written statements and/or transcripts of prior testimony shall be admitted into evidence under seal;
- (c) The written statements of KDZ533 and Safeta Hamzić shall be provisionally admitted into evidence, subject to the Prosecution providing the witness statements in a form which fully complies with the formal requirements of Rule 92 *bis*(B);
- (d) KDZ533's written statement shall be provisionally admitted under seal, pending confirmation from the Prosecution by 20 November 2009 that the witness does not require protective measures;

- (e) Muhamed Hećo and Muharem Mujanović shall appear for cross-examination;
- (f) The associated exhibits with Rule 65 *ter* numbers 00559, 00662, 00663, 00665, 07798, 12155, 12164, 12165, 14828, 14829, 14836, 21180, 21181, and 21182 shall be admitted into evidence;
- (g) The associated exhibit with Rule 65 *ter* number 07127 shall be admitted into evidence, with the exception of paragraph six, which shall be redacted by the Prosecution.
- (h) The associated exhibits with Rule 65 *ter* numbers 00626, 07289, 07523, 08339, 08874, 11787, 12137, 12138, 12139, 12140, 12144, 12146, 12148, 12149, 12150, 12151, 12153, 14851, and 14989 shall be admitted into evidence under seal;
- (i) The associated exhibit with Rule 65 *ter* number 12156 shall be provisionally admitted under seal pending the filing by the Prosecution of a public redacted version of the document; and
- (j) The associated exhibit with Rule 65 *ter* number 21198 shall be provisionally admitted under seal pending confirmation from the Prosecution that KDZ533 does not require protective measures;
2. **REQUESTS** the Registry to assign exhibit numbers to these exhibits;
3. **POSTPONES** the determination of the admission into evidence of the witness statements of Muhamed Hećo and Muharem Mujanović until such time as the witnesses are brought to give evidence before the Chamber; and
4. **DENIES** the Motion in all other respects.

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



Judge O-Gon Kwon,
Presiding

Dated this tenth day of November 2009
At The Hague
The Netherlands

[Seal of the Tribunal]