



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: 9 February 2010

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: 9 February 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ADDENDUM TO THE TRIAL CHAMBER'S DECISION ON PROSECUTION'S FIFTH
MOTION FOR ADMISSION OF STATEMENTS IN LIEU OF *VIVA VOCE* TESTIMONY
PURSUANT TO RULE 92 *BIS* (SREBRENICA WITNESSES)**

Office of the Prosecutor

Mr. Alan Tieger
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The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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”), *ex proprio motu*, issues this addendum to the “Decision on Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)”, issued 21 December 2009 (“Decision”).

1. In the Decision, the Chamber considered the admissibility into evidence of the written statements and/or transcripts of prior testimony of 66 witnesses, as well as of numerous associated exhibits. However, the Trial Chamber did not address the Prosecution’s request for the admission into evidence of five associated exhibits, and it will, therefore, determine their admission in this decision. In addition, the Decision indicated at paragraph 63 that a proposed associated exhibit, Rule 65 *ter* number 02868, would not be admitted into evidence. However, in the Disposition, the same associated exhibit is listed as one of those that are admitted. The status of this associated exhibit will be clarified below.

2. The Chamber recalls that it outlined the law applicable to motions made pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”), including that pertaining to the admission into evidence of associated exhibits, in its “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”). It will not repeat that applicable law here.

3. In the Prosecution’s Fifth Motion for Admission of Statements in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Srebrenica Witnesses)”, filed on 29 May 2009 (“Motion”), the Prosecution requested the admission into evidence of four associated exhibits in conjunction with transcripts of prior testimony of Mirsada Malagić (KDZ178).

4. In the Decision, the Chamber noted that Mirsada Malagić was one of a number of Prosecution witnesses who went to the United Nations Protection Force (“UNPROFOR”) base in Potočari after the shelling in Srebrenica in July 1995, and who witnessed the separation of Muslim men and women.¹ The Chamber admitted Mirsada Malagić’s transcript into evidence without requiring her to appear for cross-examination pursuant to Rule 92 *bis*.² As noted above, however, the Chamber did not determine whether the four associated exhibits would be admitted into evidence. These associated exhibits can be described as follows: (i) Rule 65 *ter* number

¹ Decision, para. 13.

² Decision, Disposition, para. 2.

02701 is an aerial photograph of Potočari, on which particular sites have been annotated, such as the UNPROFOR base, the “White House”, and the Zinc Factory; (ii) Rule 65 *ter* number 02722 is a photograph of the “White House”; (iii) Rule 65 *ter* number 03167 is a 10-page handwritten list of names; and (iv) Rule 65 *ter* number 03168 is a photograph of a man and a woman.

5. The Chamber has re-reviewed Mirsada Malagić’s transcripts of prior evidence. While giving evidence, the witness was shown Rule 65 *ter* number 02701, and she indicated on the photograph the locations of the Zinc Factory, which she and her son used for shelter after they arrived in Potočari, and the houses to which she had seen Serb soldiers taking Bosnian Muslim men on the evening of 12 July 1995. Mirsada Malagić was also shown Rule 65 *ter* number 02722, and stated that buses going towards Bratunac left from in front of the house shown in the photograph, and that the men who had been separated from the women and children were taken into the house or the yard of the house. In relation to Rule 65 *ter* number 03168, the witness identified the man in the photograph as her husband. The Chamber is satisfied that Rule 65 *ter* numbers 02701, 02722, and 03168 form an inseparable and indispensable part of Mirsada Malagić’s testimony and that failure to admit them would make her testimony incomprehensible or of lesser probative value. It will, therefore, admit these three associated exhibits.

6. Mirsada Malagić was also shown Rule 65 *ter* number 03167, and was asked to identify one name on the list that had been highlighted. The witness read out her son’s name, “Elvir Malagić, 1970”, and stated that her son had, in fact, been born in 1973. The Chamber notes the witness’s testimony that she had seen her son arriving at Potočari on an UNPROFOR truck, but has not seen him since. Although the list was put to Mirsada Malagić during her testimony, the Chamber is of the view that her testimony about her son, including reading his name from Rule 65 *ter* number 03167, is comprehensible and is not of lesser probative value without the list, and considers that the list does not form an inseparable and indispensable part of her testimony. The Chamber will, therefore, deny admission into evidence of Rule 65 *ter* number 03167.

7. The fifth associated exhibit which the Chamber did not address in the Decision is a photograph with Rule 65 *ter* number 03079. The Prosecution requested its admission in conjunction with the transcripts of prior testimony of Dražen Erdemović (KDZ018). As noted in the Decision, Dražen Erdemović testified about the detention and execution of Muslim men during July 1995 at Branjevo Farm and the cultural centre in Pilica.³ The Chamber has re-reviewed Dražen Erdemović’s prior testimony. During his testimony, Dražen Erdemović was shown Rule 65 *ter* number 03079, and he identified in that photograph the compound at which he and other members of his unit stopped on 16 July 1995, and where they parked their vehicle.

The Chamber is satisfied that Rule 65 *ter* number 03079 forms an inseparable and indispensable part of Dražen Erdemović testimony and that failure to admit it would make his testimony incomprehensible or of lesser probative value. It will, therefore, admit this associated exhibit.

8. Finally, the Chamber moves to the inconsistency in the Decision regarding Rule 65 *ter* number 02868. The Prosecution tendered this photograph for admission into evidence in conjunction with KDZ407. As noted in the Decision, KDZ407 testified about the detention and execution of Muslim men during July 1995 in or near Ročević and Kozluk, and around Orahovac.⁴ As a result of the inconsistency in the Decision, the Chamber has re-reviewed the transcript of KDZ407's prior testimony and notes that, when KDZ407 was shown Rule 65 *ter* number 02868, he identified the place as the Orahovac Elementary School, where Muslim men had been detained and from where detainees were loaded onto trucks. The Chamber is satisfied that Rule 65 *ter* 02868 forms an inseparable and indispensable part of KDZ407's testimony and that failure to admit it would make his testimony incomprehensible or of lesser probative value. Therefore, Rule 65 *ter* number 02868 should be admitted into evidence, which is accurately reflected in the Disposition of the Decision.

9. Accordingly, the Trial Chamber, pursuant to Rules 54 and 92 *bis* of the Rules, hereby:
- a) **ORDERS** that the associated exhibits with Rule 65 *ter* numbers 02701, 02722, 03168, and 03079 are admitted into evidence;
 - b) **REQUESTS** the Registry to assign exhibit numbers to these exhibits; and
 - c) **CONFIRMS** that the associated exhibit with Rule 65 *ter* number 02868 is admitted into evidence.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

³ Decision, para. 17.

⁴ Decision, para. 17.