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DJITI - DJIKR
18 September 2013

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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-09-92-T
Date: 18 September 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 18 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION FIFTEENTH MOTION TO
ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS* AND
MOTION FOR PROTECTIVE MEASURES FOR WITNESS
RM-089**

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 12 February 2013 the Prosecution filed a motion (“Motion”) seeking admission into evidence, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the evidence of two witnesses, Witness RM-014 and Witness RM-089 (“Witnesses”).¹ On the same day the Prosecution filed a motion for protective measures for Witness RM-089 (“Motion for Protective Measures”).² On 21 February 2013, the Defence filed a motion seeking an additional 30 days to respond to the Motion.³ On 26 February 2013, the Defence filed its response to the Motion for Protective Measures (“Response to Motion for Protective Measures”).⁴ On 1 March 2013, the Chamber granted the Defence request for an extension to respond to the Motion, in part, setting the deadline for a response to 15 March 2013.⁵ The Defence filed its response on 16 April 2013 more than a month after the set deadline.⁶ The Defence did not provide any explanation for this late filing and the Chamber, therefore, shall not recognize it as validly filed.

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution submits that the evidence of the Witnesses is relevant and probative of issues in this case, reliable, and admissible under Rule 92 *bis* of the Rules.⁷ According to the Prosecution, admission of the Witnesses’ evidence pursuant to Rule 92 *bis* will expedite the proceedings, prevent the unnecessary re-appearance of victim witnesses before the Tribunal, and will not cause unfair prejudice to the Accused.⁸ The Prosecution submits that the Witnesses provide “crime-base” evidence, and that their proposed evidence does not mention issues such as the acts and conduct of the Accused.⁹ The Prosecution concedes that there may exist some overlap between adjudicated facts and other tendered evidence, but clarifies that in certain instances redactions have not been made because either the evidence being tendered contains greater detail, or making a redaction would result in the loss of contextual information.¹⁰

¹ Prosecution Fifteenth Motion to Admit Evidence Pursuant to Rule 92*bis*, 12 February 2013 (Confidential with Confidential Annexes A and B).

² Prosecution Motion for Protective Measures for Witness RM089, 12 February 2013 (Confidential with Confidential Annex A).

³ Defence Motion to Enlarge Time to Respond to Prosecution’s Fourteenth, Fifteenth, Sixteenth, and Seventeenth Rule 92*bis* Motions, 21 February 2013 (Confidential).

⁴ Defence Response to Prosecution Motion for Protective Measures for Witness RM089, 26 February 2013 (Confidential).

⁵ T. 9503.

⁶ Defence Response to Prosecution 15th Motion to Admit Evidence pursuant to Rule 92*bis*, 16 April 2013 (Confidential).

⁷ Motion, paras 5-7.

⁸ Motion, para. 6.

⁹ Motion, para. 6.

¹⁰ Motion, para. 3.

3. With respect to Witness RM-014, the Prosecution tenders the ICTY Witness Statement of 25 May 1997 and short excerpts from the witness's previous testimony in the cases of *Prosecutor v. Brđanin* and *Prosecutor v. Stanišić and Župljanin*.¹¹ The Prosecution also tenders Witness RM-014's pseudonym sheets from those cases for the purpose of identifying Witness RM-014 as the witness that provided those testimonies, and seeks leave to add the respective pseudonym sheets to its Rule 65 *ter* exhibit list.¹² For Witness RM-089, the Prosecution tenders an ICTY Witness Statement of 16 April 2000.¹³ Further, the Prosecution requests the use of a pseudonym for this witness, submitting that this measure is necessary to protect the witness against genuine risks to the witness's personal security and that of the witness's family.¹⁴

4. In its Response to the Motion for Protective Measures, the Defence submits that there is insufficient information available to determine what objective facts Witness RM-089's fears are based on, and granting such measures would undermine the right of the Accused to a public trial.¹⁵

III. APPLICABLE LAW

(a) Additions to the Rule 65 *ter* exhibit list

5. The Chamber recalls and refers to the applicable law governing additions to the Rule 65 *ter* exhibit list, as set out in a previous decision.¹⁶

(b) Rule 92 *bis*

6. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.¹⁷

(c) Admission of Associated Exhibits

7. With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to one of its previous decisions dealing with this matter.¹⁸

¹¹ Motion, paras 8, 12.

¹² Motion, para. 13.

¹³ Motion, para. 15.

¹⁴ Motion for Protective Measures, paras 3, 5-8.

¹⁵ Response to the Motion for Protective Measures, paras 6-12.

¹⁶ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

¹⁷ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, ("Decision on Third 92 *bis* Motion"), paras 5-7.

¹⁸ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quarter*, 22 July 2012, para. 13.

(d) Protective measures

8. The Chamber recalls and refers to the applicable law in relation to protective measures, as set out in a prior decision.¹⁹

IV. DISCUSSION

(a) Additions to the Rule 65 ter exhibit list

9. With respect to the Prosecution's request to add the pseudonym sheets for Witness RM-014 from the *Prosecutor v. Brđanin* and *Prosecutor v. Stanišić and Župljanin* cases to the Rule 65 ter exhibit list for the limited purpose of identifying Witness RM-014 as the witness giving those testimonies, the Chamber finds that it is in the interests of justice to do so. The Chamber grants this request.

(b) Rule 92 bis

i. Preliminary Matters

10. The Prosecution has requested the provisional admission of the Witnesses' statements on the basis that their attestation, under Rule 92 bis (B) of the Rules, is still pending. The Chamber notes that while it is preferable to have witness statements certified before they are tendered, unattested witness statements have been provisionally admitted by the Chamber pending their formal attestation pursuant to Rule 92 bis (B).²⁰ The Chamber considers that this practice does not violate the safeguards enshrined in Rule 92 bis.

ii. Relevance and Probative Value

11. The Chamber considers the evidence of Witness RM-014 and Witness RM-089 relevant to allegations of crimes in and around Kotor Varoš during spring and summer 1992, covered by Counts 1, 3, 6 and 8 of the Indictment. Upon review of the proposed evidence, moreover, the Chamber notes that it appears to be internally consistent and presented in a coherent manner, and concludes that the requirements set out in Rule 89 (C) of the Rules have been met.

iii. Admissibility pursuant to Rule 92 bis

12. The Chamber will now assess the admissibility of the witnesses' evidence under Rule 92 bis. The Chamber considers that the proposed evidence of Witness RM-014 is primarily relevant to

¹⁹ Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2012, paras 3-6.

²⁰ Decision on Third 92 bis Motion, para. 27 and references cited therein.

the political and military background in the Kotor Varoš area. Furthermore the Chamber finds that the evidence of both witnesses concerns the impact of crimes upon victims. Witness RM-014 describes shootings and the wounding of civilians and meetings between the three largest political parties, in order to preserve peace in the Kotor Varoš area. Witness RM-089 describes the impact of alleged Serb military activities on the witness's family and village. The Chamber notes, moreover, that other witnesses have given evidence with regard to similar facts described by Witness RM-089, including Witness RM-802 and Witness RM-009, who have already testified pursuant to Rule 92 *ter*,²¹ and Witness Elvedin Pasić, a resident of Hrvani who has provided *viva voce* testimony,²² all in relation to alleged crimes committed by Serb forces in Kotor Varoš. The Chamber does not find that there are any factors against admitting the evidence of the two witnesses into evidence pursuant to Rule 92 *bis* of the Rules.

13. The Chamber considers, balancing the factors discussed above, that the Witnesses' statements are conditionally admissible under Rule 92 *bis* of the Rules, pending the submission of the missing attestations.

iv. Associated exhibits

14. The Chamber considers that Witness RM-014's pseudonym sheets from *Prosecutor v. Brđanin* and *Prosecutor v. Stanišić and Župljanin* are necessary for the identification of this witness and that to this extent, they form an inseparable part of the witness's testimony. The pseudonym sheets will therefore be admitted into evidence.

v. Compliance with Guidance

15. The Prosecution seeks to tender portions of Witness RM-014's transcript excerpts of the witness's previous testimony in other cases. Considering in particular that the Prosecution wishes to tender a limited portion of the transcripts from two previous cases, which supplements the evidence in the witness's statement, the Chamber deems that the tendering of those transcripts complies with the Chamber's Guidance.²³

(c) Protective measures for Witness RM-089

16. The Chamber recalls its finding that for protective measures to be warranted, actual threats of harassment of witnesses, their families or property are not required. Nevertheless the party requesting protective measures must demonstrate the existence of an objectively grounded risk to

²¹ Witness RM-802, T. 4518-4538, 4588-4660, Witness RM-009, T. 7952-8033

²² Witness Elvedin Pasić, T. 537-612, 616-641.

²³ T. 106-110, 137-138, 194, 315-325, 525-532.

the security or welfare of the witness or the witness's family, should it become publicly known that he or she testified before the Tribunal.²⁴ On the basis of an assessment of the Prosecution's submissions with regard to Witness RM-089's circumstances, and the investigator's declaration recording the witness's concerns, the Chamber is satisfied that there is such an objectively grounded risk. Witness RM-089 was a witness to the alleged increase of Serbian military activities and crimes in the area of Kotor Varoš, leading the witness to go hiding in the woods. The Chamber is of the view that the nature of Witness RM-089's evidence has the potential to antagonize persons in the area, where several of the witness's family members still live. It therefore considers, in this instance, that the right of the Accused to a public trial does not outweigh the need to ensure Witness RM-089's protection.

V. DISPOSITION

17. For the foregoing reasons, pursuant to Rules 75(A), 89, and 92 *bis* of the Rules the Chamber **GRANTS** the Motion;

With respect to

(i) *Witness RM-014*

CONDITIONALLY ADMITS into evidence, **UNDER SEAL**, the statement of Witness RM-014 dated 25 May 1997, bearing ERNs 0050-7035-0050-7050, uploaded in eCourt as Rule 65 *ter* no. 28712, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B);

GRANTS LEAVE to add the pseudonym sheets for Witness RM-014 in Case No. IT-99-36-T and IT-08-91-T to the Prosecution's Rule 65 *ter* exhibit list;

ADMITS into evidence, **UNDER SEAL**,

- (a) the testimonies of Witness RM-014 in *Prosecutor v. Brđanin*, Case No. IT-99-36-T, T. 17685:2 – 17685:12, 17689:8 – 17690:1, 17713:6 – 17714:25 and *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, T. 532:23 – 534:4, 542:16 – 542:25;
- (b) the pseudonym sheets for Witness RM-014 in Case No. IT-99-36-T and IT-08-91-T, uploaded in eCourt as Rule 65 *ter* nos 28715 and 28716;

²⁴ See Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2012, paras 5-6.

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(ii) *Witness RM-089*

GRANTS the Motion for Protective Measures for Witness RM-089 and **ORDERS** that Witness RM-089 be, throughout the remainder of the proceedings, identified by pseudonym;

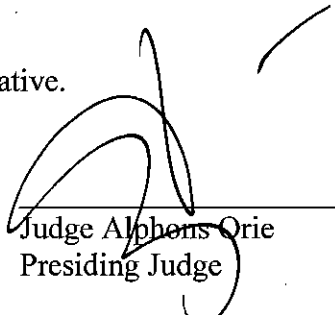
CONDITIONALLY ADMITS into evidence, **UNDER SEAL**, the statement of Witness RM-089 dated 16 April 2000, bearing ERNs 0094-2946-0094-2954, uploaded in eCourt as Rule 65 *ter* no. 28717, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B);

INSTRUCTS the Prosecution to file the corresponding attestations and declarations to the statements of Witness RM-014 and Witness RM-089;

INSTRUCTS the Prosecution to upload into eCourt all of the above documents within two weeks;

REQUESTS the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this eighteenth day of September 2013
At The Hague
The Netherlands

[Seal of the Tribunal]