

7-09-92-T
D 7706k - D 77060
28 March 2014

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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: 28 March 2014
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 28 March 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

THIRD OMNIBUS DECISION

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

1. On 26 February 2014, the Chamber closed the Prosecution case with a number of caveats.¹ The Chamber will now address some of these matters.

Decision on the Prosecution motion to tender additional pages of Rule 65 ter number 7651
(Simić's war diary)

2. On 13 February 2014, the Chamber admitted pages 38 and 39 of the document bearing Rule 65 ter number 7651 as an exhibit associated with the evidence of witness Novica Simić.² On 24 February 2014, the Prosecution requested admission of four additional pages of this document in order to complete the war diary entry for that day.³ The Defence responded on 6 March 2014, submitting that the additional pages were not discussed by the witness and, therefore, could not be regarded an inseparable and indispensable part of the witness's evidence.⁴ In its response, the Defence also argues against the admission of the witness's prior testimony.⁵ As the Defence does not address the legal requirements for reconsideration of a decision, the Chamber interprets the Defence submissions to relate only to the additional pages of Simić's war diary. The complete war diary entry was subsequently assigned the provisional exhibit number P4330.

3. After having reviewed the additional pages and Simić's previous testimony, the Chamber finds that the additional pages were not discussed by the witness. Recalling the test for admission into evidence as associated exhibits set out in a previous decision,⁶ the Chamber finds that the additional pages do not qualify as associated exhibits. Accordingly, the Chamber **DENIES** the Prosecution's motion, **REITERATES** its instruction to the Prosecution to upload only pages 38 and 39 of the document bearing Rule 65 ter number 7651, and **INSTRUCTS** the Registry to replace what is currently uploaded under P4330 with the newly uploaded version.

Decision on Prosecution request to add pages to exhibit P2705 (Intercepted conversation)

4. On 25 February 2014, the Prosecution, through an informal communication, requested that the transcripts of exhibit P2705 be amended to add two missing pages containing revisions. The Defence did not respond. Having reviewed the revisions, the Chamber notes that they do not raise

¹ Scheduling and Closing Order, 26 February 2014, p. 1; Second Omnibus Decision, 26 February 2014, fn. 1.

² Decision on Prosecution Motion to Admit the Evidence of Milenko Lazić (RM-288) and Novica Simić (RM-353) Pursuant to Rule 92 quater, 13 February 2014, para. 9(ii)(c).

³ Prosecution Motion to Tender Revised Rule 65 ter # 07651a Associated with the Admitted Testimony of Novica Simić (RM353), 24 February 2014, paras 1, 4-5.

⁴ Defence Response to Prosecution Motion to Tender Revised Rule 65 ter 07651 Associated with the Admitted Testimony of Novica Simić (RM353), 6 March 2014 ("Response"), para. 11.

⁵ Response, paras 13-15. Paragraph 15 does not appear as such in the Response. Instead, the paragraph following number "14" is numbered "13" again.

⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 quater, 23 July 2012, para. 13.

any issue in respect of the authenticity of the audio recording of the intercepted conversation. The Chamber notes, moreover, that the revisions are very minor, and that as such, they bear no significant evidential import in relation to the substance of the transcripts of the intercepted conversation. For these reasons, the Chamber **GRANTS** the Prosecution's request and **INSTRUCTS** the Registry to replace exhibit P2705 with the revised version once uploaded by the Prosecution.

Dragan Ivetić's presence in the courtroom in the absence of counsel

5. On 13 January 2014, the Chamber granted a Defence request to have Dragan Ivetić (a member of the Defence) (1) present the Defence's oral Rule 98 *bis* submissions in court in the absence of counsel and (2) be present in court (in the absence of counsel) for the Chamber's Rule 98 *bis* decision, subject to the Accused filing his consent.⁷ On 5 March 2014, the Defence filed the consent of the Accused in relation to Mr Ivetić presenting the Defence's oral Rule 98 *bis* submissions in court in the absence of counsel.⁸ The Chamber **REMINDS** the Defence that the Accused's consent for Mr Ivetić's presence in court (in the absence of counsel) for the Chamber's Rule 98 *bis* decision remains to be filed.

**Decision on addition and admission of proof-of-death document bearing Rule 65 *ter* number
30607**

6. On 14 February 2014, the Prosecution filed a motion requesting *inter alia* the addition to its Rule 65 *ter* exhibit list and admission into evidence from the bar table of one proof-of-death document.⁹ The Defence responded on 28 February 2014, not objecting to this request.¹⁰ The Chamber recalls its analysis in its previous decision of 31 January 2014 related to proof-of-death documents,¹¹ and finds that the document is admissible from the bar table. The Chamber therefore **GRANTS** the Prosecution leave to add the document to its exhibit list, **ADMITS** the document into evidence, under seal, and **INSTRUCTS** the Registry to assign an exhibit number to the document and inform the Chamber and the parties about the number so assigned.

⁷ Scheduling Order, 13 January 2014.

⁸ Notice of Filing, 5 March 2014. The Chamber notes that despite the granting of the request, co-counsel for the Accused was present in court during the Rule 98 *bis* submissions between 17 and 19 March 2014.

⁹ Prosecution Submission on the Confidential Status of Certain Proof of Death Documents and Motion Regarding 65 *ter* # 30607, 14 February 2014.

¹⁰ Defence Response to Prosecution Submission on the Confidential Status of Certain Proof of Death Documents and Motion Regarding 65 *ter* # 30607, 28 February 2014, para. 4.

¹¹ Decision on Prosecution Bar Table Submission of Proof of Death Documents in Connection with Witness Ewa Tabeau, 31 January 2014, para. 4.

**Decision on Prosecution motion for protective measures for Witnesses RM-403 and RM-409
pursuant to Rule 70**

7. On 13 February 2014, the Chamber issued its decision on the Prosecution's 31st motion to admit evidence pursuant to Rule 92 *bis*, admitting the evidence of Witness RM-403 and conditionally admitting the statement of Witness RM-409 pending the filing of a corresponding attestation and declaration.¹² The Prosecution filed a motion on 19 February 2014 requesting that the two witnesses' identities be protected pursuant to Rule 70 of the Rules.¹³ The Defence responded on 5 March 2014, submitting that it has no objections to the motion.¹⁴ The Chamber considers that despite the conditions imposed by the Rule 70 provider, the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial. The Chamber therefore **GRANTS** the motion and **CONFIRMS** that exhibits P3576 and P3586 shall remain under seal.

Reducing exhibit P3342 (Zvornik hospital logbook)

8. In its first omnibus decision of 14 February 2014, the Chamber instructed the Prosecution to upload a BCS original of exhibit P3342 that matched the English translation.¹⁵ In an informal communication of 28 February 2014, the Prosecution informed the Chamber that it had uploaded a revised version of the exhibit under a new Rule 65 *ter* number and requested that exhibit number P3342 be assigned to the revised document. The Prosecution also notified the Chamber that a revised English translation had been received for the exhibit. The Chamber takes this opportunity to confirm that exhibit number P3342 is assigned to the document bearing Rule 65 *ter* number 5138a, and **INSTRUCTS** the Registry to replace the English translation of exhibit P3342 with the revised version.

Status of Chamber's decision of 14 March 2014 regarding the future trial sitting schedule

9. On 14 March 2014, the Chamber issued a decision on the future trial sitting schedule in this case.¹⁶ Therein, it invited the parties and the Registry to indicate within seven days what, if any, portions of the decision should remain confidential.¹⁷ The Registry filed a submission on 21 March 2014, stating that should the Accused consent to the release of certain information relating to

¹² Decision on Prosecution 31st Motion to Admit Evidence Pursuant to Rule 92 *bis*, 13 February 2014; Prosecution 31st Motion to Admit Evidence Pursuant to Rule 92 *bis* (Confidential), 1 July 2013. On 26 February 2014, the Chamber granted a Prosecution motion for unconditional admission of the statement of Witness RM-409.

¹³ Prosecution Motion for Protective Measures for Witnesses RM403 and RM409 Pursuant to Rule 70, 19 February 2014 (Confidential).

¹⁴ Defence Response on Prosecution Motion 31st Motion to Admit Evidence Pursuant to Rule 92bis, 5 March 2014 (Confidential).

¹⁵ First Omnibus Decision, 14 February 2014, para. 10.

¹⁶ Decision on the Trial Sitting Schedule, 14 March 2014 (Confidential) ("Sitting Schedule Decision").

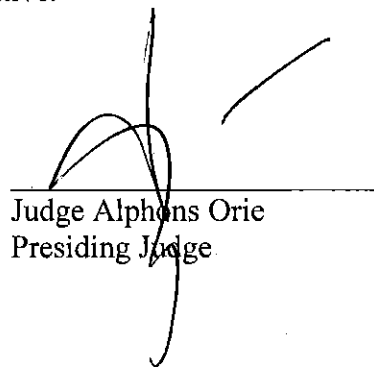
¹⁷ Sitting Schedule Decision, para. 22.

medical reports, it has no objection to the decision becoming public.¹⁸ Neither the Prosecution nor the Defence filed a submission regarding the decision's confidentiality. The Chamber considers that the Accused, by not filing a submission, has expressed that he has no objections to the decision becoming public. Under these circumstances, the Chamber hereby **LIFTS** the confidentiality of the decision.

Evidence of Witness RM-362

10. On 7 February 2014, the Chamber admitted portions of Witness 362's previous testimony in the *Popović et al.* case.¹⁹ This prior testimony was subsequently assigned exhibit number P3525. Transcript page 17322 was part of the admitted testimony, however, the Prosecution failed to upload this page into eCourt as part of exhibit P3525. The Chamber hereby **INSTRUCTS** the Prosecution to upload into eCourt a new version of P3525 which includes transcript page 17322 and **INSTRUCTS** the Registry to replace P3525 with the newly uploaded version. On a related note, the Chamber noticed that exhibit P3380 is fully contained in exhibit P3525 and hereby **INSTRUCTS** the Registry to mark exhibit P3380 as "not admitted" in eCourt.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-Eighth day of March 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ Deputy Registrar's Rule 33(B) Submission on Confidentiality of Decision on Trial Sitting Schedule, 21 March 2014 (Confidential), para. 2.

¹⁹ Decision on Prosecution 44th Motion to Admit Evidence Pursuant to Rule 92 *bis*: Witness RM-362, 7 February 2014.