



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: 01 August 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 01 August 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON ISSUES RELATING TO
WITNESS ANDREY DEMURENKO**

Office of the Prosecutor

Mr Peter McCloskey

Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić

Mr Miodrag Stojanović

1. The Chamber is seised of several matters relating to Defence witness Andrey Demurenko, who commenced his testimony before the Chamber pursuant to Rule 92 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules") on 14 June 2016. The Chamber considers it appropriate to issue the following decision to dispose of these matters expeditiously.

A. The Chamber's Decision on the Completion of Mr Demurenko's Testimony

2. At the conclusion of the hearing on 15 June 2016, the Chamber informed Mr Demurenko that his testimony would continue the following day and instructed him not to speak with anyone about his testimony.¹ The following morning, the Registry informed the Chamber and the parties that Mr Demurenko had left The Hague.² Mr Demurenko did not appear for his scheduled testimony that day, and the Chamber invited the parties to make submissions as to how to proceed.³

3. On 20 June, both the Defence and the Prosecution filed written submissions pursuant to the Chamber's invitation ("Defence Submission"⁴ and "Prosecution Submission",⁵ respectively). In their submissions, the parties agree that the Chamber should instruct the Victims and Witnesses Section ("VWS") to attempt to contact Mr Demurenko to determine whether he would complete his testimony.⁶ The parties propose that, should Mr Demurenko not complete his testimony, evidence on the record should remain on the record and the parties should be permitted to tender further evidence that they would have put to the witness during the remaining portion of his testimony, subject to the normal rules of examination.⁷ The Defence further submits that the VWS should be instructed to provide Mr Demurenko with the opportunity to explain the circumstances surrounding his departure and that the Chamber should lift its instruction that Mr Demurenko not speak about his testimony for the express purpose of permitting him to provide such information.⁸

4. On 20 June, Mr Demurenko sent an email to the VWS and the Defence explaining his reasons for leaving The Hague prior to the conclusion of his testimony.⁹ On 22 June, the Chamber

¹ T. 44196.

² See Internal Memorandum regarding Witness Mr. Andrey Demurenko, 17 June 2016 (Confidential) ("17 June VWS memorandum"), p. 2.

³ T. 44199.

⁴ Defence Submission Pursuant to Trial Chamber Order of 16 June 2016 in Relation to Witness Demurenko, 20 June 2016 (Confidential). The Chamber notes that the Defence Submission contains two paragraphs numbered 7, two paragraphs numbered 8, and two paragraphs numbered 9. In citations to these paragraphs, the Chamber will indicate to which paragraph(s) it refers.

⁵ Prosecution Submission Regarding the Testimony of Andrey Demurenko, 20 June 2016 (Confidential).

⁶ Defence Submission, paras 4, 9 (This citation to paragraph 9 refers to the paragraph 9 beginning on p. 6.), p. 9; Prosecution Submission, paras 2, 5, 8.

⁷ Defence Submission, para. 11; Prosecution Submission, paras 2, 4, 6, 8.

⁸ Defence Submission, para. 9. This citation to paragraph 9 refers to the paragraph 9 beginning on p. 6.

⁹ See Internal Memorandum regarding Correspondence from Witness Mr. Andrey Demurenko, 21 June 2016 ("21 June VWS memorandum"). On 22 June, the Defence also requested VWS to transmit a letter to Demurenko providing further information about the Defence Submission. VWS requested the Chamber's authorization before

instructed by email that the VWS contact Mr Demurenko in order to ascertain whether he was willing to continue his testimony. The Chamber noted that such testimony could take place in The Hague or via video-conference link. On the same day, Mr Demurenko informed the VWS that he was willing to complete his testimony, preferably through video-conference link.¹⁰ On 23 June, the Chamber requested by email that the parties provide their positions on hearing the remainder of Mr Demurenko's testimony through video-conference link. On 24 June, the Prosecution responded by email that it did not object to such an arrangement provided that the Chamber hears Mr Demurenko's testimony prior to the Tribunal's summer recess. The Prosecution stated that it would object to completing Mr Demurenko's testimony by any means after such date. On 25 June, the Defence responded by email that it had no objection to Mr Demurenko testifying through video-conference link.

5. On 29 June, the Chamber informed the parties by email that it had decided to hear the remainder of Mr Demurenko's testimony through video-conference link on 16 August and instructed the Registry to ensure that the video-conference link was arranged for that date. The Chamber further noted that it would consider cancelling this arrangement if the parties were to submit, no later than 15 July, a joint motion tendering further evidence in place of continued examination in accordance with the procedure outlined in the parties' submissions. This decision is now placed on the record. As Mr Demurenko has explained his reasons for leaving The Hague prior to the conclusion of his testimony, and as there will be a further opportunity to clarify any remaining issues when Mr Demurenko continues his testimony, the Chamber considers that no further requests contained in the Defence Submission remain to be addressed at present.

B. The 17 June VWS Memorandum and Related Filings

6. On 17 June 2016, the Registry confidentially filed a memorandum from the VWS regarding its interactions with Mr Demurenko and his wife following his testimony on 15 June ("17 June VWS memorandum").¹¹ The Defence Submission and Prosecution Submission, which made reference to the 17 June VWS memorandum, were initially filed as public documents. Following a request by the Registry, the Chamber placed both submissions provisionally under seal. On 24 June, the Registry filed a submission clarifying that the 17 June VWS memorandum was filed confidentially to protect the identities of VWS staff members and to maintain the confidentiality of

sending the letter. The Chamber considers that, as Demurenko has both explained his reasons for leaving The Hague prior to the conclusion of his testimony and communicated his position regarding the completion of his testimony, the issue of the sending of the letter has been rendered moot.

¹⁰ Internal Memorandum regarding VWS contact with Witness Mr. Andrey Demurenko, 23 June 2016.

¹¹ 17 June VWS memorandum. The Registry has informed the Chamber that the final line of this memorandum should read '22:45 on 15 June 2016' rather than '22:45 on 16 June 2016'.

its communications with Mr Demurenko, which the VWS submits is important for maintaining the confidence of witnesses and fulfilling its mandate of supporting witnesses.¹²

7. In the interest of transparency, the Chamber considers it appropriate to make as much as possible of the 17 June VWS memorandum public. In light of the Registry's concerns regarding the confidentiality of the VWS's communications with Mr Demurenko, the Chamber considers it appropriate to ask Mr Demurenko, upon his reappearance before the Chamber, whether he is willing to waive the confidentiality of his communications with the VWS as contained in the 17 June VWS memorandum. Should Mr Demurenko waive this confidentiality, the Chamber would hear from the parties as to whether they would oppose an instruction to the Registry to reclassify the Defence Submission and the Prosecution Submission as public and to file a public version of the 17 June VWS memorandum, redacting only the names of Tribunal staff members.

C. Exhibits Associated with Mr Demurenko's Written Statement

8. On 22 February 2016, the Defence filed a motion seeking the admission into evidence of the written statement of Mr Demurenko along with 63 associated exhibits, pursuant to Rule 92 *ter* of the Rules.¹³ On 7 March, the Prosecution responded ("Response"), supporting the admission of 19, opposing the admission of 18, reserving its position with respect to two, and taking no position on the remainder of the associated exhibits.¹⁴ On 9 June, the Prosecution filed a corrigendum correcting a misstatement in the Response.¹⁵ On 13 June, the Defence provided to the Chamber and the Prosecution an updated list of 43 associated exhibits for which it seeks admission.¹⁶ On 14 June, during the testimony of Mr Demurenko, the Chamber admitted the witness statement into evidence as exhibit D2120, together with one of the associated exhibits.¹⁷ The Chamber notes that it previously admitted one other associated exhibit into evidence.¹⁸

¹² Deputy Registrar's Submission in Relation to the Defence Submission of 20 June 2016, 24 June 2016, paras 1-3.

¹³ Defense Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Andrey Demurenko, 22 February 2016. While the motion states that there are 72 associated exhibits, its Annex B lists 70 such exhibits. Of these 70, six are listed as already admitted, one of which (P12) is listed twice.

¹⁴ Prosecution Response to Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Andrey Demurenko, 7 March 2016.

¹⁵ Corrigendum to Prosecution Response to Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Andrey Demurenko, 9 June 2016.

¹⁶ While the list provided by the Defence contains 46 associated exhibits, two documents (the documents bearing Rule 65 *ter* numbers 1D03887 and 1D03930) are listed twice, and two documents are the separate English and BCS versions of the same document (the documents uploaded into eCourt under Doc IDs 1D13-1497 and 1D13-1498).

¹⁷ D2120 and D2122. See T. 44028, 44092.

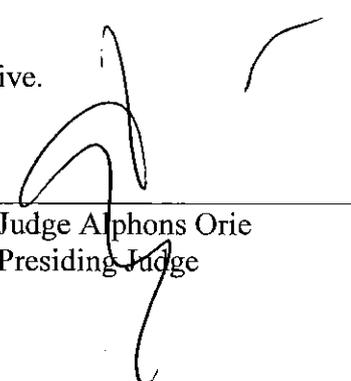
¹⁸ P7808. See T. 43191.

9. The Chamber recalls and refers to the applicable law governing the admission into evidence of associated exhibits with written statements, as set out in previous decisions.¹⁹

10. The Chamber has reviewed exhibit D2120 and finds that it contains a discussion of the documents bearing Rule 65 *ter* numbers 10440, 14297, 15487, 1D03878-1D03887, 1D03890-1D03901, 1D03905-1D03907, 1D03911-1D03914, 1D03916, 1D03918, 1D03923, 1D03928, 1D03930, and 1D05967-1D05969 to an extent that each form an inseparable and indispensable part of the witness statement and that the witness statement would be of lesser probative value without them. The Chamber therefore admits these documents into evidence.

11. The Chamber further finds that exhibit D2120 contains a discussion of pages 1 to 4 of the document bearing Rule 65 *ter* number 1D03344 to an extent that this portion of the document forms an inseparable and indispensable part of the witness statement and that the witness statement would be of lesser probative value without it. The Chamber admits pages 1 to 4 of the document bearing Rule 65 *ter* number 1D03344 into evidence and instructs the Defence to upload a new version of this document into eCourt and to inform the Chamber and the Registry when it has done so. The Chamber instructs the Registry to make the necessary replacements in eCourt in relation to this document once uploaded and to assign exhibit numbers to the documents admitted in this decision.

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



Judge Alphons Orié
Presiding Judge

Dated this first day of August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁹ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 12-13. *See also* Decision on Prosecution's Motion for Reconsideration, Granting Admission from the Bar Table or Certification in Relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8; T. 530-531, 5601-5603.