

UNITED
NATIONS



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-08-91-A
Date: 3 September 2014
Original: English

4-08-91-A
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03 September 2014

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IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 3 September 2014

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**DECISION ON PROSECUTION MOTION REQUESTING
PUBLIC REDACTED VERSION OF THE TRIAL CHAMBER'S
DECISION OF 21 JULY 2011**

The Office of the Prosecutor

Ms. Laurel Baig, Mr. Douglas Stringer, and Mr. Matthew Olmsted

Counsel for Mićo Stanišić

Mr. Slobodan Zečević and Mr. Stéphane Bourgon

Counsel for Stojan Župljanin

Mr. Dragan Krgović, Ms. Tatjana Čmerić, and Mr. Christopher Gosnell

SJK

I, CARMEL AGIUS, Judge of the Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in this case;¹

NOTING the confidential “Decision Partially Granting Stojan Župljanin’s Motion for Admission of Evidence Pursuant to Rule 92 *bis*”, issued on 22 July 2011 by Trial Chamber II of the Tribunal (“Trial Chamber”) in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T (“Decision”);²

BEING SEISED OF the “Prosecution Motion to Request Public Redacted Version of Trial Chamber’s 21 July 2011 Decision”, filed confidentially with a confidential annex by the Office of the Prosecutor (“Prosecution”) on 6 June 2014 (“Motion”), requesting that the Appeals Chamber issue a public redacted version of the Decision so that it may be provided to the Defence in the case of *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T (“*Hadžić case*”);³

NOTING the Prosecution’s submissions that: (i) the Decision addresses issues currently before the Trial Chamber in the *Hadžić case*, namely, the admissibility of character evidence pursuant to Rule 92*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);⁴ (ii) the Defence in the *Hadžić case* has tendered written evidence of a nature similar to that discussed in the Decision;⁵ (iii) the Prosecution has relied on the Decision to contest the admission of that evidence pursuant to Rule 92*bis* of the Rules;⁶ (iv) the Decision is not available to the Defence in the *Hadžić case* because of its confidential status;⁷ and (v) it is therefore in the interests of justice that a public redacted version of the Decision be issued;⁸

NOTING that neither Mićo Stanišić nor Stojan Župljanin (“*Stanišić*” and “*Župljanin*”, respectively) responded to the Motion;

NOTING that the Decision was initially issued publicly but later reclassified as confidential in order to avoid the disclosure of identifying information relating to two protected witnesses;⁹

¹ Order Designating a Pre-Appeal Judge, 2 May 2014, p. 1.

² It is noted that while the Decision is dated 21 July 2011, it was filed on 22 July 2011.

³ Motion, paras 1, 5. The Prosecution attaches a confidential Annex to its Motion indicating its suggested redactions to the Decision.

⁴ Motion, paras 1-2.

⁵ Motion, para. 4. See Motion, para. 2.

⁶ Motion, para. 4.

⁷ Motion, paras 1, 4.

⁸ Motion, para. 5. See Motion, para. 1.

⁹ See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Order Making Confidential a Number of Filings Related to Witnesses SZ020 and SZ023, 17 October 2011 (confidential), pp 2-3; *Prosecutor v. Mićo Stanišić and*

5744

NOTING, however, that the protective measures granted to one of these witnesses were later rescinded by the Trial Chamber;¹⁰

NOTING FURTHER that the Decision also discloses the name and other identifying information of a third witness, who was granted protective measures by the Trial Chamber on 24 November 2011;¹¹

RECALLING that, in these circumstances the Pre-Appeal Judge considered it appropriate to invite submissions from the Victims and Witnesses Section of the Registry of the Tribunal (“VWS”, and “Registry”, respectively) as to which passages of the Decision require redaction to ensure effective protection for the Witnesses;¹²

CONSIDERING the “Registrar’s Submission in Compliance with the Order for Submissions on Prosecution Motion Requesting Public Redacted Version of a Trial Chamber Decision”, filed confidentially by the Registrar of the Tribunal on 1 August 2014, which attaches a report prepared by the VWS (“VWS Report”) indicating the redactions it considers necessary to ensure effective protection for the Witnesses, in addition to those suggested by the Prosecution;¹³

RECALLING that pursuant to Rule 75(F)(i) of the Rules, once protective measures have been ordered in any proceedings before the Tribunal, they shall continue to have effect *mutatis mutandis* in any other proceeding before the Tribunal or another jurisdiction unless and until they are rescinded, varied or augmented;

CONSIDERING that issuing a public redacted version of the Decision will not prejudice either Stanišić or Župljanin;

Stojan Župljanin, Case No. IT-08-91-T, Decision Partially Granting Župljanin Supplemental Motion for Protective Measures for Witnesses SZ023 and SZ020, 6 September 2011 (confidential) (“Decision of 6 September 2011”), pp 5-6. Witness SZ023 and Witness SZ020 were both granted the protective measures of, *inter alia*, a pseudonym, image distortion, and having their names, addresses, whereabouts, and other identifying information sealed and not included in the public records of the Tribunal, or where necessary, expunged from those records (see Decision of 6 September 2011, pp 5-6).

¹⁰ See T. 26011-26012, 18 Nov 2011, where the Trial Chamber rescinded the protective measures in place for Witness SZ020.

¹¹ See Decision, paras 4, 23, 33-34, fn. 52; *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting Župljanin Motion for Protective Measures for Witness SZ022, 24 November 2011 (confidential), pp 1-3. Witness SZ022 was granted the protective measures of, *inter alia*, a pseudonym, voice and image distortion, and having his or her name, address, whereabouts, and other identifying information sealed and not included in the public records of the Tribunal, or where necessary, expunged from those records. Witness SZ023 and Witness SZ022 will hereinafter be referred to collectively as “Witnesses”.

¹² Order for Submissions on Prosecution Motion Requesting Public Redacted Version of a Trial Chamber Decision, 23 July 2014 (confidential), p. 2.

¹³ In addition to the redactions proposed by the Prosecution, the VWS recommends redacting paragraphs 4, 23, 24, 33, footnote 52, and the first paragraph on page 10 (VWS Report, paras 1-3). According to the VWS, the redactions proposed by the Prosecution in relation to Witness SZ020 are not necessary as the Trial Chamber rescinded the protective measures that were in place for this witness (VWS Report, fn. 3. See T. 26011-26012, 18 Nov 2011).

5743

CONSIDERING FURTHER that redaction of any identifying information in the Decision relating to the Witnesses is necessary to ensure the effectiveness of protective measures granted to them pursuant to Rule 75 of the Rules;

FINDING that it is in the interests of justice to issue a public redacted version of the Decision so that the Defence in the *Hadžić* case may be provided with a copy;

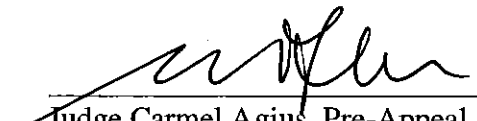
FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 75, and 107 of the Rules;

HEREBY GRANT the Motion and **ISSUE** a public redacted version of the Decision (see Annex I).

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

Dated this third day of September 2014,
At The Hague,
The Netherlands.



Judge Carmel Agius, Pre-Appeal Judge

[Seal of the Tribunal]

5762

ANNEX I

MADE CONFIDENTIAL PURSUANT TO CHAMBER
ORDER OF 17/10/2011, RP D13293-D13291

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**UNITED
NATIONS**



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-08-91-T
Date: 21 July 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 21 July 2011

PROSECUTOR

v.

MİĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION PARTIALLY GRANTING STOJAN
ŽUPLJANIN'S MOTION FOR ADMISSION OF
EVIDENCE PURSUANT TO RULE 92 *BIS***

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. Trial Chamber II ("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 "Župljanin motion for admission of evidence pursuant to Rule 92 *bis*", filed confidentially on 28 March 2011 ("Motion"), whereby the Defence of Stojan Župljanin ("Defence") seeks admission of the statements of ten witnesses ("Proposed Witnesses") pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules").¹ The Prosecution responded on 5 April 2011 ("Response").² On 12 April 2011, the Defence sought leave to reply and filed a proposed reply ("Reply").³

2. On 20 June 2011, the Trial Chamber indicated that it was minded to grant the Motion, while keeping open the question of cross-examination under Rule 92 *bis*(C), and that a written decision would follow.⁴

3. The Trial Chamber is of the view that, since the Defence has not requested protective measures for any of the witnesses subject of this Motion, after being directed to file any such motions by 28 March 2011,⁵ the confidentiality of this decision and related filings is not necessary. The Trial Chamber therefore issues this decision publicly and decides that, in the interests of justice, it is appropriate to lift the confidentiality of the Motion, Response and Reply.

II. SUBMISSIONS

4. In the Motion, the Defence tenders the statements of Stjepan Cemazar (SZ014), Suada Banjac (SZ015), Josip Dizdar (SZ016), Anto Đebro (SZ017), Nail Hotilović (SZ018), Ivica Kaurin (SZ019), Nijaz Smajlović (SZ020), Emir Zahiromić (SZ021), ██████████ (SZ022) and ██████████ (SZ023)⁶ and requests that the Proposed Witnesses not be required to appear for cross-examination.⁷

5. The Defence submits that the evidence of the Proposed Witnesses satisfies the requirement of Rule 92 *bis*(A) in that each witness's evidence goes to proof of a matter other than the acts and

¹ Župljanin Motion for admission of evidence pursuant to Rule 92 *bis*, confidential, 28 Mar 2011, para. 1.

² Prosecution's response to Župljanin motion for admission of evidence pursuant to Rule 92 *bis*, 5 Apr 2011.

³ Leave to reply and reply to Prosecution's response to Župljanin motion for admission of evidence pursuant to Rule 92 *bis*, confidential, 12 Apr 2011.

⁴ Hearing, 20 Jun 2011, T, 22406, 22424.

⁵ Amended scheduling order for the beginning of the defence case, 3 Feb 2011, p. 1.

⁶ Motion, Confidential Annex A.

⁷ Motion, para. 5.

conduct of the Accused as charged in the Indictment.⁸ The Defence argues that the statements of the Proposed Witnesses relate to the character of Stojan Župljanin and that this is a factor pursuant to Rule 92 *bis*(A)(i)(e) in favour of admitting evidence solely in written form.⁹ The Defence further submits that the written statements are relevant and probative to issues in this case within the meaning of Rule 89(C).¹⁰

6. The Prosecution accepts that the technical requirements of Rule 92 *bis* have been fulfilled, namely that the statements are signed and contain the completed requisite declarations required by Rule 92 *bis*(B).¹¹ The Prosecution states that if the Defence is seeking only to tender character evidence in respect of mitigation of sentence, it does not oppose the Motion.¹²

7. However, the Prosecution submits that the statements "are not purely evidence of character" as each of the Proposed Witnesses "directly implies" that Stojan Župljanin lacked ethnic animosity.¹³ The Prosecution asserts that evidence on the ethnic bias of the Accused goes directly the *mens rea* necessary for committing the crimes charged in the indictment and that evidence from MUP employees automatically goes to acts and conduct of the Accused.¹⁴

8. Furthermore, the Prosecution submits that "none of the witnesses give evidence about the actual crimes contained in the Indictment" and the Defence does not present arguments to show how this evidence relates to the charges against the Accused.¹⁵ However, the Prosecution submits that the evidence of two of the Proposed Witnesses goes to facts relevant to the case¹⁶ and that a further five, who were employees in the MUP during 1992 under the command of Stojan Župljanin, comment on his conduct.¹⁷ The Prosecution asserts that all of this evidence "relates to fact and to the acts and conduct of the Accused which should be tested by cross-examination" in accordance with Rule 92 *bis*(C).¹⁸

9. In reply, the Defence clarifies that the evidence of the Proposed Witnesses forms part of its overall defence,¹⁹ since Stojan Župljanin's character is a relevant consideration for the purposes of determining his innocence or guilt to the charges in the Indictment "as it indicates that he is lacking

⁸ *Id.*, para. 3.

⁹ *Ibid.*

¹⁰ *Id.*, para. 4.

¹¹ Response, para. 3.

¹² *Id.*, para. 2.

¹³ *Id.*, paras 5-6

¹⁴ *Id.*, para. 6.

¹⁵ *Id.*, para. 4.

¹⁶ *Id.*, paras 7-8, referring to the statements of Anto Đebro and Nijaz Smajlović.

¹⁷ *Id.*, para. 9, referring to the statements of Stjepan Černazar, Suada Banjac, Josip Dizdār, Emir Zahirović and [REDACTED]

¹⁸ *Ibid.*

¹⁹ Reply, para. 5.

in propensity to commit the crimes charged.”²⁰ In addition, were the Trial Chamber to find him guilty, the Defence submits that the evidence of the Proposed Witnesses will also become relevant for the purposes of mitigation of sentence.²¹ The Defence reiterates its view that the Proposed Witnesses need not appear for cross-examination because their evidence relates solely to the character of the Accused and notes that the admission of their written statements will save substantial court time.²²

10. On 22 June 2011, the Prosecution orally informed the Trial Chamber that it had requested the Defence to inquire of all its witnesses, including those subject to the current Motion, whether they would be amenable to being interviewed by the Prosecution, but that it had not yet received a response.²³ The Prosecution asserted that in the event that any of the Proposed Witnesses decline to be interviewed, as they are entitled to do, that may become a factor for the Trial Chamber to take into consideration when determining the question of cross-examination.²⁴ The Prosecution made a “formal application” for the Trial Chamber to consider the position of the Proposed Witnesses with regard to being interviewed by the Prosecution as a relevant factor in its determination “on whether [the] witnesses should be ordered to attend” for cross-examination.²⁵ The Trial Chamber directed the Parties to communicate informally regarding the willingness of the Defence witnesses to meet with the Prosecution and apprise the Chamber when further information was available.²⁶

11. On 6 July 2011, the Defence orally confirmed that none of its witnesses were willing to be interviewed by the Prosecution.²⁷ Consequently, the Trial Chamber invited the Prosecution to substantiate its earlier oral application to have this development considered a relevant factor in the Trial Chamber’s determination of the issue of cross-examination pursuant to Rule 92 *bis* (C).²⁸

12. The Prosecution responded, firstly, that interviewing the witnesses would have enabled it to verify “whether or not they are aware of what [...] are relevant, salient matters which go to what they have to say about Mr. Župljanin”.²⁹ Secondly, the Prosecution posited that, had the Proposed Witnesses consented to being interviewed, it may only have been necessary to supplement their

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, para. 6.

²³ Hearing, 22 Jun 2011, T. 22649.

²⁴ *Ibid.*

²⁵ *Id.*, T. 22651.

²⁶ *Ibid.*

²⁷ Hearing 6 July 2011, T. 22872.

²⁸ Hearing, 6 Jul 2011, T. 22872-22873.

²⁹ *Id.*, T. 22934.

17-08-91-A

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current statements with any new relevant information obtained in the process.³⁰ The Prosecution incorporated by reference its request for cross-examination, stating that "discriminatory intent is obviously a major issue when it comes to the count of persecutions".³¹

13. The Defence responded that the statements "address the nature of the Accused" and that his relationship with persons of other communities is "part of his character".³² It distinguished the Motion factually from the other cases cited by the Prosecution, in which character evidence was rejected as going to acts and conduct of the accused, on the basis that the tendered statements do not speak to "his behaviour or actions in particular situations" but provide "an overall portrait [...] of Mr. Župljanin's character".³³ The Defence highlighted that, in the *Karadžić* Oral Ruling, that Chamber had in fact indicated to the Accused that it would proceed to decide the pending motions pursuant to Rule 92 *bis* irrespective of whether or not those witnesses were willing to be interviewed by the Accused.³⁴ Finally, the Defence objected in principle to the Prosecution offering supplementary statements procured from the Proposed Witnesses as evidence after having closed its case.³⁵

III. DISCUSSION

14. The Trial Chamber refers to the applicable law on Rule 92 *bis* set out in its decision of 2 November 2010.³⁶ The Trial Chamber recalls that pursuant to Rule 92 *bis*(A)(i)(e), the fact that the evidence in question relates to the character of the accused is a factor in favour of admission.

A. Review of the witness statements

15. Stjepan Cemazar, a Slovenian who in 1992 was an inspector for economic crimes at the Banja Luka CSB, describes his professional relationship with Stojan Župljanin, whose office was next to that of Stjepan Cemazar. He worked at the Banja Luka CSB with the Accused from 1976

³⁰ *Id.*, T. 22934-22935, citing *Prosecutor v. Karadžić*, Case No. IT-95-5-18, Oral ruling granting *Karadžić's* leave to file supplemental evidence in response to the admission of Prosecution's evidence pursuant to Rule 92 *bis*, 6 Oct 2009, T. 489-490 ("*Karadžić* Oral Ruling").

³¹ Hearing, 6 Jul 2011, T. 22935-22936, citing *Prosecutor v. Prlić et al.*, Case No. IT-07-74-T, Decision on Slobodan Praljak's motion to admit evidence pursuant to Rule 92 *bis* of the Rules, 16 Feb 2010, paras 42-44 ("*Prlić* Decision"); *Prosecutor v. Prlić et al.*, Case No. IT-07-74-T, Decision on *Prlić* Defence motion for admission of written statements pursuant to Rule 92 *bis*, 25 Nov 2008, paras 11-12; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Pandurević's motion for admission of written evidence pursuant to Rules 92 *bis* and 92 *ter*, 17 Dec 2008, p. 4; *Prosecutor v. Nsabimana et al.*, Case No. ICTR-98-42-T, Decision on Nsabimana's motion to admit the written statement of witness Jami in lieu of oral testimony pursuant to Rule 92 *bis*, 15 Sep 2006, paras 11-12.

³² Hearing, 6 Jul 2011, T. 22936.

³³ *Ibid.*

³⁴ *Id.*, T. 22937.

³⁵ *Ibid.*

³⁶ Written reasons for oral decision of 4 September 2009 admitting evidence of 24 witnesses pursuant to Rule 92 *bis*, 2 Nov 2010 ("*2010 Decision on Rule 92 bis*"), paras 27-31.

MADE CONFIDENTIAL PURSUANT TO CHAMBER
ORDER OF 17/10/2011, RP D13293-D13291

and asserts that Stojan Župljanin "never said anything negative against Croats and Muslims and, furthermore, never made statements professing or insinuating that Serbs were in any way superior".³⁷

16. Suada Banjac, a typist and secretary of Bosnian Muslim ethnicity at the Banja Luka CSB until 2007, describes her professional relationship with Stojan Župljanin at the CSB from 1978.³⁸ During the war, she lived in Banja Luka and worked in the homicide department.³⁹ Suada Banjac states that she never heard Stojan Župljanin say anything negative about Croats or Muslims and he always acted fairly towards everybody.⁴⁰

17. Josip Dizdar, a traffic officer of Croat ethnicity with the Banja Luka CSB until 1994, provides information about his professional relationship with Stojan Župljanin. Josip Dizdar lived in Banja Luka and worked at the CSB during the war. He states that "at work [Stojan Župljanin] never differentiated between colleagues and employees based upon ethnic background or nationality. He always tried to help people and was held in great esteem by his colleagues".⁴¹

18. Anto Đebro, a policeman of Croat ethnicity at the Banja Luka CSB until 1990, speaks of his professional relationship with Stojan Župljanin which ended before the war began. He states that he never heard or witnessed the Accused make nationalistic statements or "treat anyone differently based on their ethnicity or religion".⁴² He states that he lived in Debaljači during the war and knew that Muslims and Croats, particularly in ethnically homogenous villages around Banja Luka, mostly stayed indoors during the war.⁴³ He also confirms that persons who had to travel due to their employment were issued permits to pass the check points set up around Banja Luka.⁴⁴

19. Nail Hotilović, a Bosnian Muslim who lives in Garici, Kotor Varoš, speaks of his relationship with Stojan Župljanin which was of a social nature. Nail Hotilović states that "[he] never heard Mr. Župljanin [sic] express any nationalistic attitudes or say anything negative against Croats or Muslims. He always tried to help people, regardless of their ethnicity, nationality or religion".⁴⁵

20. Ivica Kaurin, a bailiff of Croat ethnicity at the Basic Court of Banja Luka until 1999, states that he has known Stojan Župljanin since childhood and that they cooperated professionally on

³⁷ 2D10-0095, Statement of Stjepan Cemazar, p. 2.

³⁸ 2D10-0007, Statement of Suada Banjac, p. 1.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ 2D10-0047, Statement of Josip Dizdar, p. 2.

⁴² 2D10-0017, Statement of Anto Đebro, p. 2.

⁴³ *Id.*, para. 4.

⁴⁴ *Id.*, p. 3.

MADE CONFIDENTIAL PURSUANT TO CHAMBER
ORDER OF 17/10/2011, RP D13293-D13291

occasions when the police had to assist bailiffs in the course of enforcement procedures. Ivica Kaurin further states that "[he] can confirm that [he has] neither heard or witnessed Mr. Župljanin [sic] make any nationalistic statements or statements promoting Serbs in any way, nor did [he] hear or witness him ever differentiate between people of different ethnic or religious backgrounds".⁴⁶

21. Nijaz Smajlović, an assistant commander of Bosnian Muslim ethnicity with the traffic police in Bosanska Gradiska in 1992, occasionally attended "collegiums" at the Banja Luka Security Centre where Stojan Župljanin was also present and describes the atmosphere as tolerant.⁴⁷ However, he does not provide information about what matters were discussed, or about Stojan Župljanin's participation, at these meetings.⁴⁸ He adds that he never heard Stojan Župljanin say anything negative or discriminatory about Muslims or Croats nor did he ever issue orders contrary to the law against any other ethnic group.⁴⁹

22. Emir Zahiromić, a Bosnian Muslim, was employed with the Banja Luka police until 1993 and was a reserve member of the State Security Service during the war.⁵⁰ He provides information about his professional relationship with Stojan Župljanin, whom he has known since 1980, and states that he was always fair towards the staff and never said anything negative against members of other ethnic groups.⁵¹

23. [REDACTED] a Bosnian Muslim, describes his personal relationship with Stojan Župljanin, whom he has known since [REDACTED]. [REDACTED] He never heard Stojan Župljanin speak negatively about Muslims or Croats.⁵²

24. Finally, [REDACTED], a Croat by ethnicity, [REDACTED] mentions "business trips" to Sarajevo he undertook with Stojan Župljanin.⁵³ However, he does not provide any further details concerning the purpose of these trips. The witness has known the Accused since the beginning of his [REDACTED] career and has

⁴⁵ 2D10-0066, Statement of Nail Hotalović, p. 2.
⁴⁶ 2D10-0038, Statement of Ivica Kaurin, p. 2.
⁴⁷ 2D10-0076, Statement of Nijaz Smajlović, p. 2.
⁴⁸ *Ibid.*
⁴⁹ *Id.*, para. 4.
⁵⁰ 2D10-0028, Statement of Emir Zahiromić, p. 2.
⁵¹ *Ibid.*
⁵² 2D10-0057, Statement of [REDACTED], p. 2-3.
⁵³ 2D10-0086, Statement of [REDACTED], p. 2.

MADE CONFIDENTIAL PURSUANT TO CHAMBER
ORDER OF 17/10/2011, RP D13293-D13291

known him to be fair and professional towards all employees.⁵⁴ He never heard Stojan Župljanin say anything negative derogatory about people from other ethnic or religious backgrounds.⁵⁵

B. Discussion

25. The Trial Chamber is satisfied that all the written statements meet the formal requirements of Rule 92 *bis*(B). The tendered statements are corroborative of each other in as much as they all contain evidence relevant to the character of the Accused. The Trial Chamber considers the fact that the Proposed Witnesses provide character evidence, in the context of their relationship with Stojan Župljanin, to be a factor in favour of admitting their statements pursuant to Rule 92 *bis*(A)(i)(e).

26. It is appropriate to distinguish between character evidence which also evidences the acts and conduct of the accused as charged in the indictment, and consequently is not admissible pursuant to Rule 92 *bis*, from that which does not relate to the acts and conduct of the accused as charged in the indictment and which, as a result, is admissible pursuant to Rule 92 *bis*(A)(i)(e) and (f).⁵⁶

27. However, the Trial Chamber has identified portions in the statements of two witnesses, Nijaz Smajlović and [REDACTED] that go beyond character evidence and refer to facts and events within the temporal and geographical scope of the indictment.

28. Nijaz Smajlović refers to meetings he attended at CSB Banja Luka during the indictment period at which Stojan Župljanin was present.⁵⁷ [REDACTED] refers to "business trips" he made to Sarajevo with the Accused without providing details as to the purpose of these trips.⁵⁸ Nijaz Smajlović and [REDACTED] both give account of immediate professional interaction with the Accused and make reference to their knowledge of issues directly relevant to the case.

29. Under these circumstances, the Trial Chamber directs that these two witnesses appear for cross-examination, in accordance with the provisions of Rules 92 *bis*(C) and 92 *ter*, in order to ensure a fair trial.⁵⁹

30. The Trial Chamber considers that none of the remaining eight statements has any direct bearing upon the Accused's alleged responsibility. The statements do not represent a "critical" or "pivotal" element of the Defence case. The Trial Chamber is satisfied that their admission without

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Prić* Decision, paras 44-45.

⁵⁷ 2D10-0076, Statement of Nijaz Smajlović, para. 3.

⁵⁸ 2D10-0086, Statement of [REDACTED] para. 2.

⁵⁹ 2010 Decision on Rule 92 *bis*, para. 44.

cross-examination is not substantially outweighed by the need to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal ("Statute").⁶⁰

31. As for the Prosecution oral submission that the refusal of the Proposed Witnesses to be interviewed by its representatives ought to be considered a relevant factor within the meaning of Rule 92 bis(A)(ii)(c), the Trial Chamber is of the view that since witnesses are well within their rights to decline to meet with one or the other party in trial proceedings, their decision to do so does not, and in fact ought not necessitate their being required to appear for cross-examination. The Trial Chamber concurs with the principle followed in the *Karadžić* Oral Ruling to the extent that the ability of an opposing party to interview witnesses whose evidence is being tendered in written form is not a relevant factor for determining the issue of cross-examination.⁶¹

32. The right to cross-examination at the Tribunal is not an absolute one, as is amply evident from a plain reading of Rules 92 bis and 92 quater.⁶² When a party is allowed cross-examination under Rules 92 bis and 92 ter, it is principally restricted to the contents of the written evidence admitted pursuant to those Rules. It is not granted for the purpose of allowing an opportunity to fully explore the witness's potential knowledge of the events surrounding the indictment, which may extend well beyond the evidence tendered in written form. This appears to be the essence of the Prosecution's request.

33. Accordingly, the Trial Chamber rejects the Prosecution request for cross-examination of Stjepan Cemazar, Suada Banjac, Josip Dizdar, Nail Hotilović, Ivica Kaurin, Emir Zahirović [REDACTED] and Anto Đebro. The Trial Chamber will, therefore, admit the statements of these eight witnesses solely as evidence on the character of the Accused for the purposes of mitigation, were Stojan Župljanin to be found guilty of any of the crimes charged against him.

IV. DISPOSITION

34. For the above reasons and pursuant to Articles 20 and 21 of the Statute and Rules 54, 89(C), 92 bis and 92 ter, the Trial Chamber:

GRANTS the Defence leave to reply;

GRANTS the Motion in part;

⁶⁰ 2010 Decision on Rule 92 bis, para. 34; *Prosecutor v. Sikirica et al.*, Case No. IT-95-8-T, Decision on Prosecution's application to admit transcripts under Rule 92 bis, 23 May 2001, para. 4.

⁶¹ *Karadžić* Oral Ruling.

⁶² *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on appeal against the Trial Chamber's decision on the evidence of witness Milan Babić, 14 Sep 2006; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution's Rule 92bis motion, 4 Jul 2006, para. 11; *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-

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17-08-91-A

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MADE CONFIDENTIAL PURSUANT TO CHAMBER ORDER OF 17/10/2011, RP D13293-D13291

ADMITS the statements of Stjepan Cemazar, Suada Banjac, Josip Dizdar, Nail Hotilović, Ivica Kaurin, Emir Zahirović, [REDACTED] and Anto Đebro pursuant to Rule 92 *bis*;

ADMITS the statements of Nijaz Smajlović and [REDACTED] pursuant to Rule 92 *ter*;

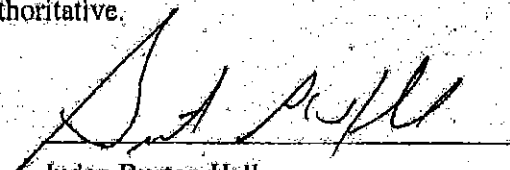
ORDERS the Defence of Stojan Župljanin to call Nijaz Smajlović and [REDACTED] pursuant to the provisions of Rule 92 *ter*;

GRANTS the Defence of Stojan Župljanin 20 minutes to conduct its examination-in-chief of each of the two witnesses, following which the Defence of Mićo Stanišić and the Prosecution shall both have the opportunity to cross-examine;

ORDERS the Registrar to assign exhibit numbers to the evidence admitted by this decision; and

ORDERS the Registrar to lift the confidential status of the Motion, Response and Reply.

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


Judge Burton Hall
Presiding

Dated this twenty-first day of July 2011

At The Hague

The Netherlands

[Seal of the Tribunal]

60-T, First decision on Prosecution's motion for admission of witness statements and prior testimony pursuant to Rule 92 *bis*, 12 Jun 2003, para. 14.