

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 29 October 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO ADMIT STATEMENTS
PURSUANT TO RULE 92*bis*
(SREBRENICA COMPONENT)

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rule 92 *bis* for admission of the statements of 3 Srebrenica component witnesses who were recently added to his witness list.

2. While Dr. Karadzic has tried hard to present his defence case through oral testimony which can be fully tested, now that the Trial Chamber has allocated the hours that Dr. Karadzic will have to complete his case, he must utilize secondary forms of evidence, such as Rule 92 *bis*, in order to place before the Chamber as much of his evidence as possible.

3. While the Trial Chamber set a deadline of 27 August 2012 for the submission of Rule 92 *bis* motions, Dr. Karadzic has good cause for not having made such a motion as to these witnesses before that date as these witnesses were only added to his witness list after then.

4. The Trial Chamber has set forth the requirements for admission of evidence pursuant to Rule 92 *bis*. The proposed evidence must be (1) relevant; (2) its probative value must not be substantially outweighed by the need to ensure a fair trial; (3) it must not relate to the acts and conduct of the accused; and (4) it must be capable of meeting the certification requirements.¹

5. Even where evidence is admissible under Rule 92 *bis*, the Trial Chamber has discretion not to admit it. The main factors in the exercise of this discretion seem to be whether the evidence is of a cumulative nature, whether it involves conduct close to the accused, and whether it touches a live and important issue in the case.²

6. The Trial Chamber, upon deciding to admit evidence pursuant to Rule 92 *bis*, may require that the witness appear for cross examination. Many of the same factors used to decide whether to exercise discretion to admit the testimony also apply to the issue of whether a witness should appear for cross examination.³

7. Finally, the Trial Chamber has indicated that those documents that form an indispensable and inseparable part of the evidence being offered should be tendered as associated exhibits.⁴

8. An analysis of the evidence of each of the witnesses tendered under Rule 92 *bis* demonstrates that the criteria for admission pursuant to that Rule is met and that the Trial

¹*Decision on Prosecution's Third Motion for Admission of Statements or Transcripts of Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality)* (15 October 2009) at paras. 4-6,9

²*Id.*, paras. 7-8

³*Id.* at para. 10

⁴*Decision on Accused's Motion for Admission of Prior Testimony of Thomas Hansen and Andrew Knowles Pursuant to Rule 92 bis* (22 August 2012) at para. 11

Chamber should exercise its discretion to admit the evidence. The evidence may be ordered admitted pending completion of the certification requirements by the Registrar.⁵

9. As a strong proponent of oral testimony, Dr. Karadzic's leaves it to the Trial Chamber to determine whether it wishes to hear cross examination of any of the witnesses. He simply asks that the Trial Chamber apply the same criteria to his witnesses as it did to the prosecution's witnesses.

Witness KW581—Mile Petrovic

10. The prior testimony of Mile Petrovic is available in e-court as Rule 65 *ter* #1D09174. Mile Petrovic was a military policeman in the Bratunac Brigade in July 1995. According to Prosecution witness Momir Nikolic, on the afternoon of 13 July 1995, he went from Bratunac to Konjevic Polje with Petrovic and military police commander Milos Jankovic in a UN armored personnel carrier. While enroute, they picked up six Muslims who had surrendered. Nikolic testified that when they arrived in Konjevic Polje, Petrovic executed them.⁶ Mr. Petrovic testified that he never executed any prisoners.

11. This testimony was admitted pursuant to Rule 92 *bis* in the *Blagojevic & Jokic* trial. It is cumulative to other witness testimony showing that Momir Nikolic's testimony was false, including Svetozar Kosoric,⁷ Petar Uscumlic,⁸ and Nedo Nikolic.⁹ The evidence does not go to the acts and conduct of the accused. It touches upon the credibility of Momir Nikolic, a significant issue, but the events described by Mr. Petrovic is not in and of itself a live and important issue in the case.

12. The prosecution had a full and fair opportunity to cross examine Mr. Petrovic at the *Nikolic* sentencing hearing, as did counsel for Nikolic, who had the same motive to discredit Mr. Petrovic's testimony.

13. There are no exhibits associated to Mr. Petrovic's testimony.

Borivoje Jakovljevic

14. The prior testimony of Borivoje Jakovljevic in the *Blagojevic* trial is available in e-court as Rule 65 *ter* #1D09175. Mr. Jakovljevic was a military policeman in the Bratunac

⁵ See *Decision on Third Motion* at para. 9: It is permissible for a party to propose statements for provisional admission pending their certification under Rule 92 *bis* (B).

⁶ T24662-64

⁷ D3562

⁸ D3552

⁹ D3690

Brigade in July 1995. He was providing close protection to General Ratko Mladic in Konjevic Polje on the afternoon of 13 July 1995. He will testify that contrary to the testimony of Momir Nikolic, General Mladic and Nikolic never spoke at Konjevic Polje that day nor did General Mladic make a hand signal as claimed by Nikolic.

15. This testimony is cumulative to other witness testimony showing that Momir Nikolic's testimony was false, including Svetozar Kosoric, Petar Uscumlic, and Nedo Nikolic. The evidence does not go to the acts and conduct of the accused. It goes to a live and important issue in the case—whether a plan to kill the prisoners existed before the Kravica warehouse incident.

16. The prosecution had a full and fair opportunity to cross examine Mr. Jakovljevic at the *Blagojevic* trial.

17. There are no exhibits associated to Mr. Jakovljevic's testimony.

Milenko Todorovic

18. The testimony of Milenko Todorovic in the *Tolimir* trial is available in e-court as Rule 65 ter #1D09173. Mr. Todorovic was the Assistant Commander for Security and Intelligence of the East Bosnia Corps in July 1995. He will testify that shortly after the fall of Srebrenica, the VRS Main Staff, probably through General Tolimir, instructed the East Bosnia Corps to prepare the Batkovici camp to receive an additional 1000 to 1200 detainees. This instruction was cancelled a day or two later.

19. This testimony is cumulative to other witness testimony showing that Momir Nikolic's testimony was false, including Svetozar Kosoric, Petar Uscumlic, and Nedo Nikolic. The evidence does not go to the acts and conduct of the accused. It goes to a live and important issue in the case—whether a plan to kill the prisoners existed before the Kravica warehouse incident. Dr. Karadzic contends that the fact that the prisoners were originally intended to be taken to Batkovici and that the instruction was only cancelled after the Kravica warehouse incidents, helps refute Momir Nikolic's testimony that there was a plan to kill the prisoners from the morning of 12 July.

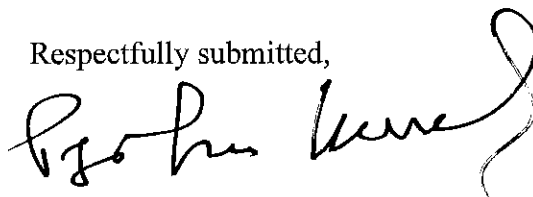
20. The prosecution had a full and fair opportunity to examine Mr. Todorovic at the *Tolimir* trial, where he was called as its witness.

21. The list of associated exhibits for Mr. Todorovic's testimony are attached in Annex A.

22. It is respectfully requested that the Trial Chamber admit the 3 statements pursuant to Rule 92 *bis*.

Word count: 1190

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a large, stylized flourish at the end.

Radovan Karadzic

ANNEX "A"

ASSOCIATED EXHIBITS FOR MILENKO TODORVIĆ 1D9173

65ter/Exh No.	Tolimir Case #	Tolimir Page #	Main Date	Description	Comment
#3204	#1454 (P2179)	T12927		Map 3 from Map Book: Army of the Republika Srpska Corps Boundaries	
1D9451	#2686 (P2180)	T12953		Aerial photo – Batkovic Prison (marked by witness)	
1D9454	#5714 (D219)	T13030	31-Mar-1996	GS VRS Sector for Intelligence & Security document, Strictly Confidential No. 12/46- 223/96, signed by Gen Maj Zdravko TOLIMIR, Assistant Commander. Concerns implementation of disarmament proposals in Dayton Agreement.	
1D9455	#4086 (D223)	T13097	25-Nov-1995	GS VRS Security & Intelligence report (12/45- 1376), re Peace negotiations from Dayton, typesigned Maj Gen Zdravko TOLIMIR, Assistant Commander.	

1D9456	#5484 (D224)	T13108	6-Dec-1995	Sector for Security and Intelligence Affairs, VRS Main Staff, confidential No. 12/46-728/95, signed by Gen Maj Zdravko TOLIMIR, Assistant Commander, dated 6 December 1995. Concerns the Dayton Peace negotiations. Article IX provides that the parties...
1D9457	#5835 (D225)	T13110	7-Jan-1995	GS VRS report (12/46-6/95), re third meeting of Joined Central Commission for Implementation of Agreement on Cessation of Hostilities held on 6 January 1995, type-signed Gen Maj Zdravko TOLIMIR, Assistant Commander, dated 7 January 1995. This Report...
1D29064	D176	T13139	27-Jul-1995	ABiH, Command of the 2nd Corps, Str. Conf. No: 02/1-727/68, Chronology of events related to the breakthrough of 28 div.
1D9458	#7314 (D226)	T13140	16-Jul-1995	VRS Main Staff Order No. 02/2-528 to transfer POWs to Batkovic Camp, type-signed by Manojlo MILOVANOVIC, dated 16

				July 1993	
#23604	P2155	T13152	21-Jul-1995	VRS Main Staff Technical Department document No. 10/34/2-2-630, regarding chemical weapons, type-signed Miroslav CVIJETIC, dated 21 July 1995	
1D9459	D200	T13153		Mine M-83	
#23606	D201	T13153		M79 AG-1	
#24778	#7332 (P2184)	T13161	29-Nov-1995	3rd Battalion Command document No. 5/110-438, re briefing on state of combat readiness in unit for 1995 as ordered, signed by Dragisa Vulin, dated 29 November 1995	
#24780	#7337 (P2188)	T13168		VRS East Bosnia Corps (IBK) logbook, covering the period from 5 March 1995 to 12 June 1996	

1D9460	#1434 (P2185)	T13201	18-Jul-1995	Bratunac Health Center Doc: escort of 22 wounded Muslim prisoners by 5th Military Police Battalion from Vlasenica to 3rd Battalion IBK.	
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