

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: 4 February 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO ADMIT TESTIMONY
OF BRANKO BASARA
PURSUANT TO RULE 92*bis*

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 testimony of Branko Basara given as a prosecution witness in the *Stanisic & Zupljanin* trial on 12 and 13 October 2009.

2. While Dr. Karadzic has tried hard to present his defence case through oral testimony which can be fully tested, Mr. Basara, who is 74 years old, has indicated to defence investigator Milomir Savcic as recently as January 2014 that he is unable and unwilling to testify due to his failing health, even by video-conference link.

3. The Trial Chamber set a deadline of 27 August 2012 for the submission of Rule 92 *bis* motions. However, Dr. Karadzic had hoped to call him as a live witness at that time and only later learned that his health would not allow for him to testify.

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

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

8. An analysis of the evidence of Colonel Basara demonstrates that the criteria for admission pursuant to that Rule are met and that the Trial Chamber should exercise its discretion to admit the evidence.

9. The prior testimony of Branko Basara is available in e-court as Rule 65 *ter* #22059. Colonel Basara was Commander of the VRS 6th Krajina Corps and served in the Sanski Most area during 1992. He testified that the overwhelming majority of the members of the 6th Krajina Brigade behaved accordingly to the instruction to obey international humanitarian law and that he did everything he could to prevent incidents and punish the perpetrators of crimes. He further testified that crimes in Sanski Most were committed by paramilitaries and others not under the control of the authorities.

10. This testimony is relevant to establish that there was no intent to destroy the Bosnian Muslims of Sanski Most, as charged in Count One, and that there was no policy or plan to expel Muslims from Serb controlled areas of Sanski Most or to commit crimes against them.

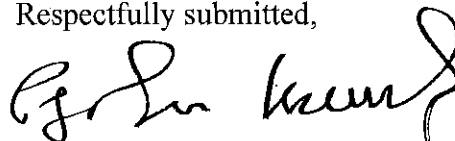
11. Colonel Basara's evidence is cumulative to other witness testimony about Sanski Most including that of Boro Tadic, Mikan Davidovic, Mile Dobrijevic, Vinko Nikolic, and Branko Davidovic. The evidence does not go to the acts and conduct of the accused.

12. The prosecution had a full and fair opportunity to examine Colonel Basara at the *Stanisic and Zupljanin* trial, as it called him as its own witness. It has also benefited from the admission of Rule 92 *bis* testimony about events in Sanski Most from witnesses Rajif Begic, Sakib Muhic and KDZ097. It also benefited from the admission of Colonel Basara's diary as an associated exhibit with another witness.⁵ It would be unfair to allow the diary to be admitted without the corresponding testimony of Colonel Basara.

13. Therefore, it is respectfully requested that the Trial Chamber admit the testimony of Colonel Basara pursuant to Rule 92 *bis*.

Word count: 754

Respectfully submitted,



Radovan Karadzic

⁵ P3660

ANNEX "A"

Rule 92ter Package

<p>Witness Name: Municipality/Category: Time: 65ter Summary</p>	<p>26. Branko BASARA Sanski Most / (92bis witness)</p> <p>Branko BASARA retired from the army before the war broke out in BH with the rank of Colonel. On 29 October 1991, he was mobilised as a reserve officer and sent to Jasenovac, in Croatia, to assume the duties of commander of the 6th Krajina Brigade of the 5th Krajina Corps (KK).</p> <p>The brigade was deployed in Jasenovac in order to secure the area in which was situated the monument marking the place where many Serbs perished in World War II. In the beginning of April 1992, the Brigade was transferred to the Sanski Most sector and was stationed at Lusci Palanka, close to the boundary of the municipality of Bosanska Krupa. The sector of Sanski Most was the only area of responsibility of the brigade, although some of the members of the brigade participated of their own initiative in the first day of combat in Bosanska Krupa. The mandate of the brigade in BH was to disarm people who obtained weapons illegally, regardless of their ethnicity.</p> <p>The brigade was composed of about 1,000 men, but its strength increased when new men responded to the mobilisation in the area of Sanski Most. Around 2-3% of the members were non-Serbs, however they received a directive from the leadership of the SDA and HDZ to leave the units as soon as possible. No state of war was declared in BH until the NATO bombing of RS, and this created a very difficult situation in which men were left free to return to their homes after having executed a certain assignment, which made it impossible for any commander to know how many men were effectively under his command.</p> <p>When Colonel BASARA first arrived in Sanski Most, the ethnic composition of the members of the Municipal Assembly reflected the composition of the municipality. On 15th April 1992, the parties agreed to carry out divisions in the municipality. They also agreed on a division of the MUP: the Serbs were supposed to remain in the MUP building, while the Muslim part of the MUP was to be relocated into the premises of an enterprise. Instead, the Muslims took over the municipality building. In order to prevent bloodshed, Colonel BASARA sent in a battalion even though he did not receive an order to do so.</p> <p>The political leadership of RS and President KARADŽIĆ laid claims only on those parts of the territory of BH that belonged to the Serbs. The army was called to behave humanely and in a civilised way towards captured and wounded members of the enemy, as well as the civilian population, in keeping with the norms and international laws of wars. The overwhelming majority of the members of the 6th Krajina Brigade behaved accordingly to the instruction and Colonel BASARA did everything he could to prevent incidents and punish the perpetrators of crimes.</p> <p>After the incident in the village of Hrustovo, the people who killed the Muslim civilians were arrested and turned to the SUP of Sanski Most. Another incident happened at Vrhpolje bridge, where a paramilitary unit intercepted a group of civilians who were travelling to Sanski Most and killed around 18 of them. On this occasion, the perpetrators run into the forest before the police or the</p>
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	<p>army could apprehend them.</p> <p>As for the shelling of Mahala, it occurred after two mortars opened fire at the units that had started to confiscate illegal weapons. The population was given three hours to leave Mahala and nobody who did not wish to fight was harmed. After combat operations, the units withdrew from Mahala, as this was the standard procedure since the state of war had not been declared. It was not in Colonel BASARA's duties to continue securing the territory after a disarmament was completed and, for this reason, armed units and individuals would loot and commit crimes after the withdrawal of the army.</p> <p>Colonel BASARA ordered to allocate people to guard the mosques, but during the night armed groups would disarm the guards and knock down the mosques. Colonel BASARA had strong suspicions that his staff commander, Mr. BRAJIĆ, ordered the mosque in Mahala to be knocked down and conveyed this to General TALIC, the commander of the 5th KK. Colonel BASARA did everything in his power to prevent these paramilitary groups from terrorising the population. For this reason, he placed the Serbian Defence Forces (SOS) under his command and in this way he managed to impose some control over this group. As the Superior Command ordered, it was necessary to arrest and remove all troops who did not comply with laws and regulations. Orders also forbid crimes against women, children and the elderly. The punishment of perpetrators was partially limited by the impossibility of establishing a marshal court until the state of war was finally declared.</p> <p>In May 1992, Colonel BASARA received information that the Muslims established a training centre in "Suma" Golaja, and there were indicia that reinforcement were air-lifted there. During the search operation of that forest, two Serbian soldiers were captured and later also the battalion commander who went to negotiate their release was taken as hostage. Contact was established with Captain AVDIC, the commander of the units in Golaja and it was agreed that, in exchange for the release of the hostages, the Green Berets would be transported to Bihac.</p> <p>Colonel BASARA was not an extremist and tried to help his Muslim friends during the conflict. He freed Captain HALLOVIC from Manjaca and other four Muslims from Krupa who were erroneously detained as extremists. Colonel BASARA maintained a good relationship with the MUP since the chief of the MUP was his former chief of intelligence, Mr. VRUCINIC, a man who he respected and who was not a nationalist. As for the other municipal authorities, the relations were not friendly, because Colonel BASARA did not accept to be a member of the Crisis Staff nor did he accept any interference in his command.</p>
<p>Relevant Counts/Paragraphs</p>	<p>1, 3-8</p>

Statement and/or Testimony to be Relied Upon

65ter # in IT-95-5/18-T (if any)	Description	Date	Complete Page Range (Transcripts = Page; Statements = ERN)	Comments

22059	Transcript of Testimony of Branko BASARA in STANISIC-ZUPLJANIN (IT-08-91), dated 12/10/2009 and 13/10/2009.	12-Oct-2002
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Associated Exhibits

65ter# in IT-95-5/18-T (if any)	Description	Date	Where Referenced (Transcripts = Case - Page; Statements = ERN - Para. or Page)	Comments
P148	5th Corps Command Order No. 313-1 to the 10th Partisan Brigade instructing on the withdrawal of 6th Partisan Brigade from the combat area and its re-deployment to the area of Sanski Most. By General Tali	1-Apr-1992		P60.3 (Tr. Page 1235)
P3329	Excerpts from the Certified Copy of hand written original diary of RASULA Nedeljo used in court with witness KARABEG and KDZ474.			P60.13 (Tr. Page 1244)
P3590	Minutes of the Command of the 1st Partisan Brigade of the Meeting With Presidents of Municipalities in the Zone of Responsibility of the Division held on 14 May 1992	14-May-1992		65ter 796 -> P105 (Tr. Page 1253)
P3921	1st Krajina Corps document No. 459-2, re the formation of an army of the Serbian Republic of BH, signed by Milutin VUKELIC, dated 21 May 1992	21-May-1992		65ter 1597 -> P106 (Tr. Page 1258)
ID9922	Map - Sanski Most			65ter 3152 -> P107 (Tr. Page 1270) <i>Not on 65ter List</i>
ID9923	Map - Sanski Most (marked by Branko BASARA)			65ter 3152 -> P108 (Tr. Page 1270) <i>Not on 65ter List</i>
P2614	Conclusions of the Crisis Staff of the Serbian Municipality of Sanski Most, no. KS-27/92, reached at a meeting on 30 May 1992 dealing with, inter alia, finding a "solution" for the non-Serb refugees in the area of Mahala in Sanski Most and all Muslims...	30-May-1992		65ter 614 -> P109 (Tr. Page 1274)
P3640	Informator of the Serbian Democratic Party, Sanski Most, Published on St. Peter s Day 1992	9-Jun-1992		65ter 644 -> P110 (Tr. Page 1280)

D3840	Report on the situation in the 6th Krajiska Infantry Brigade, Military Post 7421 Sanski Most, to the Command of 1st KK	6-Dec-1992		65ter 10123 -> P111 (Tr. Page 1283)
P3918	War Bulletin - 6th Krajina Brigade (Ratni Bilten), Issue no. 3, 15 December 1992	15-Dec-1992		65ter 10124 -> P112 (Tr. Page 1285)
P3660	Handwritten history of the 6th Krajina Bde, signed by Col Basara - estimated date is end of 1992.			65ter 10125 -> P113 (Tr. Page 1290)
P149	5th Corps Command daily combat report No. 44-1/92 to 2nd Military District Command. Signed by Talic	2-Apr-1992		ID00-4486 -> ID18 (Tr. Page 1303)
ID9924	Chronology of important events in Bosnia and Herzegovina			ID00-4222 -> ID19 (Tr. Page 1306) <i>Not on 65ter List</i>
ID3565	SFRY Official gazette - Law on all peoples defence	23-Apr-1982		ID00-4222 (Tr. Page 1313)
P3313	Order of the Commander of the Serb Territorial Defence for the action Grme - 92 to take place on 26/05/92 approved by the commander of the Serb Territorial Defence Colonel ANICIC			65ter 1682 (P60.7) (Tr. Page 1315, 1366)
P3597	Stamped criminal charges compiled by 6th Krajina Bde MP Coy Military Post Code 7421 Sanski Most against Danilusko KAJTEZ aka Dane, Milos MAKSIMOVIC, and Goran VUKOJEVIC	7-Dec-1992		2D07-0033 (Tr. Page 1320)
D3825	1st Krajina Corps document No. 539-3 (quoting from a Army of Republika Srpska Main Staff regulation) concerning the prevention of retaliatory actions, signed by Milutin VUKELIC, dated 23 June 1992	23-Jun-1992		2D07-0045 -> 2D15 (Tr. Page 1359)
P3601	Order of the Commander of 6th (Sana) Partisan Brigade	1-Jun-1992		0086-9834-9835 -> 2D16 (Tr. Page 1362)
D1817	Command of 6th Partisan brigade - Order, str.con.736-I, signed by Branko BASARA	18-Jun-1992		2D07-0022 -> 2D17 (Tr. Page 1369)

P3586	Order dated 18/05/92 by Branko BASARA, 6th Partisan Bde Cmdr, to the Comd of the 5th Infantry Bat that men from other battalions be transferred to the battalions in the region	18-May-1992	0050-7437-7438 (Tr. Page 1372)
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Additional Exhibits to be Used with Witness

65ter# in IT-95-5/18-T (if any)	Description	Date	Comments