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-09-92-T
		Date:	15 December 2015
		Original:	English

IN TRIAL CHAMBER I

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

Registrar: **Mr John Hocking**

Decision of: **15 December 2015**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON DEFENCE MOTION TO ADMIT THE EVIDENCE OF JASMIN ODOBAŠIĆ PURSUANT TO RULE 92*BIS*

Office of the Prosecutor
Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 7 September 2015, the Defence filed a motion ("Motion") seeking to provisionally admit into evidence, pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules"), the written statement of Jasmin Odobašić, dated 17 June 2005, and 12 associated exhibits.[1] On 21 September 2015, the Prosecution filed its response ("Response"), not opposing the Motion, but requesting that three contextual documents be admitted into evidence.[2]

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the proposed evidence is relevant to and probative of the crimes alleged in Counts 1 to 6 of the Indictment and does not go to the acts and conduct of the Accused.[3] It moreover submits that the witness should not be required to appear for cross-examination, since all the evidence is 'entirely contained in his witness statement and the associated exhibits'.[4] According to the Defence, admission of the proposed evidence will prevent the unnecessary appearance of the witness, avoid unnecessary expense, and reduce the length of the trial.[5] The Defence further submits that the associated exhibits should be admitted because they provide further detail and context to the evidence.[6]

3. The Prosecution notes that some of the information discussed in the witness's statement and in some associated exhibits has no bearing on the evidence before the Chamber.[7] According to the Prosecution, nine of the 17 cases discussed in the statement as allegedly wrongly-identified individuals are not individuals listed in any proof-of-death report before the Chamber.[8] However, despite this, the Prosecution does not oppose the admission of the statement and associated exhibits, and further requests that three contextual documents be admitted into evidence.[9] It submits that the three related documents represent a reply to the assertions in the witness statement and relate

1 Defence Motion Pursuant to [*sic*] Admit the Evidence of Jasmin Odobašić Pursuant to Rule 92*BIS*, 7 September 2015 (Confidential), paras 1, 26.
2 Prosecution Response to Defence Motion to Admit the Evidence of Jasmin Odobašić Pursuant to Rule 92*bis*, 21 September 2015 (Confidential), paras 1, 4, 6, 8.
3 Motion, paras 2, 15-16, 24.
4 Motion, para. 23.
5 Motion, para. 22.
6 Motion, paras 20.
7 Response, para. 5.
8 Response, para. 6.
9 Response, paras 1, 4, 6, 8.

directly to individuals referred to in the statement.[10] Therefore, the documents offer a more complete understanding of the assertions in the statement.[11] According to the Prosecution, it would not be an efficient use of court time to call the witness to tender such documents during the presentation of his evidence.[12]

III. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, including the admission of exhibits associated with the written statements as set out in previous decisions.[13]

IV. DISCUSSION

A. Attestation and Declaration

5. The witness statement has no corresponding attestation and declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have previously been conditionally admitted by this Chamber pending their formal attestation.[14] In line with this practice, provided that all other admissibility requirements are met, the Chamber will conditionally admit the unattested witness statement pending the filing of the required attestation and declaration.

B. Admissibility Pursuant to Rule 89 (C) of the Rules

6. The witness's statement relates to, *inter alia,* the investigation into killings of detainees from Keraterm and Omarska, in Prijedor in 1992. More specifically, the statement concerns the possible misidentification of bodies exhumed from the Jakarina Kosa, Hrastova Glavica, Kozaruša-Mujkanovići, Kurevo-Vodice, Višegrad, Srebrenica, Korićanke Stijene and Kevljani sites, and the alleged hiding of these mistakes.

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10 Response, paras 3-5.
11 Response, para. 4.
12 Response, para. 5.
13 Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7; Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 23 July 2012, para. 13; 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.
14 Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, para. 27 and references cited therein.

7. With regard to the Prosecution's arguments that some of the information discussed in the statement and in some associated exhibits has no bearing on the evidence before the Chamber, the Chamber considers that at least some of the exhumed individuals appear in evidence, more specifically in the proof-of-death reports of the Prosecution.[15] Furthermore, by providing additional examples of alleged mistakes, Odobašić's statement might provide background information on the investigations.

8. With regard to probative value, the Chamber notes that the witness's statement has been signed by the witness and contains an acknowledgement that it is true to the best of his recollection. The Chamber also notes that the Prosecution has not objected to the Motion.

9. The Chamber therefore considers Odobašić's statement to be relevant and probative of the crimes as charged in the Indictment, and concludes that the witness's statement and the associated exhibits meet the requirements of Rule 89 (C) of the Rules.

C. Admissibility Pursuant to Rule 92 *bis* of the Rules

10. The Prosecution has not argued and the Chamber does not find that the witness's statement relates to the acts and conduct of the Accused. The Chamber considers that the witness's statement concerns matters in relation to the crime base of this case. There are no factors under Rule 92 *bis* (A)(ii) weighing against admitting the evidence in written form. In light of the above, the Chamber finds that the statement is admissible pursuant to Rule 92 *bis* of the Rules.

D. Associated Exhibits

11. With regard to the exhibits associated with the witness's evidence, the Chamber notes that the witness discussed them in paragraphs 1, 8 to 10, and 13 to 26 of his statement. However, he does not elaborate on the document bearing Rule 65 *ter* number 1D06089 beyond making a passing reference and the contents of the document are not necessary to understand his statement. Therefore, the Chamber will not admit this document into evidence. The Chamber also notes that the document bearing Rule 65 *ter* number 12199 consists of 83 pages. In paragraph 8/I of his statement, the witness only makes reference to a list of 373 bodies. This list can be found on pages 78 to 83 of the document. The Chamber will therefore only admit those six pages into evidence.

[15] Proof-of-Death Annex (P2797) and Tomašica Annexes (MFI'd P7451).

Concerning the remaining 10 exhibits, the Chamber finds that without these documents it would not be able to fully comprehend the statement and, for this reason, finds that they form an inseparable and indispensable part of the statement. Therefore, the Chamber will admit the documents bearing Rule 65 *ter* numbers 1D06083 up to and including 1D06088, 12204 up to and including 12206, and 27136 into evidence.

E. Documents Tendered by the Prosecution

12. With regard to the three documents tendered by the Prosecution, the Chamber has considered whether the rebuttal phase of the case would have been a more procedurally appropriate time to tender such documentary evidence, but also considers the fact that the Defence has not objected to the admission of these documents even after the Chamber raised the matter.[16] The documents in question originate from the ICMP and are directly relevant to the statement of the witness. The Chamber, therefore, finds that the documents are relevant and of probative value for the purposes of admission. Moreover, the Chamber finds that the documents help to contextualise the witness's statement and that their admission at this stage of the proceedings contributes to the expeditiousness of the trial and is, therefore, consistent with the interests of justice. For these reasons, the Chamber will exceptionally admit the three documents into evidence.

V. DISPOSITION

13. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *bis* of the Rules, the Chamber

GRANTS the Motion **IN PART**;

CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with Rule 92 *bis* of the Rules, the witness statement of Jasmin Odobašić, dated 17 June 2005, bearing Rule 65 *ter* number 1D01123;

CONDITIONALLY ADMITS into evidence the documents bearing Rule 65 *ter* numbers 1D06083 up to and including 1D06088, 12204 up to and including 12206, 27136, pages 78 to 83 of 12199, 30486, 33170, and 33171;

[16] T. 41282.

INSTRUCTS the Defence to upload into eCourt pages 78 to 83 of the document bearing 65 *ter* number 12199 within two weeks of the date of this decision and inform the Registry and the Chamber when it has done so;

DENIES the admission into evidence the document bearing Rule 65 *ter* number 1D06089;

INSTRUCTS the Defence to file the corresponding attestation and declaration to the statement of Jasmin Odobašić within six weeks of the filing of this decision; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted into evidence.

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

Judge Alphons Orie
Presiding Judge

Dated this fifteenth day of December 2015
At The Hague
The Netherlands

[Seal of the Tribunal]