

IT-09-92-T
D 48276 - D 48271
14 December 2012

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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-09-92-T
Date: 14 December 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 14 December 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF WITNESSES RM-107, RM-170, AND RM-180
PURSUANT TO RULE 92 *QUATER***

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 23 July 2012, the Prosecution filed a motion ("Motion") seeking the admission into evidence of prior statements of Matija Bošković (Witness RM-107), Enver Taslaman (Witness RM-170), and Đorđe Đukić (Witness RM-180), as well as one associated exhibit, pursuant to Rules 89 (C) and 92 *quater* of the Tribunal's Rules of Procedure ("Rules").¹
2. The Motion was not distributed to the Chamber and the Defence until 28 September 2012 for technical reasons. On 1 October 2012, the Chamber set the response deadline to 15 October 2012.² The Defence did not respond to the Motion.

II. SUBMISSIONS OF THE PARTIES

3. The Prosecution submits that the requirements for admissibility pursuant to Rule 92 *quater* of the Rules are satisfied since the witnesses are deceased and their statements are relevant and reliable.³ In the absence of a death certificate for Witness Đukić, the Prosecution requests that the Chamber take judicial notice of the fact, established in a decision in *Prosecutor v. Momčilo Perišić*, that he is deceased and therefore unavailable.⁴
4. With regard to Witness Bošković, the proposed evidence includes a redacted ICTY witness statement dated 20 November 2003, which the Prosecution submits provides evidence of the role that Bošković, a member of the volunteer unit of the Serbian Radical Party, played in and around Sarajevo in the spring and summer of 1992.⁵ The Prosecution also seeks admission of one associated exhibit, a record of the temporary confiscation of a vehicle which Bošković used to travel to Sarajevo in July 1992.⁶ The proposed evidence for Witness Taslaman consists of a redacted ICTY witness statement dated 20 November 1995 and a redacted supplemental ICTY witness statement dated 8 February 2001.⁷ The Prosecution avers that the relevant paragraphs of these statements provide general evidence of the shelling and sniping campaign against civilians in Sarajevo.⁸ With regard to Witness Đukić, the proposed evidence consists of redacted extracts of statements from several interviews carried out by Bosnian police officials in February 1996.⁹ The

¹ Prosecution Motion to Admit the Evidence of RM107, RM170 and RM180 Pursuant to Rule 92 *quater*, 23 July 2012, paras 1, 35, Annex D (Confidential).

² T. 3319-3320.

³ Motion, paras 2, 6-11, 16-21, 25-32, Annex A.

⁴ Motion, para. 25; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Defence Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2010 ("Perišić Decision"), para. 11.

⁵ Motion, paras 7, 11.

⁶ Motion, paras 13-14, Annex D (Confidential).

⁷ Motion, para. 16, Annex B.

⁸ Motion, para. 17.

⁹ Motion, para. 25.

Prosecution states that Đukić was the Assistant Commander for Logistics for the VRS Main Staff and provides evidence pertaining to Mladić's command and control of the VRS, including his direct command of various operations in Bosnia and Herzegovina from 1992-1995.¹⁰

5. The Prosecution submits that the evidence provided by Witnesses Bošković and Taslaman is reliable as the respective statements were signed by the witnesses and translated by an interpreter duly certified by the Registry of the Tribunal.¹¹ The statements are furthermore accompanied by a signed acknowledgment that they were given voluntarily and are true to the best of the witnesses' knowledge and recollection.¹² In addition, the Prosecution further submits that the witness statements are corroborated by the evidence of other witnesses, as well as by documentary exhibits.¹³ With regard to the evidence provided by Witness Đukić, the Prosecution avers that the tendered extracts are reliable as they were each signed by the witness and accompanied by a signed acknowledgment confirming that the witness was treated correctly by the authorised officials who conducted the interviews.¹⁴ The Prosecution acknowledges that parts of Witness Đukić's evidence relate to the acts and conduct of the Accused, and submits that this evidence is admissible under Rule 92 *quater* of the Rules, as it is comprehensively corroborated by a number of other witnesses and exhibits.¹⁵

III. APPLICABLE LAW

6. The Trial Chamber recalls and refers to the applicable law governing the admission of evidence and associated exhibits pursuant to Rule 92 *quater* of the Rules, as set out in a previous decision.¹⁶

IV. DISCUSSION

A. Unavailability

7. The Chamber has been provided with the death certificates of Witnesses Bošković and Taslaman and is satisfied that they are deceased and therefore unavailable pursuant to Rule 92 *quater* of the Rules. With regard to Witness Đukić, the Prosecution has not provided a death certificate. In relation to the witness's death, considering that the Perišić Chamber did not find

¹⁰ Motion, para. 31.

¹¹ Motion, paras 8, 18.

¹² Ibid.

¹³ Motion, paras 9, 19, Annex D (Confidential).

¹⁴ Motion, para. 26.

¹⁵ Motion, paras 30, 33, Annex D (Confidential).

¹⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 10-13.

beyond a reasonable doubt that the witness was deceased, but was merely satisfied in relation to his unavailability,¹⁷ the Chamber does not consider it appropriate to take judicial notice under Rule 94 (B) of the Rules of the witness's death. Nevertheless, on the basis of other documentation and the references submitted by the Prosecution, the Chamber is satisfied that the witness is unavailable pursuant to Rule 92 *quater* of the Rules.¹⁸

B. Reliability

(a) Matija Bošković (Witness RM-107)

8. With regard to the reliability of Witness Bošković's witness statement, the Chamber notes that while this evidence was neither given under oath, nor subjected to cross-examination, the statement was signed by the witness with an accompanying acknowledgment that the statement is true to the best of the witness's recollection and was taken with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal. Nevertheless, the Chamber considers that the statement provided by Witness Bošković is incoherent. The Chamber notes that the statement is particularly unclear as to whether, and when, in 1992 the witness was affiliated to various military/political formations. The statement further lacks precision in terms of the extent of the witness's role within the respective organisations. Based on the foregoing, the Chamber thus finds the evidence unreliable for the purpose of admission under Rule 92 *quater* of the Rules. As a consequence, the Chamber will deny the Motion in respect of Witness Bošković's witness statement and the associated exhibit thereto.

(b) Enver Taslaman (Witness RM-170) and Đorđe Đukić (Witness RM-180)

9. With regard to the reliability of Witness Taslaman's witness statement, the Chamber notes that this evidence was neither given under oath, nor subjected to cross-examination. Nevertheless, the statement was signed by the witness with an accompanying acknowledgment that the statement is true to the best of the witness's recollection and was taken with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal. The Chamber further considers that Witness Taslaman's statement is corroborated by the testimonies already given in this case,¹⁹ and reasonably expected to be given by upcoming witnesses.²⁰ Based on the foregoing, the Chamber finds that the evidence is reliable for the purpose of Rule 92 *quater* of the Rules.

¹⁷ Perišić Decision, para. 11.

¹⁸ *Prosecutor v. Djordje Djukić*, Case No. IT-96-20-A, Order Terminating the Appeal Proceedings, 29 May 1996.

¹⁹ Motion, Annex D (Confidential); see e.g. Witnesses Harland and Van Lynden.

²⁰ Motion, Annex D (Confidential); see e.g. Witnesses RM-503 and RM-174.

10. With regard to the reliability of Witness Đukić's statements, the Chamber notes that the statements from which the extracts derive were not given under oath, nor subjected to cross-examination. Nonetheless, each of the extracts were signed by the witness and accompanied by a signed acknowledgment confirming that the witness was treated correctly by the authorised officials who conducted the interviews. The Chamber considers that the extracts tendered are corroborated by other exhibits as well as the testimonies already given,²¹ and reasonably expected to be given, by other witnesses in this case.²² Accordingly, the Chamber finds that the evidence provided by Witness Đukić is reliable for the purpose of Rule 92 *quater* of the Rules.

11. The Chamber notes that the proposed evidence of Witness Taslaman does not go to the acts and conduct of the Accused. The Chamber further observes that parts of Witness Đukić's evidence do however relate to the acts and conduct of the Accused. With regard to the corroborative evidence, which includes the expected testimonies of witnesses due to appear before this Chamber, the Chamber considers that the Defence will have ample opportunity to test the content of evidence similar to that provided by Witness Đukić.

12. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the statements provided by Witnesses Taslaman and Đukić are relevant to the case, as they relate to crimes allegedly committed within the indictment period. Since reliability is the component part of the probative value of the piece of evidence, the Chamber considers that there is no need to re-examine this aspect of the probative value where a determination of reliability has already been made within the context of Rule 92 *quater* (A) (ii) of the Rules. As a result, the Chamber allows the witness statement of Witness Taslaman, as well as the extracts of Witness Đukić's statements into evidence.

V. DISPOSITION

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

GRANTS the Motion in part;

ADMITS into evidence:

- (i) The redacted versions of the ICTY witness statements of Enver Taslaman dated 20 November 1995 and 8 February 2001, bearing ERNs 0036-0620-0036-0623 and R109-3096-R109-3100 respectively; and

²¹ Motion, Annex D (Confidential); see e.g. Witnesses Jordan and Dozo.

²² Motion, Annex D (Confidential); see e.g. Witnesses RM-502, RM-110, RM-165 and RM-175.

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(ii) The redacted versions of the extracts of statements from interviews with Đorđe Đukić carried out in February 1996, bearing ERNs 0303-0537-0303-0541, 0302-5342-0302-5346, 0303-0028-0303-0032, 0302-7493-0302-7495, 0302-7489-0302-7492, 0302-7487-0302-7488, 0304-0805-0304-0808, 0099-6155-0099-6156;

DENIES admission of:

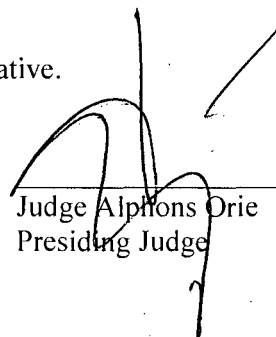
(i) The redacted version of the ICTY witness statement of Matija Bošković dated 20 November 2003, bearing ERN 0344-8347-0344-8360; and

(ii) The associated exhibit to Witness Bošković's statement, bearing Rule 65 *ter* number 12937;

INSTRUCTS the Prosecution to upload the admitted documents into eCourt; and

REQUESTS the Registrar to assign exhibit numbers to the admitted documents and inform the parties and the Chamber of the exhibit numbers assigned.

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


Judge Alphons Orie
Presiding Judge

Dated this fourteenth day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]