

IT-09-92-T
DT8536 - DT8530
25 April 2013

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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: 25 April 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 25 April 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF WITNESS ISMET POLJAK (RM-072)
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 AND SUBMISSIONS OF THE PARTIES

1. On 22 February 2013, the Prosecution filed a motion ("Motion") seeking to admit into evidence the ICTY Witness Statement of Ismet Poljak (RM-072) ("Witness"), dated 25 January 1999 ("Statement"), pursuant to Rule 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules").¹ On 8 March 2013, the Defence filed its response ("Response").²

2. The Prosecution submits that the Statement meets the requirements set out by Rule 89 (C) and Rule 92 *quater* of the Rules, as the Witness is deceased and hence unavailable, his Statement is relevant to the charges in the Indictment and is, furthermore, reliable.³ According to the Prosecution, the evidence provided by the Witness in his Statement is corroborated by the testimony of Rule 92 *ter* Witnesses RM-034 and RM-048 as well as the proposed evidence of Rule 92 *bis* Witness RM-035, and provides additional details relating to adjudicated facts 731-732, 739-741 and 743-745.⁴ The Prosecution further submits that while the Witness mentions the acts and conduct of the Accused in his Statement, such references are minimal and do not relate to any of the specific acts charged in the Indictment.⁵

3. The Defence opposes the Motion, submitting, *inter alia*, that portions of the Statement should be stricken or the Motion be denied because these portions contradict other evidence, are based on third party hearsay and therefore, render the evidence unreliable.⁶ The Defence further submits that references to the acts and conducts of the Accused, however minimal, should be excluded as there is no possibility of cross-examination.⁷

¹ Prosecution Motion to Admit the Evidence of Ismet Poljak (RM072) pursuant to Rule 92 *quater*, 22 February 2013.

² Defence Response to Prosecution Motion to Admit the Evidence of Ismet Poljak (RM072) pursuant to Rule 92 *quater*, 8 March 2013.

³ Motion, paras 2, 6-8, 12-13.

⁴ Motion, paras 2, 10-11, 16.

⁵ Motion, para. 16.

⁶ Response, paras 7-11.

⁷ Response, paras 1, 12.

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *quater* of the Rules, as set out in a previous decision.⁸

III. DISCUSSION

5. The Chamber has been provided with a death certificate of the witness and is satisfied that he is deceased and therefore unavailable pursuant to Rule 92 *quater* of the Rules.

6. With regard to the reliability of the Statement, the Chamber notes that it has been signed by the Witness with an accompanying acknowledgement that the Statement is true to the best of his recollection and was taken with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal. The evidence provided in the Statement concerns Serb military activities, detention facilities and alleged killings in Kalinovik municipality and is cumulative to testimony already provided by Rule 92 *ter* Witnesses Fejzija Hadžić (RM-034) and RM-048 in this case.⁹ Proposed Rule 92 *bis* Witness RM-035 is also expected to give evidence about Serb military activities and events concerning the police in Kalinovik, as well as the alleged killings and rapes of non-Serb civilians by Serb forces in Kalinovik municipality.¹⁰ Considering this, the Chamber will not additionally address if and to what extent the adjudicated facts the Chamber has taken judicial notice of are cumulative.¹¹

7. As for the Defence's assertion that portions of the proffered evidence are unreliable because the statement contains hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal. With respect to the portion concerning the killing of Muslim men at Mladi Gaj which the Defence contends qualifies as unreliable hearsay evidence, the Chamber notes that Fejzija Hadžić (RM-034), whom the Witness identified as his source of hearsay and who was a survivor of the incident, testified about this same event and allowed the Chamber to assess the

⁸ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 10-13.

⁹ Witness Fejzija Hadžić (RM-034), T. 1829-1867; Witness RM-048, T. 8809-8870.

¹⁰ Witness RM-035, Prosecution Witness List, 10 February 2012 (Confidential), p. 114. The Chamber notes that in the 10 February 2012 Witness List, RM-035 is noticed as a Rule 92 *ter* witness. However, the witness is the subject of the Prosecution's Ninth Motion to Admit Evidence Pursuant to Rule 92 *bis* (Confidential), 6 December 2012, which is currently pending with the Chamber.

¹¹ See further Decision on Prosecution Motion to Admit the Evidence of Witnesses Zaim Košarić and Đula Leka Pursuant to Rule 92 *quater*, 9 November 2012, para. 7.

reliability of the Statement against first hand testimony of the source.¹² The Chamber therefore finds that there is no indication of unreliability in this respect.

8. The Defence has objected to the portion of the Statement concerning the Accused's visits to his father on the basis that the Accused's father, as submitted by the Defence, died in 1945.¹³ The Chamber accepts that the Witness may by mistake have referred to the Accused's father where he meant to refer to another relative, or have referred to a visit to the grave of the Accused's father rather than to the Accused's father in person. However, the Chamber does not consider the Witness's understanding of the motives behind the Accused's visits to Kalinovik critical to his evidence that the Accused did in fact regularly visit the village. Whatever explains the issue raised by the Defence, the Chamber therefore cannot conclude on the basis of this unexplained portion that the Statement suffers from unreliability which would oppose admission

9. The Chamber has further reviewed the portions of the Statement identified by the Defence as relating to the acts and conduct of the Accused but considers that the objection in this regard is without merit. The portions identified by the Defence in this regard concern the Witness's understanding of the existence of a friendship between Radovan Karadžić and the Accused on which basis the police chief in Kalinovik is alleged to have been appointed. However, apart from reflecting the Witness's self-expressed, unsubstantiated belief that this appointment was unlawful, these portions have no direct bearing on the criminal conduct of the Accused as charged in the Indictment. Therefore, the Chamber does not find that these references should weigh against admission of the Statement pursuant to Rule 92 *quater* of the Rules. Based on the foregoing, the Chamber considers the Statement reliable for the purpose of Rule 92 *quater* of the Rules.

10. With respect to the requirements of Rule 89 (C) of the Rules, the Chamber finds the Witness's evidence to be relevant to the case as it relates to Counts 3, 4, 5 and 6, and in particular, to scheduled detention facilities C.9 and scheduled incident B.7 of the Indictment. Since reliability is a component of the probative value of evidence, the Chamber considers there is no need to re-examine this aspect of the proffered evidence where a determination of reliability has already been made pursuant to Rule 92 *quater* (A) (ii) of the Rules. As a result, the Chamber considers the Statement suitable for admission pursuant to Rule 92 *quater* of the Rules.

¹² T. 1841-1842; P138 (Fejzija Hadžić, witness statement, 31 January 1999), pp 4-5; P139 (Fejzija Hadžić, witness statement, 20 October 1992), p. 4.

¹³ Response, para. 8.

IV. DISPOSITION

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

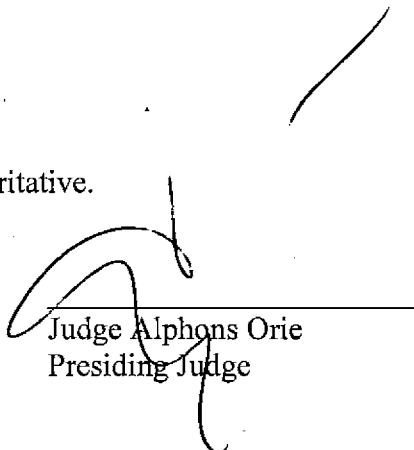
GRANTS the Motion; and

ADMITS into evidence the Statement, bearing ERNs 0069-3704-0069-3711;

INSTRUCTS the Prosecution to upload the admitted document into eCourt within two weeks; and

REQUESTS the Registry to assign an exhibit number to the admitted document and inform the parties and the Chamber of the exhibit number so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-fifth day of April 2013
At The Hague
The Netherlands

[Seal of the Tribunal]