

IT-09-92-T
D 62273-062269
21 June 2013

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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: 21 June 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: 21 June 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF WITNESS RM-030 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 26 April 2013, the Prosecution filed a motion ("Motion") seeking admission into evidence of three written statements ("Statements") of Witness RM-030 ("Witness") pursuant to Rule 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules").¹ Annex A of the Motion reflects that the Statements do not have to be admitted under seal.² However, on 10 June 2013, the Prosecution informed the Chamber through an informal communication that it seeks the admission of the statements under seal. On 9 May 2013, the Defence filed its response, requesting that the Chamber deny the Motion ("Response").³

2. The Prosecution submits that the tendering of the Statements complies with the requirements set out by Rules 89 (C) and 92 *quater* of the Rules in that the Witness is unavailable because he is deceased and his evidence is reliable and relevant to the charges of the Indictment.⁴ The Prosecution further submits that the Statements are consistent and that they are corroborated by the evidence of other witnesses, *inter alia*, Witnesses RM-029, RM-031, RM-049, RM-066, RM-067, RM-069, RM-073 and RM-088, and by adjudicated facts 1254, 1258-1263 and 1265.⁵ The Prosecution avers that the Statements do not directly relate to the acts and conduct of the Accused, that they are short, complement each other, and that their admission into evidence would be in the interests of justice.⁶

3. In its Response, the Defence submits that it is unclear under which circumstances one of the Statements, dated 25 January 1993 and provided by the Ministry of Interior of the Republic of Bosnia-Herzegovina ("BH Statement"), was given.⁷ Submitting that previous witnesses have renounced statements given to the authorities of Bosnia-Herzegovina in Tuzla, the Defence considers the proffered evidence to be unreliable.⁸ The Defence further submits that for portions of the BH Statement, the Witness's source of knowledge is unclear and that it might contain hearsay.⁹ For the above reasons, the Defence requests the BH Statement to be stricken and disregarded or the

¹ Prosecution Motion to Admit the Evidence of RM030 Pursuant to Rule 92*quater*, 26 April 2013 (Confidential) (Original title of the Motion has been amended due to protective measures accorded to the Witness).

² Motion, Annex A (Confidential).

³ Defence Response to Prosecution Motion to Admit the Evidence of RM030 Pursuant to Rule 92*quater*, 9 May 2013 (Confidential) (Original title of the Motion has been amended due to protective measures accorded to the witness).

⁴ Motion, paras 2, 5-6, 8-12.

⁵ Motion, paras 2, 9.

⁶ Motion, paras 2, 12-13.

⁷ Response, para. 8 (The Chamber notes that the Response contains two paragraphs "8". In this instance, it refers to first paragraph numbered "8").

⁸ Response, paras 1, 8 (both paragraphs numbered "8").

⁹ Response, para. 8 (first paragraph numbered "8").

Motion denied.¹⁰ Moreover, the Defence contends that the probative value of the evidence is substantially outweighed by the need to ensure a fair trial as the proffered evidence goes directly towards charged crimes and critical parts of the Indictment and there is no opportunity for cross-examination.¹¹

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.¹²

III. DISCUSSION

5. The Chamber has been provided with the death certificate of the Witness and is satisfied that the Witness is deceased and therefore unavailable within the meaning of Rule 92 *quater* of the Rules.¹³

6. With regard to the two proffered ICTY witness statements (“ICTY Witness Statements”), the Chamber notes that the ICTY Witness Statements were signed by the Witness with an accompanying acknowledgment that the respective statements were true to the best of the Witness’s recollection, and that they were taken with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal. As regards the BH Statement, the Chamber observes that it was signed by the Witness, declaring that he took part in its drafting and accepted the statement as his own.

7. As regards the reliability of the BH Statement, the Chamber notes that the BH Statement, which consists of only two short paragraphs, is internally consistent and also consistent with the other two proffered statements. Regarding the Defence’s general concerns about statements given to the authorities in Tuzla, the Chamber is not aware of a general pattern of questionable practice that would *prima facie* render such statements unreliable. Further, the Chamber does not consider that the half-sentence with possible hearsay within the BH Statement, as submitted by the Defence, makes the entire statement unreliable. The Chamber also takes into consideration that the content of the BH Statement overlaps with adjudicated facts 1258-1260 and is cumulative in part to the

¹⁰ Response, para. 8 (second paragraph numbered “8”).

¹¹ Response, paras 9-11.

¹² Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 10-13.

¹³ Motion, Annex C (Confidential).

testimonies of other witnesses in this case, including Witnesses RM-066, RM-088 and Ibro Osmanović (RM-067) who have testified in this case pursuant to Rule 92 *ter* of the Rules.¹⁴ In this context, the Chamber observes that the evidence provided by these as well as other witnesses covers a substantial part of the Statements' content and that the Statements *prima facie* do not involve considerable deviations from or contradictions to this other evidence. Based on the foregoing, the Chamber finds the Statements to be sufficiently reliable for the purposes of Rule 92 *quater* of the Rules.

8. The Chamber further notes that the proposed evidence of the Witnesses does not go directly to the acts and conduct of the Accused and that, in this regard, the evidence does not entail a factor against its admission pursuant to Rule 92 *quater* (B) of the Rules.

9. As concerns the requirements of Rule 89 (C) of the Rules, the Chamber notes that the evidence of the Witness is relevant to the case, as it relates to Counts 1, 3, 4, 5, 6, 7 and 8, and in particular, to Scheduled Incidents B 16.1 and C 19.3 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.

10. With regard to the Defences submission that the proffered evidence concerns a critical part of the Prosecution case, the Chamber recalls its findings that there is already other evidence on the related incidents and that the Statements *prima facie* do not introduce new topics or create contradictions to that evidence. The Chamber, therefore, is of the view that the Accused is not prejudiced by the lack of cross-examination in relation to the present evidence.

11. In accordance with Rule 75 (F) (i) of the Rules, protective measures as granted to the Witness in a previous case before this Tribunal continue to apply in this case. Thus, and in accordance with the Prosecution's amended request, the Statements should be admitted under seal.

IV. DISPOSITION

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

GRANTS the Motion;

¹⁴ T. 2418-2557, 2747-2851, 5338-5404.

ADMITS into evidence, **UNDER SEAL**, the Statements bearing ERNs

(a) 0018-4574-0018-4581;

(b) 0053-2418-0053-2421;

(c) 0025-7393-0025-7397;

INSTRUCTS the Prosecution to upload the admitted documents into eCourt within two weeks of the date of issue of this decision; 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 twenty-first day of June 2013
At The Hague
The Netherlands

[Seal of the Tribunal]