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IT-09-92-T p.75147

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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: 17 December 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: 17 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT
EVIDENCE OF THOMAS KNUSTAD AND ZLATKO
MEDJEDOVIĆ PURSUANT TO RULE 92 *QUATER* AND TO
ADD THREE DOCUMENTS TO THE RULE 65 *TER* EXHIBIT
LIST**

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 24 July 2013, the Prosecution filed a motion (“Motion”) seeking the admission into evidence of the witness statement, and certain portions of the testimony of Thomas Knustad in the *Prosecutor v. Dragomir Milošević* case and two witness statements of Zlatko Medjedović, pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution also seeks leave to add to its Rule 65 *ter* exhibit list of 10 February 2012 (“Exhibit List”) three exhibits and requests to have a total of nine exhibits associated with the above witnesses’ evidence admitted into evidence.²

2. The Defence filed its response on 14 August 2013, one week after the deadline provided for in Rule 126 *bis* of the Rules.³ The Defence did not ask for an extension to respond and did not provide any explanation for this late filing. The Chamber considers that the response was not validly filed.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of evidence and associated exhibits pursuant to Rules 89 (C) and 92 *quater* of the Rules, as set out in a previous decision.⁴

4. With regard to the applicable law related to amendments to the exhibit list, the Chamber recalls and refers to its previous decision dealing with this matter.⁵

¹ Prosecution Motion to Admit the Evidence of RM-131 and RM-139 pursuant to Rule 92 *quater*, 24 July 2013 (“Motion”), paras 1-4, 6-26. For further details with regard to the Prosecution’s submissions the Chamber refers to the Motion.

² Motion, paras 1, 5, 15, 25, 27.

³ Defence Response to Prosecution Motion to Admit the Evidence of RM131 and RM129 pursuant to Rule 92 *quater*, 14 August 2013.

⁴ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 10-13. See also T. 5601-5604; 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.

⁵ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

III. DISCUSSION

(a) Addition of exhibits to the Prosecution Rule 65 ter exhibit list

5. The Chamber considers that the Prosecution did not show good cause for the addition of three documents to the Exhibit List. Having reviewed the documents the Chamber notes that the two maps and the two pages of the witness statement of Borislav Stankov relate to the shelling and sniping in Sarajevo. The Chamber finds these to be *prima facie* relevant and of probative value. Regarding the question of prejudice, the Chamber notes that the documents consist of maps and only two pages of a statement, and they were duly disclosed to the Defence. Therefore the Chamber considers that the addition of these documents to the exhibit list will not unduly burden the Defence. For these reasons, the Chamber is satisfied that it is in the interests of justice to grant the request for addition of the documents to the Exhibit List.

(b) Admissibility under Rule 92 quater of the Rules

6. The Chamber has been provided with the death certificates of the witnesses and is convinced that the witnesses are deceased and therefore unavailable within the meaning of Rule 92 quater of the Rules.

7. With regard to the reliability of the ICTY witness statements, the Chamber notes that they were signed by the witnesses with an accompanying acknowledgement that they were true to the best of their recollections. The statements of Witness Zlatko Medjedović were taken with the assistance of a duly qualified interpreter approved by the Registry of the Tribunal. In addition, Thomas Knustad testified in the *Dragomir Milošević* case under oath, was subject to cross-examination, and his statement and testimony were admitted in the *Karadžić* case. Based on the foregoing the Chamber finds that the proffered evidence of both witnesses is reliable for the purposes of Rule 92 quater (A) (ii) of the Rules.

8. The Chamber takes into consideration as a factor weighing in favour of admission that the evidence of Thomas Knustad is of a cumulative nature, in the sense that other witnesses have testified on similar or the same facts, in particular Rupert Smith, John Jordan, Francis Roy Thomas, Mirza Sabljica, Martin Bell, Ismet Svraka, and Witness RM-110. Regarding the evidence of Zlatko Medjedović the Chamber takes into consideration that his evidence is cumulative with *inter alia* the testimony of Witness RM-110, Mirza Sabljica, Dragan Mioković, and Bakir Nakas who have also already testified pursuant to Rule 92 ter of the Rules. The Chamber further notes that the witnesses' proposed evidence does not directly go to proof of the acts and conduct of the Accused. For the

foregoing reasons, the Chamber finds that the proffered testimony is, on balance, admissible pursuant to Rule 92 *quater* of the Rules.

(c) Requirements of Rule 89 (C) of the Rules

9. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the selected portions of the previous testimony of Thomas Knustad and the statements of both witnesses are relevant to the case, as they relate to crimes allegedly committed within the Indictment period, in particular to the alleged shelling and sniping of Sarajevo, including Scheduled Incidents F.15, G.7, and G.18 of the Indictment. Turning to the proffered evidence's probative value of which reliability is a component, the Chamber refers to its finding on reliability made pursuant to Rule 92 *quater* (A) (ii) of the Rules above.

(d) Associated Exhibits

10. With regard to the associated exhibit with Rule 65 *ter* number 29137, which is an ICTY witness statement of Borislav Stankov, the Chamber considers that it was taken for the purpose of the proceedings before the Tribunal and tendered in lieu of Stankov's oral testimony. Therefore it cannot be admitted in the form of an associated exhibit to another witness's statement. The Chamber has reviewed the other eight associated exhibits tendered with the witnesses and notes that each was referred to by the witnesses, and provides additional information on the subjects they testified about. The Chamber therefore finds that these form an integral and indispensable part of the witnesses' statements and testimony.

(e) Guidance

11. The Chamber finds that the tendering of this evidence complies with the Chamber's Guidance.⁶

IV. DISPOSITION

12. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4) of the Tribunal's Statute and Rules 54, 65 *ter* (E) (iii), 89 (C), and 92 *quater* of the Rules, the Chamber;

⁶ T. 137, 194, 315-325, 525-532.

GRANTS the motion to amend the Exhibit List by adding three documents, uploaded in eCourt under 65 *ter* exhibit numbers 29135, 29136, and 29137 to the exhibit list;

GRANTS the Motion **IN PART**

with respect to

(i) *Thomas Knustad*

ADMITS into evidence

- a) the ICTY Witness statement of Thomas Knustad, dated 21 May 1996, bearing ERN 0039-6655-0039-6659 (Eng);
- b) excerpts of the testimony of Thomas Knustad from *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, T. 1980:1-1982:10, 1985:16-2015:10, 2020:3-2049:10;
- c) map of Sarajevo, marked by Thomas Knustad, uploaded in eCourt under Rule 65 *ter* number 29135;
- d) map of part of Sarajevo, marked by Thomas Knustad, uploaded in eCourt under Rule 65 *ter* number 29136;
- e) colour map of Sarajevo area, marked by Thomas Knustad, uploaded in eCourt under Rule 65 *ter* number 10332;
- f) large format colour military map with Sarajevo in the centre, uploaded in eCourt under Rule 65 *ter* number 9922;
- g) the OTP Information Report regarding Markale II, 2 October 2003, uploaded in eCourt under Rule 65 *ter* number 10279;

(ii) *Zlatko Medjedović*.

ADMITS into evidence

- a) the ICTY Witness statement of Zlatko Medjedović, dated 20 November 1995, bearing ERN 0036-1380-0036-1384 (Eng);
- b) the ICTY Witness statement of Zlatko Medjedović, dated 5 September 2000, bearing ERN 0103-9295-0103-9301 (Eng);

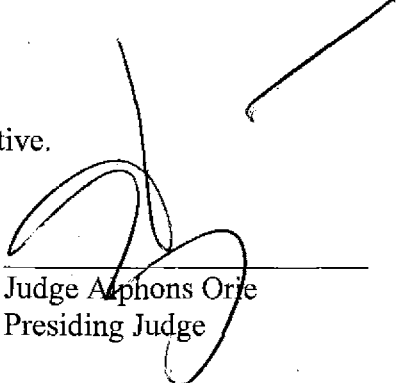
- c) the report concerning gunfire attack on a tram on 3 March 1995, signed by Zlatko Medjedović, uploaded in eCourt under Rule 65 *ter* number 12924;
- d) the report concerning shelling in Dobrinja on 4 February 1994, signed by Zlatko Medjedović and Mirza Sabljica, uploaded in eCourt under Rule 65 *ter* number 12923;
- e) the report concerning shelling of Vase Miskina Street on 27 May 1992, signed by Zlatko Medjedović, uploaded in eCourt under Rule 65 *ter* number 12921;

DENIES admission into evidence of the two pages of the ICTY witness statement of Borislav Stankov, dated 26 November 1995, uploaded in eCourt under Rule 65 *ter* number 29137;

INSTRUCTS the Prosecution to upload the admitted documents into eCourt within two weeks of this decision, insofar as it has not done so already, 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 seventeenth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]