

IT-09-92-T
Džoković - Džoković
13 January 2014

7/16/14
Y.S.

**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: 13 January 2014
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 13 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF LJUBOMIR BOJANOVIĆ AND MIROSLAV
DERONJIĆ 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 30 August 2013, the Prosecution filed a motion (“Motion”) seeking to admit the evidence of Ljubomir Bojanović and Miroslav Deronjić pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence (“Rules”).¹ On 9 September 2013, the Prosecution filed a corrigendum correcting the witness number of Deronjić and attaching his entire *Blagojević and Jokić* (“*Blagojević*”) testimony for the Chamber’s consideration in its evaluation of his credibility.² On 13 September 2013, the Defence filed a motion requesting an additional 14 days within which to file its response to the Motion.³ On 18 September 2013, the Chamber granted the Defence request for additional time.⁴ On 27 September 2013, the Defence filed its response (“Response”) opposing the Motion in its entirety.⁵ On 4 October 2013, the Prosecution filed a request for leave to reply to the Response, with its reply (“Reply”) attached thereto.⁶

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence and associated exhibits pursuant to Rules 92 *quater* and 89(C) of the Rules, as set out in a previous decision.⁷

¹ Prosecution Motion to Admit the Evidence of Ljubomir Bojanović (RM218) and Miroslav Deronjić (RM269) pursuant to Rule 92 *quater*, 30 August 2013 (Confidential with Confidential Annexes A, B and C). For the Prosecution submissions, see the Motion.

² Corrigendum to Prosecution Motion to Admit the Evidence of Ljubomir Bojanović (RM218) and Miroslav Deronjić (RM269) pursuant to Rule 92 *quater*, 9 September 2013 (Confidential with Confidential Annex A) (“Corrigendum”).

³ Defence Motion to Enlarge Time to Respond to Prosecution Motion to Admit the Evidence of Ljubomir Bojanović (RM218) and Miroslav Deronjić (RM269) pursuant to Rule 92 *quater*, 13 September 2013 (Confidential), p. 4.
⁴ T. 17021-17022.

⁵ Defence Response to Prosecution Motion to Admit the Evidence of Ljubomir Bojanović (RM218) and Miroslav Deronjić (RM269) pursuant to Rule 92 *quater*, 27 September 2013 (Confidential). For the Defence submissions, see the Response.

⁶ Prosecution Request for Leave to Reply to Defence Response to Prosecution Motion to Admit the Evidence of Ljubomir Bojanović (RM218) and Miroslav Deronjić (RM228) pursuant to Rule 92 *quater*, 4 October 2013 (Confidential with Confidential Annex). For further details with regard to the parties’ submissions, see the Motion, Response, and Reply.

⁷ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 22 July 2012, paras 10-13. See also T. 5601-5604; Decision on Prosecution’s Motion for Reconsideration, Granting

III. DISCUSSION

A. Preliminary Matters

3. Considering the amount of material to be addressed in the Motion, the Chamber grants the Prosecution's request to exceed the word limit. The Chamber finds that the Response raises issues that could not have been anticipated at the time of the Motion, and grants the Prosecution leave to file a reply. The Chamber considers the Reply attached to the request as having been timely filed. The Chamber notes that while the tendered excerpt of Deronjić's transcript amounts to around 252 pages, such length should be evaluated in the context of the entirety of his testimony amounting to 1,079 pages.⁸ The Chamber considers the tendered excerpt to be of an acceptable length under the circumstances. The Chamber therefore finds that the tendering of this evidence complies with the Chamber's Guidance.⁹

4. The Chamber notes that the document bearing Rule 65 *ter* number 4205 which the Prosecution tenders as an associated exhibit with Bojanović's testimony is identical to exhibit D285, which is already in evidence.¹⁰ The Chamber therefore considers this aspect of the Motion to be moot.

B. Admissibility pursuant to Rule 92 *quater* of the Rules

5. The Chamber has considered the death certificates of witnesses Bojanović and Deronjić submitted by the Prosecution, indicating that Bojanović died on 20 January 2007, and that Deronjić passed away on 19 May 2007,¹¹ and notes that the Defence does not contest that they are deceased. The Chamber is satisfied that these two individuals are unavailable in the context of Rule 92 *quater* (A)(i) of the Rules.

6. The Chamber finds that the testimony of both of the proposed witnesses was given in the *Blagojević* case before this Tribunal, and was therefore given under oath, with the assistance of a Registry-approved interpreter, and subject to cross-examination.

Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

⁸ While the Prosecution submits that the tendered excerpt of Deronjić's transcript substantively amounts to 172 pages, the Chamber has reviewed the material and considers that 252 pages is a more accurate figure. The Chamber notes that the tendered excerpt amounts to 289 pages, while the redacted portions amount to around 37 pages. See Motion, para. 3.

⁹ T. 137, 194, 315-325, 525-532.

¹⁰ The Chamber limits itself to the English translation of the document bearing Rule 65 *ter* number 4205, which consists of 22 pages and is essentially identical to the English translation of exhibit D285. The Chamber notes, however, that the BCS version of the document bearing Rule 65 *ter* number 4205 amounts to 236 pages.

¹¹ Motion, paras 10-11; Motion, Confidential Annex B.

7. The Chamber notes that Bojanović occupied different posts in the Zvornik Brigade between 1992 and 1995, and therefore rejects the Defence objection that his evidence concerning the VRS command structure, among others, amounts to expert testimony that is inappropriate in the absence of notice under Rule 94 *bis* of the Rules.¹² The Chamber considers that such knowledge is to be expected from a former Zvornik brigade member, and does not amount to expert opinion. The Chamber further considers that Bojanović's evidence is cumulative to the testimony of Richard Butler and Witness RM-322. The Chamber considers moreover that the tendered extract of his testimony does not go to proof of acts and conduct of the Accused. Based on the foregoing, the Chamber finds that the proffered evidence is admissible pursuant to Rule 92 *quater* of the Rules.

8. Having considered the materials furnished by the Prosecution,¹³ and noting that the inconsistencies between Deronjić's *Blagojević* testimony and previous statements were subject to extensive cross-examination, the Chamber considers that his testimony remains sufficiently reliable so as to be admissible under Rule 92 *quater* of the Rules. The Chamber considers that the inconsistencies go to the weight of the evidence, which will be evaluated at a later stage of the proceedings. The Chamber recalls that decisions of other Trial Chambers of this Tribunal are not binding on this Chamber, and notes that the *Karadžić* case involves a different accused charged with acts and conduct distinct from those the Accused Mladić is charged with in the present case. The *Karadžić* Trial Chamber's decision rejecting Deronjić's evidence observed that "it is replete with references to the Accused and descriptions of the Accused's acts and conduct during the Indictment period relating to several of the allegations in the Indictment" and found that "the circumstances of the present case are distinguished [from previous cases before the Tribunal where his evidence was deemed admissible] on the basis of the inordinate amount of acts and conduct evidence pertaining to this Accused, coupled with the fact that the Chamber's concern in relation to Deronjić's reliability is very much connected to the veracity of his evidence regarding the Accused."¹⁴ In contrast with the situation in the *Karadžić* case, the Chamber considers that Deronjić's evidence contains only limited references to matters that go to the proof of Mladić's acts and conduct as charged in the Indictment. The Chamber notes that Deronjić's evidence is cumulative to other evidence in this case.¹⁵ The Chamber considers therefore that these portions ultimately do not militate against the admission of Deronjić's evidence under Rule 92 *quater* (B).

¹² Response, paras 19-20.

¹³ Corrigendum, Confidential Annex A.

¹⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Motion for Admission of the Evidence of KDZ297 (Miroslav Deronjić) pursuant to Rule 92 *Quarter*, 23 March 2010, paras 37, 39.

¹⁵ The Chamber considers that Deronjić's evidence appears to be cumulative to the evidence of other witnesses and other exhibits in evidence in this case, as described, *inter alia*, in Motion, Confidential Annex A, pp. iii-xiii. The Chamber notes in this regard that while the document bearing Rule 65 *ter* number 4221 has been admitted as

The Chamber further emphasizes that it cannot possibly enter a conviction solely on Deronjić's evidence without other evidence to corroborate it, and notes that the quality of cross-examination will be carefully taken into account when assessing the weight to be given to his evidence.

9. As for Deronjić's ICTY statement, the Chamber notes that each of the pages tendered bears his signature and further notes that he attested to the truth and accuracy thereof under oath in the *Slobodan Milošević* case.¹⁶ The Chamber considers that the statement generally appears to be consistent with the tendered excerpt of his *Blagojević* testimony. The Chamber considers that Deronjić's statement is sufficiently reliable for admission under Rule 92 *quater* of the Rules.

C. Admissibility pursuant to Rule 89(C) of the Rules

10. As regards the requirements of Rule 89(C) of the Rules, the Chamber finds that the excerpt of Bojanović's testimony in the *Blagojević* case is relevant, as it concerns the activities of the Zvornik Brigade in 1995, including events in Srebrenica in July 1995. As regards Deronjić, the Chamber considers that his evidence relates to events that took place in Srebrenica in July 1995, and therefore relevant to the overarching joint criminal enterprise to permanently remove Bosnian Muslims from Bosnian Serb-claimed territory, and to the joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica, as alleged in the Indictment. As previously noted, while Deronjić's evidence relates in part to the acts and conduct of the Accused as charged in the Indictment, this portion is nevertheless admissible in relation to Rule 92 *quater* (B). As the Chamber has already found that the evidence of both Bojanović and Deronjić is reliable for admission under Rule 92 *quater* (A)(ii), with reliability being a major component of probative value, the Chamber deems it unnecessary to further address its probative value. The Chamber finds that the evidence of Bojanović and Deronjić meets the requirements for admission under Rule 89(C).

D. Associated Exhibits

11. The Prosecution tenders six associated exhibits with Bojanović's testimony, namely, documents bearing Rule 65 *ter* numbers 17285, 4300, 21149AA,¹⁷ 4354, 4205, and 5899. The Chamber notes that the document bearing Rule 65 *ter* number 17285 is 195 pages long, while Bojanović testified solely in relation to Article 66 thereof.¹⁸ Accordingly, the Chamber admits only pages 34 to 36 of the document which relate to duty officers. As noted above, the Chamber

exhibit P2107, all the other documents referred to in Confidential Annex A by their Rule 65 *ter* numbers are not currently in evidence. See also Reply, para. 11; and Motion, paras 28-29.

¹⁶ Motion, para. 17.

¹⁷ The Chamber notes that the Motion refers to Rule 65 *ter* number 21149A, but the document appears in eCourt under Rule 65 *ter* number 21149AA.

¹⁸ Motion, Confidential Annex A, p. xiv.

considers the Motion moot in relation to the requested admission of the document bearing Rule 65 *ter* number 4205.

12. With respect to the two associated exhibits tendered with Deronjić's evidence, the Chamber finds that they constitute an inseparable and indispensable part of his evidence. The Chamber therefore admits the associated exhibits bearing Rule 65 *ter* numbers 4006 and 5900 into evidence.

IV. DISPOSITION

13. For the foregoing reasons, pursuant to Article 21(4) of the Statute, and Rules 89, 92 *quater* and 126(B) of the Rules, the Chamber

GRANTS the Prosecution leave to exceed the word limit for the Motion;

GRANTS the Prosecution leave to file a reply;

FINDS the Motion moot **IN PART**, with respect to the requested admission of the document bearing Rule 65 *ter* number 4205;

GRANTS the Motion **IN PART**

With respect to

1) Witness Miroslav Deronjić

ADMITS into evidence

- a) ICTY statement of the witness dated 25 November 2003, paragraphs 1-159 and 207;
- b) Excerpts of his testimony on 19-22 January 2004 in *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, T. 6132:2-6138:18; 6139:3-6140:23; 6151:7-6155:9; 6156:20-23; 6157:17-22; 6158:22-6167:1; 6181:23-6197:24; 6199:15-6205:4; 6205:13-6206:20; 6216:15-6221:4; 6221:12-6223:10; 6223:18-6230:1; 6237:18-6247:20; 6248:9-6250:6; 6250:13-6260:21; 6262:4-6270:12; 6270:18-6275:5; 6277:21-6283:3; 6285:15-6286:10; 6294:7-6295:13; 6296:7-6300:5; 6325:7-6330:5; 6339:3-6342:9; 6376:3-6380:24; 6382:8-6385:17; 6398:18-6411:23; 6412:11-6414:21; 6416:13-6420:16; 6421:1-6424:4; 6424:14-6426:23; 6432:13-

6433:13; 6434:14-6436:1; 6438:7-6446:8; 6447:8-6452:17; 6453:5-6462:25;
6464:7-6470:4; 6471:5-6473:19; and 6476:2-6479:9; and

c) Documents bearing Rule 65 *ter* numbers 4006 and 5900;

2) *Witness Ljubomir Bojanović*

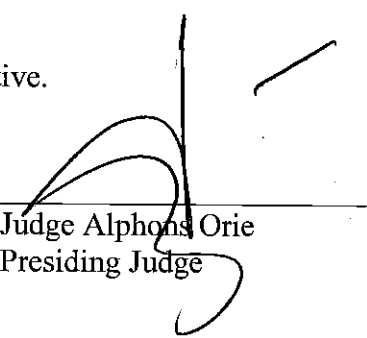
ADMITS into evidence **UNDER SEAL** excerpts of his testimony on 8-9 July 2004 in *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, T. 11673:6-11708:20; 11723:4-11728:14; 11728:18-11731:21; 11733:6-18; 11734:20-11735:17; 11741:20-11744:8; 11756:4-11759:22; and 11760:1-11770:1;

ADMITS into evidence documents bearing Rule 65 *ter* numbers 4300, 21149AA, 4354, and 5899, and pages 34 to 36 of the document bearing Rule 65 *ter* number 17285;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within three weeks of the date of this decision; and

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

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



Judge Alphons Orié
Presiding Judge

Dated this thirteenth day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]