

IT-09-92-T
D 62317 - D 62313
24 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: 24 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: 24 June 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF ALIJA ISAKOVIĆ 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 25 January 2013, the Prosecution filed a motion (“Motion”) seeking to admit into evidence two statements of Alija Isaković (“Witness”), pursuant to Rules 89 (C) and 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 12 February 2013 the Mladić Defence (“Defence”) filed a response (“Response”) calling for the Chamber to deny the Motion in its entirety, or alternatively to exclude from admission those portions of the statements emanating from hearsay.² On 19 February 2013 the Prosecution filed a motion seeking leave to reply to the Response (“Request for Leave to Reply”).³

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution informs the Chamber that the Witness is deceased, as confirmed by the death certificate attached as Annex C to the Motion.⁴ It argues that the two statements brought forward for admission into evidence are sufficiently reliable.⁵ The Prosecution further submits that both statements are corroborated by other Prosecution witnesses, as well as by documentary evidence and adjudicated facts.⁶ Moreover, it argues that the statements are relevant to and probative of crimes charged in the Indictment including the scheduled detention facilities C16.1, C16.3, and scheduled incident B14.2.⁷ The Prosecution further submits that the proffered evidence does not relate directly to the acts and conduct of the Accused.⁸ Finally the Prosecution does not seek admission of associated exhibits related to the Witness.⁹

3. The Defence does not take issue with the unavailability of the Witness but submits that the proffered evidence is unreliable as the statements predominantly provide hearsay evidence from unknown sources, which should not be admitted without the Defence having had an opportunity to cross-examine the Witness.¹⁰ Furthermore, it submits that portions of the proffered evidence touch

¹ Prosecution Motion to Admit the Evidence of Alija Isaković (RM040) Pursuant to Rule 92 *Quater* with Public Annexes A, B and C, 25 January 2013, para. 17; Annex A.

² Defence Response to Prosecution Motion to Admit the Evidence of Alija Isaković (RM040) Pursuant to Rule 92 *Quater*, 12 February 2013, para. 13. The Defence first filed an incorrect response to the Motion, notifying the Chamber thereof on 12 February 2013, filing the correct response on the same date. The Chamber accepts this late filing.

³ Prosecution Motion Seeking Leave to Reply to Defence Response to Prosecution Motion to Admit the Evidence of Alija Isaković (RM-040) Pursuant to Rule 92 *Quater*, 19 February 2013.

⁴ Motion, paras 2, 6; Annex C.

⁵ Motion, paras 7-9.

⁶ Motion, paras 2, 11.

⁷ Motion, paras 12-13.

⁸ Motion, para. 16.

⁹ Motion, para. 10.

¹⁰ Response, paras 7-8.

on live issues of the case.¹¹ With respect to the statement given to Bosnian authorities, the Defence avers that it was not taken under oath and lacks an attestation.¹² Finally, it contends that none of the matters raised in the statement are corroborated by any other witness in this case.¹³

III. 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.¹⁴

IV. DISCUSSION

5. The Chamber is not convinced that the reply would be of assistance in its consideration of the Motion and therefore denies the Request for Leave to Reply.

6. The Chamber has been provided with the death certificate of the Witness and is thus satisfied of his unavailability pursuant to Rule 92 *quater* of the Rules.

7. With regard to the Defence's claim that the witness has not attested to the statement he gave to the Bosnian authorities, the Chamber observes that the testimony given to the Bosnian authorities is signed by the Witness, confirming that he dictated the statement personally. In the statement the witness gave to the ICTY in 1999 he attested to the accuracy of the 1993 statement and re-signed it. The statement given to the ICTY was read back to the Witness in a language which he understood, by an interpreter certified by the Registry of the Tribunal, and the Witness's signature verifies that the statement was given voluntarily and is true to the Witness's best knowledge and recollection.

8. As for the Defence's assertion that portions of the proffered evidence are unreliable because the statements contain hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal. The Chamber finds that the examples of hearsay evidence objected to by the Defence cannot be construed as constituting "a significant amount" of the evidence provided by the Witness. It notes that with respect to his evidence on material elements of the Indictment, the source of the Witness's knowledge is direct, with information emanating from his own, personal experiences of the take-over of Rogatica and the time he was detained at Vlahović Secondary School and in Rasadnik. The Chamber furthermore notes that the evidence given in the statements is cumulative to that of Witness RM-081, who testified about the take-over of Rogatica

¹¹ Response, para. 10.

¹² Response, para. 11.

¹³ Ibid.

¹⁴ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *Quater*, 23 July 2012, paras 10-12.

and the detention of Muslim men and women in Vlahović Secondary School, events also dealt with in the testimony of Šefik Hurko, who additionally provided evidence on the detention centre in Rasadnik. Witnesses RM-006, RM-037, and RM-041 are expected to give further evidence on these three events. Furthermore, Witness RM-037 is expected to testify pursuant to Rule 92 *ter* of the Rules, providing a possibility for cross-examination on events related to the detention centre in Rasadnik. Based on the foregoing, the Chamber finds the statements provided by the Witness to be sufficiently reliable for the purposes of Rule 92 *quater* of the Rules. The Chamber further considers that the proffered evidence does not relate directly to the acts or conduct of the Accused.

9. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the proffered evidence is relevant to the case, as it relates to crimes allegedly committed within the indictment period, in particular to scheduled detention facilities C16.1, C16.3, and scheduled incident B14.2. 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. Based on the foregoing, the Chamber therefore considers both statements to be suitable for admission pursuant to Rule 92 *quater* of the Rules.

V. DISPOSITION

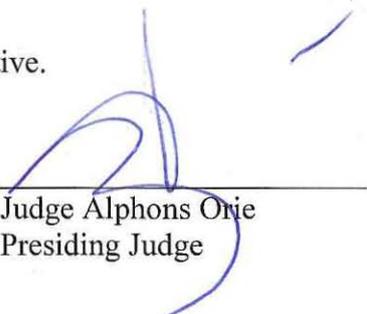
11. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *quater* of the Rules, the Chamber **DENIES** the Prosecution's motion seeking leave to reply to the Response; and **GRANTS** the Motion and **ADMITS** into evidence:

- (i) The ICTY Witness Statement of Alija Isaković dated 22 January 1999, ERN 0069-1943-0069-1949;
- (ii) The Statement of Alija Isaković given to the Bosnian Authorities dated 30 March 1993, ERN 0069-1950-0069-1955; and

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

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

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



Judge Alphons Onie
Presiding Judge

Dated this twenty-fourth day of June 2013
At The Hague
The Netherlands

[Seal of the Tribunal]