

5-09-92-T
D 76186 - D 76182
24 January 2014

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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: 24 January 2014
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 24 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF KEMAL BUĆO (RM109) 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 3 December 2013 the Prosecution filed a motion (“Motion”) seeking to admit the evidence of Kemal Bućo pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence (“Rules”).¹ On 16 December 2013, the Defence filed its response opposing the Motion (“Response”).² On 23 December 2013 the Prosecution filed its request for leave to reply to the Response attaching its Reply (“Request for leave to Reply” and “Reply”).³

II. APPLICABLE LAW

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

III. DISCUSSION

(a) Leave to reply

3. The Chamber considers that it is assisted by further submissions from the Prosecution on the matters outlined in the Request for leave to Reply and will therefore grant such leave.

(b) Admissibility under Rule 92 *quater* of the Rules

4. The Chamber has been provided with the death certificate of Kemal Bućo and is convinced that he is deceased and therefore unavailable within the meaning of Rule 92 *quater* of the Rules.

5. With regard to the reliability of the tendered excerpts of the testimony of Bućo from the *Dragomir Milošević* case the Chamber notes that he testified under oath and was subject to cross-examination.

¹ Prosecution Motion to Admit the Evidence of Kemal Bućo (RM109) pursuant to Rule 92 *quater*, 3 December 2014.

² Defence Response to Prosecution Motion to Admit the Evidence of Kemal Bućo (RM109) pursuant to Rule 92 *quater*, 16 December 2013. For details of the Defence submissions the Chamber refers to the Response.

³ Prosecution Request for Leave to Reply and Reply to Defence Response to Prosecution Motion to Admit the Evidence of Kemal Bućo (RM109) pursuant to Rule 92 *quater*, 23 December 2013. For the Prosecution submissions, see the Motion, the Request for Leave to Reply, and the Reply. On 7 January 2014 the Chamber informally asked the parties to make the Witness Statement of Kemal Bućo available to the Chamber for its consideration of the Motion, to which both parties agreed.

⁴ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 22 July 2012.

6. Regarding the Defence's argument that the tendered excerpts of cross-examination are not extensive, the Chamber recalls that the tendering party is not required to submit a witness's testimony in its entirety.⁵ Instead, only the portions of a transcript upon which the tendering party seeks to rely should be tendered for admission, including any portions necessary for contextualizing or clarifying those portions.⁶ In its response to such a motion, the other party should then tender any portions it considers relevant to the proper understanding of the witness's testimony.⁷ The Chamber notes that the Defence did not tender such portions in its Response. Absent specific submissions on reliability issues that would arise from the Prosecution tendering only parts of Bućo's cross-examination, the Chamber does not consider this to make the evidence unreliable.

7. The Chamber has further reviewed the tendered evidence in light of the Defence's argument that it is inconsistent with Bućo's witness statement, and the testimonies of Aernout van Lynden and Mirza Sabljica. In his statement Bućo stated that he "would visit the sites of cases of sniping and shelling against civilians".⁸ In his testimony, after being questioned if he would attend crime scenes, as part of his duties, Bućo testified "No, I only took statements from the victims, and based on these statements I compiled my own reports."⁹ The Chamber considers that his general statement about his work as an inspector does not contradict his testimony about his specific duties when assisting the Ministry of the Interior to collect statements. Furthermore the Chamber notes that Bućo has been extensively examined and gave clear answers about his duties as a criminal inspector during the war.

8. As for the alleged inconsistency regarding the investigations on Scheduled Incident F.13 the Chamber notes that Mirza Sabljica testified that UNPROFOR was present with a team but that this team did not conduct the investigation together with the BiH MUP ballistic team.¹⁰ In his witness statement Bućo said that "the origin of fire was determined on the basis of our ballistic team and also of UNPROFOR who were also present". The mere fact that an UNPROFOR team did not conduct the investigation together with the BiH MUP ballistic team is not as such inconsistent with the presence of an UNPROFOR team at the place where the tram was hit or with a possible involvement of that team or any of its team members, in a yet unspecified capacity, in the path leading to the determination of the origin of fire as reported by the BiH team.

⁵ T. 5406-5408.

⁶ T. 5407.

⁷ Ibid.

⁸ Kemal Bućo, ICTY witness statement, p. 2

⁹ Excerpts of the testimony of Kemal Bućo from *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, namely T. 1493.

¹⁰ Mirza Sabljica, T. 8187-8189.

9. The Chamber finds that the Defence argument that Van Lyndens evidence contradicts the Prosecution claim of corroboration is without merit. Van Lynden testified that he had visited several positions around Sarajevo held by the SRK which is corroborative in accordance with the Prosecutions claim. The fact that he, when asked about daily information and knowledge of all firing positions of the BiH army, responded that he did not know them all, from neither side of the conflict, does not in any way invalidate his observations of positions he had visited.

10. As regards the Defence's assertion that portions of the testimony contain hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal.¹¹ Further the Chamber notes that it is clear from the portion of the testimony indicated by the Defence that the witness has no direct knowledge about the subject he's testifying about there. The Chamber does not consider that this affects the overall reliability of Bućo's evidence.

11. Turning to the Defence objection that parts of his testimony constitute expert testimony, the Chamber considers that the transcript lines indicated by the Defence are not expert evidence, but contain a factual description by the witness about how incident reports were compiled and drafted. The reports Bućo refers to in his testimony have been admitted into evidence.¹²

12. Based on the foregoing, the Chamber finds that the evidence of Kemal Bućo meets the reliability requirements of Rule 92 *quater* of the Rules.

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

13. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the selected portions of the previous testimony of Kemal Bućo are relevant to the case, as they relate to crimes allegedly committed within the Indictment period, in particular to Scheduled Incident F.13 of the Indictment. Since reliability is a component part of the probative value of a piece of evidence, the Chamber considers that there is no need to re-examine this aspect of the probative value where a determination of reliability has already been made within the context of Rule 92 *quater* (A) (ii) of the Rules.

¹¹ See *Prosecutor v. Aleksovski*, Case No. IT-95-14/I-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15; *see also* Decision on Prosecution's Motion to Admit the Evidence of Witness Predrag Radulović pursuant to Rule 92 *quater*, 20 December 2013, para. 5.

¹² These documents were admitted on 7 December 2012 as P614 and P619.

(d) Guidance

14. The Chamber finds that the tendering of this evidence complies with the Chamber's Guidance.¹³

IV. DISPOSITION

15. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *quater* of the Rules, the Chamber **GRANTS** the Prosecution's request for leave to reply;

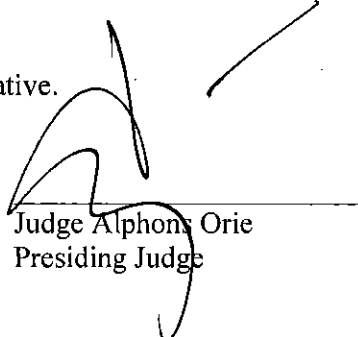
GRANTS the Motion;

ADMITS into evidence excerpts of the testimony of Kemal Bućo, dated 2 February 2007, from *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, T. 1489:15-1490:3, 1490:14-17, 1493:3-1495:15, 1496:17-1499:2, 1508:16-1512:1;

INSTRUCTS the Prosecution to upload the admitted document into eCourt within two weeks of the date of issuance of this decision; and

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

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



Judge Alphonse Orié
Presiding Judge

Dated this twenty-fourth day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ T. 137, 194, 315-325, 525-532.