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13 February 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: 13 February 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: 13 February 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF MILENKO LAZIĆ (RM-288) AND NOVICA
SIMIĆ (RM-353) 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 BY THE PARTIES

1. On 30 August 2013, the Prosecution filed a confidential motion (“Motion”) tendering evidence of selected excerpts of prior testimonies of Milenko Lazić and Novica Simić, along with a number of associated exhibits, pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 13 September 2013, the Defence responded to the Motion, objecting to the admission of the evidence in its entirety.²

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.³

III. DISCUSSION

(i) Rule 92 quater

3. The Chamber has been provided with the death certificates of the witnesses and is convinced that the witnesses are deceased.⁴ They are therefore unavailable within the meaning of Rule 92 *quater* (A) (i) of the Rules.

4. With regard to the requirements of Rule 92 *quater*, the Chamber considers that the proffered evidence was elicited within the safeguards afforded by judicial proceedings. It was given under oath in proceedings before this Tribunal and interpreted simultaneously by duly-qualified CLSS interpreters. Further, the witnesses were cross-examined. With regard to Milenko Lazić, the Defence points to a number of portions of the testimony that are “speculative in nature, irrelevant, vague and contradictory”.⁵ The Chamber notes that most of the references indicated by the Defence

¹ Prosecution Motion to Admit the Evidence of Milenko Lazić (RM288) and Novica Simić (RM353) Pursuant to Rule 92 *quater*, 30 August 2013 (Confidential). For further details with regard to the Prosecution’s submissions, *see* the Motion.

² Defence Response to Prosecution Motion to Admit Evidence of Milenko Lazić (RM288) and Novica Simić (RM353) Pursuant to Rule 92 *quater*, 13 September 2013 (Confidential) (“Response”). For further details with regard to the Defence’s submissions, *see* the Response.

³ 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.

⁴ *See* Motion, Annex C and F.

⁵ Response, paras 8-13.

refer to questioning where the witness expresses his uncertainty about the answer. It is therefore clear from the transcript that the witness does not know the answer, and any answer he nevertheless offers must be considered in light of that. The Chamber does not find that the portions indicated by the Defence render the evidence unreliable. For the foregoing reasons, the Chamber finds that the proffered evidence is reliable within the meaning of Rule 92 *quater* (A) (ii).

5. The Chamber also considers that the proffered evidence is cumulative to the evidence of other witnesses in this case⁶ and that it does not go to the acts and conduct of the accused Ratko Mladić as charged in the Indictment.⁷ The Defence argues that the testimony of Novica Simić touches upon a live and important issue, namely the “Six Strategic Objectives”.⁸ The relevant part of the testimony covers two transcript pages where the witness is shown his own notes from a meeting when the strategic objectives were discussed. The notes list the strategic objectives, written in the witness’s own words or the words of the person speaking at the meeting. The Chamber does not consider that this reference by the witness to the strategic goals militates against admission pursuant to Rule 92 *quater*. Based on the foregoing, the Chamber finds that the proffered evidence can be admitted pursuant to Rule 92 *quater* of the Rules.

(ii) Rule 89 (C)

6. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the proffered evidence is relevant to Counts 2 through 8 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. The Chamber thus considers that the proffered evidence has probative value pursuant to Rule 89 (C) of the Rules.

(iii) Associated Exhibits

7. The Chamber notes that the documents with Rule 65 *ter* numbers 5807, 13162, and 5234 have already been admitted into evidence.⁹ The request for admission into evidence of these documents is therefore moot. With regard to Rule 65 *ter* number 7651, which is 113 pages long, the Chamber understands from Annex D of the Motion that the Prosecution is only tendering pages 38

⁶ This includes Richard Butler, Rupert Smith, and Ljubomir Obradović.

⁷ The Chamber notes that the Defence states that “[t]here is some limited discussion in the Simić transcript that goes to the acts and conduct of the Accused” (Response, para. 19). They do so in the context of arguing that the cross-examination of this witness, who was called as a Defence witness in the *Popović et al.* case, did not adequately address the interests of the accused in this case (*ibid.*). The Defence does not specify in any way which portions of the previous evidence that allegedly deals with the acts and conduct of the accused.

⁸ Response, para. 16.

⁹ As P2095, P2481, and P2918.

and 39 of the English version.¹⁰ The Prosecution is therefore instructed to upload those two pages into eCourt after which they can be admitted into evidence. With regard to the remaining associated exhibits, the Chamber has reviewed them with a view to determining whether they are needed to properly understand the evidence of the two witnesses. In this respect, the Chamber finds that the following documents form an inseparable and indispensable part of the witnesses' written testimonies: Rule 65 *ter* numbers 6037, 5585, 8712, 21884, 26067, 9825, 3524, 9228, and 14153.

(iv) Guidance

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

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *quater* of the Rules, the Chamber hereby

GRANTS the Motion in part and with respect to

(i) Milenko Lazić

ADMITS into evidence

a) excerpts of the testimony of Milenko Lazić from *Prosecutor v. Popović et al.* (Case No. IT-05-88-T), as included in Annex B and specified in Annex A of the Motion¹²; and

b) associated exhibits with Rule 65 *ter* numbers 06037 and 05585;

(ii) Novica Simić

ADMITS into evidence

a) excerpts of the testimony of Novica Simić from *Prosecutor v. Popović et al.* (Case No. IT-05-88-T), as specified in Annex D of the Motion;

¹⁰ The Chamber notes that the ERN numbers indicated in the Motion, Annex D do not perfectly correspond to the pages that the Prosecution is tendering. In this respect, the Chamber has considered the page numbers in Rule 65 *ter* 7651, which are the same as the page numbers in eCourt.

¹¹ T. 137, 194, 315-325, 525-532. In this respect, the Chamber notes that the Defence in its Response appears to think that the Prosecution is tendering all the documents discussed by the witness (*see* Response, paras 14-15, 17-18). However, the Prosecution explicitly limits its tendering to seven associated exhibits for Lazić and ten for Simić (*see* Motion, paras 9, 16).

¹² The Chamber notes, however, that Annex A omits a reference to T. 21851:1-25.

b) associated exhibits with Rule 65 *ter* numbers 8712, 21884, 26067, 9825, 3524, 9228, and 14153;
and

c) pages 38 and 39 of the associated exhibit with Rule 65 *ter* number 7651;

DECLARES the Motion moot with regard associated exhibits with Rule 65 *ter* numbers 5807, 13162, and 5234;

DENIES the Motion in all other respects;

INSTRUCTS the Prosecution to upload into eCourt all the above documents, as well as pages 38 and 39 of Rule 65 *ter* number 7651, within two weeks of the date of this decision, insofar as it has not done so already; and

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

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]