

IT-09-92-T  
D46827-D46823  
09 NOVEMBER 2012

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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: 9 November 2012  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 9 November 2012

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION MOTION TO ADMIT THE  
EVIDENCE OF WITNESSES ZAIM KOŠARIĆ AND ĐULA  
LEKA PURSUANT TO RULE 92 *QUATER***

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**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 21 September 2012, the Prosecution filed a motion (“Motion”) seeking to admit into evidence prior statements of Zaim Košarić (RM-133) and Đula Leka (RM-137), as well as one associated exhibit pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>1</sup> On 4 October 2012, the Defence filed its response (“Response”).<sup>2</sup> On 11 October 2012, the Prosecution filed a motion seeking leave to reply to the Response (“Reply”), which was granted by the Chamber on 17 October 2012, and the parties were informed accordingly through an informal communication.<sup>3</sup>

## II. SUBMISSIONS OF THE PARTIES

2. The Prosecution submits that the requirements of the Rules are met since the witnesses are unavailable because they are deceased and their statements are reliable and relevant to the Indictment.<sup>4</sup> The statements deal with the shelling of the Markale marketplace on 28 August 1995 and, according to the Prosecution, corroboration is found in adjudicated facts nos 2564, 2571, 2576, 2577, 2578, and 2580, documentary evidence, as well as the testimony of other witnesses, one of whom already testified before the Chamber.<sup>5</sup> Furthermore, the evidence is crime based and does not relate to the acts and conduct of the Accused.<sup>6</sup>

3. With regard to Košarić the proposed evidence consists of an ICTY Witness Statement dated 5 November 2008.<sup>7</sup> The proposed evidence for Leka includes a witness statement given to Bosnian authorities on 29 August 1995 (“Bosnian Statement”) and an ICTY Witness Statement given on 25 February 1996.<sup>8</sup> The Bosnian Statement is tendered as an associated exhibit as it, according to the Prosecution, forms an inseparable and indispensable part of the witness’s evidence since it was

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<sup>1</sup> Prosecution Motion to Admit the Evidence of RM133 and RM137 pursuant to Rule 92 *quater*, 21 September 2012.

<sup>2</sup> Defence Response to Prosecution Motion to Admit the Evidence of RM133 and RM137 pursuant to Rule 92 *quater*, 4 October 2012.

<sup>3</sup> Prosecution Motion Seeking Leave to Reply to Defence Response to Prosecution Motion to Admit the Evidence of RM133 and RM137 pursuant to Rule 92 *quater*, 11 October 2012.

<sup>4</sup> Motion, paras 2, 6, 14, Annex A.

<sup>5</sup> Motion, paras 2, 7, 9, 16, Annex C; Reply, paras 4, 9.

<sup>6</sup> Motion, paras 12, 19.

<sup>7</sup> Motion, para. 7, Annex B.

<sup>8</sup> Motion, paras 14, 20, Annex B.

discussed and corrected in the ICTY Witness Statement.<sup>9</sup> The Prosecution submits that the ICTY Witness Statements were read back to the witnesses by an interpreter duly certified by the Registry of the Tribunal in a language they understood and signed by the respective witness.<sup>10</sup> They are furthermore accompanied by a signed acknowledgement confirming that the statement was given voluntarily and is true to the best of the witness' knowledge and recollection.<sup>11</sup>

4. The Defence opposes the Motion and contends that the proffered testimony is unreliable, goes to the acts and conduct of the Accused, touches upon critical aspects of the Prosecution's case-in-chief, and should therefore be excluded as there is no possibility of cross-examination.<sup>12</sup> However, the Defence does not challenge the unavailability of the witnesses.<sup>13</sup> The Defence contends that the statements are uncorroborated because no eye-witnesses testified on this incident before and there has been no cross-examination of these witnesses on the record.<sup>14</sup>

### III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing the admission of evidence and associated exhibits pursuant to Rule 92 *quater* of the Rules, as set out in a previous decision.<sup>15</sup>

### IV. DISCUSSION

6. The Chamber has been provided with the death certificates of the witnesses and is therefore satisfied that they are deceased and therefore unavailable pursuant to Rule 92 *quater* of the Rules.

7. With regard to the reliability of the statements, the Chamber notes that the witness statements of Košarić and Leka were neither given under oath nor have been subject to cross-examination. Nevertheless, they were signed by the respective witness with an accompanying acknowledgement that the statement is true to the best of the witness' recollection and were taken

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<sup>9</sup> Motion, paras 20-21.

<sup>10</sup> Motion paras 8, 15.

<sup>11</sup> Ibid.

<sup>12</sup> Response, para. 1.

<sup>13</sup> Response, para. 13.

<sup>14</sup> Response, para. 14-15.

<sup>15</sup> Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 10-13.

with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal. The Chamber considers that the statements are corroborated by the anticipated testimony of other witnesses who are due to give evidence in this case and by the testimony of two witnesses who have already given evidence in this case.<sup>16</sup> Considering this, the Chamber will not address whether the adjudicated facts the Chamber has taken judicial notice of can have a corroborating function. The Chamber further considers that there are no inconsistencies between the two statements and that the proposed evidence does not go to the acts and conduct of the Accused. Based on the foregoing, the Chamber finds that the evidence of both witnesses is reliable under Rule 92 *quater* of the Rules.

8. With respect to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the witness statements are relevant to the case, as they relate to the shelling of the Markale marketplace on 28 August 1995, which is charged under Counts 4, 5, 6, 9 and 10 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. As a result, the Chamber allows the witness statements of Košarić and Leka into evidence pursuant to Rule 92 *quater* of the Rules.

9. The Chamber finds that the Bosnian Statement forms an integral and indispensable part to Witness Leka's statement dated 25 February 1996. The Chamber therefore admits the document into evidence.

## V. DISPOSITION

10. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *quater* of the Rules, the Chamber **GRANTS** the Motion; and

**ADMITS** into evidence the ICTY Statements of Zaim Košarić (RM-133) dated 5 November 2008 and Đula Leka (RM-137), dated 25 February 1996 and as an associated exhibit the Bosnian Statement of Leka dated 29 August 1995.

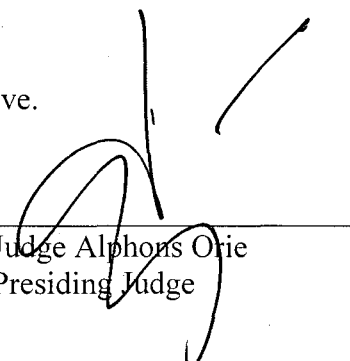
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<sup>16</sup> Sulejman Crnčalo, T. 3228-3307; Ismet Svraka, T. 4540-4580.

**INSTRUCTS** the Prosecution to upload into eCourt complete redacted versions of the statements bearing ERNs 0645-1924-0645-1929, 0645-1924-0645-1929-BCST and 0037-8865-0037-8867, 0308-2551-0308-2553 and the Bosnian Statement bearing ET 0052-3514-0052-3515, 0052-3514-0052-3515.

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

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



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Judge Alphons Orie  
Presiding Judge

Dated this Ninth day of November 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**