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D76486 - D76481
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 RULE 92 *QUATER* MOTION:
PREDRAG RADIĆ**

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 1 August 2013, the Prosecution filed a motion (“Motion”) tendering evidence of Predrag Radić pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution also seeks leave to add two documents to its Rule 65 *ter* exhibit list (“Exhibit List”).² On 12 August 2013, the Defence requested an extension to respond to the Motion, which was granted by the Chamber on 19 August 2013.³ On 27 September 2013, the Defence responded to the Motion, objecting to it in its entirety.⁴

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence and associated exhibits pursuant to Rules 89 (C) and 92 *quater* of the Rules, as set out in a previous decision.⁵ With regard to the applicable law related to amendments to the Exhibit List, the Chamber recalls and refers to a previous decision dealing with this matter.⁶

III. DISCUSSION

(i) Addition of exhibits to the Exhibit List

3. The witness was only recently added to the Prosecution’s Rule 65 *ter* witness list (“Witness List”)⁷ and for this reason the Chamber considers that the Prosecution had good cause for only

¹ Prosecution 92 *quater* Motion: Predrag Radić, 1 August 2013. For further details with regard to the Prosecution’s submissions, *see* the Motion.

² Motion, para. 21.

³ Defence Motion for Enlargement of Time to Respond to “Prosecution 92 *quater* Motion: Predrag Radić (RM099)”, 12 August 2013; T. 15267-15268.

⁴ Defence Response to Prosecution Motion to Admit Evidence of Predrag Radić (RM099) Pursuant to Rule 92 *quater*, 27 September 2013 (“Response”). For further details with regard to the Defence’s submissions, *see* the Response.

⁵ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012 (“RM-266 Decision”), 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.

⁶ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

⁷ T. 16745-16748. The Chamber notes that the Defence in its Response requested that the Chamber’s decision on the Motion be delayed until the Chamber had rendered a decision on the Prosecution’s request to add Radić to the Witness List. However, the decision about adding the witness to the Witness List had already been rendered at the time of the Response. This request is therefore moot.

seeking to add the documents, which consists of transcripts of the Prosecution's interviews with the witness about events in the ARK in 1992, at this late stage of the proceedings. Having reviewed the documents, the Chamber finds that the documents are *prima facie* relevant and of probative value. Considering that the Defence has been in possession of the documents at least since the Prosecution requested to add the witness to its Witness List,⁸ the Chamber considers that their addition to the Exhibit List does not unduly burden the Defence. For these reasons the Chamber is satisfied that it is in the interests of justice to grant the request for addition of the documents to the Exhibit List.

(ii) Rule 92 quater

4. The Chamber has been provided with the death certificate of the witness and is convinced that he is deceased.⁹ He is therefore unavailable within the meaning of Rule 92 *quater* (A) (i) of the Rules.

5. With regard to the remaining 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 witness was cross-examined. Contrary to the Defence's arguments,¹⁰ the Prosecution is tendering a part of this cross-examination into evidence. The Defence points to inconsistencies in the witness's testimony in the *Krajišnik* case but, although stating that admitting the testimony "would be prejudicial to the rights of the Accused to a fair trial", acknowledges that these inconsistencies do not affect the admissibility of the evidence, but should go to weight to be given to the evidence.¹¹ The Chamber will review any inconsistencies accordingly, when assessing the witness's testimony against the evidence as a whole. The Defence has further pointed to portions of hearsay and argues that the Motion should be denied on this basis.¹² Having reviewed the portions indicated by the Defence, the Chamber does not find that they render the proffered evidence unreliable. For the foregoing reasons, the Chamber concludes that the proffered evidence is reliable within the meaning of Rule 92 *quater* (A) (ii).

⁸ See Defence Response to Prosecution Motion for Leave to Amend Its Rule 65*ter* Witness List, 23 July 2013, paras 11-14.

⁹ See Motion, Annex C.

¹⁰ Response, p. 5.

¹¹ Response, pp. 5-6.

¹² Response, pp. 6-7.

6. The Chamber has also considered that the proffered evidence is cumulative with the evidence of other witnesses in this case¹³ and that it does not go to proof of the acts and conduct of the accused Ratko Mladić as charged in the Indictment. Based on the foregoing, the Chamber finds that the proffered evidence is admissible pursuant to Rule 92 *quater*.

(iii) Rule 89 (C)

7. With regard to the requirements of Rule 89 (C) of the Rules, the Chamber finds that the proffered evidence is relevant to Counts 1 and 3 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.

(iv) Associated Exhibits

8. The Chamber notes that the documents with Rule 65 *ter* numbers 6370 and 10841 have already been admitted into evidence. The request for admission into evidence of these documents is therefore moot. With regard to the documents with Rule 65 *ter* numbers 29138 and 29139, the Chamber notes that they are 85 and 70-page transcripts of the Prosecution's interviews with the witness. The Chamber considers that these are "evidence of a person in the form of a written statement or transcript who has subsequently died" and their admission should therefore be sought pursuant to Rule 92 *quater*, rather than as an associated exhibit.¹⁴ If the Prosecution opts to do so, it should bear in mind the Chamber's guidance that a tendering party should only tender for admission the portions of a transcript upon which it wants to rely, including any portions necessary to contextualize or clarify those portions.¹⁵ For the present witness, the Prosecution should make such a selection taking into account what will have been admitted through the present decision. Based on the foregoing, the Chamber denies admission of the two documents into evidence.

¹³ This includes Dorothea Hanson, Mevludin Sejmenović, Nusret Sivac, and Edward Vulliamy.

¹⁴ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Reasons for Decision on Prosecution's Motion for Admission of Evidence of Witness Miroslav Deronjić Pursuant to Rule 92 *quater*, 1 March 2011, para. 27. See also *Prosecutor v. Stanislav Galić*, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002, para. 31; *Prosecutor v. Slobodan Milošević*, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002, para. 18.

¹⁵ See RM-266 Decision, para. 14.

9. The Chamber considers all other associated exhibits referred to in the Motion to form an inseparable and indispensable part of the witness's testimony and finds them admissible on this basis.¹⁶

(v) Guidance

10. The Chamber finds that the tendering of this evidence complies with the Chamber's Guidance.¹⁷

IV. DISPOSITION

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

GRANTS the request to add the documents bearing Rule 65 *ter* numbers 29138 and 29139 to the Exhibit List;

GRANTS the Motion in part and **ADMITS** into evidence

(a) the excerpts of the witness's testimony from *Prosecutor v. Krajišnik* (Case No. IT-00-39-T), as identified in Annex A of the Motion; and

(b) the associated exhibits bearing Rule 65 *ter* numbers 3214, 22306, 6879, 21298, 8972, 22682A, 6942, 3307, 10848 and 29143;

DECLARES the Motion moot with regard associated exhibits with Rule 65 *ter* numbers 6370 and 10841;

DENIES the Motion in all other respects, without prejudice;

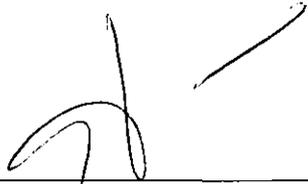
INSTRUCTS the Prosecution to upload into eCourt all the above documents within two weeks of this decision, insofar as it has not done so already; and

¹⁶ The Chamber notes the Defence's request to "reiterate its guidance regarding its preference for ICTY statements and fewer than 7 Associated Exhibits" (*see* Response, p. 8). The Chamber clarifies that its preference for ICTY statements over transcripts remains and that there has never been guidance from the Chamber limiting associated exhibits to seven documents.

¹⁷ T. 137, 194, 315-325, 525-532.

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.



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]