



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-81-T

Date: 21 April 2010

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 21 April 2010

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION
OF EVIDENCE PURSUANT TO RULE 92 *QUATER***

The Office of the Prosecutor

Mr. Mark Harmon
Mr. Daniel Saxon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

TRIAL CHAMBER I (“Trial Chamber”) of the 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 (“Tribunal”) is seised of the Defence’s “Motion for Admission of Evidence Pursuant to Rule 92 *quater* with Public Annexes” filed publicly on 22 March 2010 (“Motion”), and hereby renders its Decision.

I. SUBMISSIONS

1. In its Motion, the Defence requests that the Trial Chamber admit documents, statements and transcripts of testimony of three deceased witnesses – Milan Babić, Miroslav Deronjić and Đorđe Đukić (collectively, “Proffered Evidence”) – all of which it argues meet the requirements for admissibility under Rule 92 *quater* of the Rules of Procedure and Evidence (“Rules”).¹ The Defence submits that the Trial Chamber has previously admitted portions of statements, interviews and documents from these same witnesses pursuant to Rule 92 *quater*.²

2. The Defence tenders three sets of documents from Milan Babić (“Babić Proposed Evidence”). The first comprises Babić’s plea agreement before the Tribunal along with the accompanying factual statement.³ The Defence submits that the plea agreement is reliable as it is sworn to and signed by Babić, the Prosecutor and the Defence counsel, and that it is relevant as it relates to the credibility and intentions of Babić in testifying in cases before the Tribunal.⁴ Secondly, the Defence tenders two portions of testimony which Babić gave in the *Slobodan Milošević* case, both of which were given under oath and were subject to examination by both parties.⁵ The first portion of testimony deals with the credibility of Babić and is thus, according to the Defence, relevant to an assessment of the reliability of the witness’s evidence.⁶ The second portion of the testimony deals with Milošević’s participation in the peace process. The final document that the Defence tenders with respect to Babić is a part of his interview with the Office of the Prosecutor (“OTP”). The Defence submits that this document is relevant to a portion of Babić’s testimony that was previously tendered by the Prosecution, and that it gives the Trial Chamber a better understanding of the context of that portion of Babić’s testimony.⁷

3. With respect to Miroslav Deronjić, the Defence seeks to tender four portions of Deronjić’s testimony from previous cases before the Tribunal – namely the cases against *Krstić*, *Slobodan*

¹ Motion, paras 1 and 26.

² Motion, para. 3 referring to Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 92 *quater*, 10 October 2008 (“10 October 2008 Decision”).

³ Motion, Annex A1.

⁴ Motion, paras 8-9.

⁵ Motion, para. 10 and Annex A2.

⁶ Motion, para. 11.

Milošević, Blagojević and Jokić as well as *Krajišnik* (“Deronjić Proposed Evidence”).⁸ The Defence submits that all portions are relevant to the case as they concern the events that occurred at Srebrenica; the establishment and structure of the Army of Republika Srpska (“VRS”); the procurement of weapons and other aid by the VRS; and the direct credibility of the witness.⁹

4. The Defence points out that the Trial Chamber has previously admitted portions of Deronjić’s testimony from the *S. Milošević, Krstić* and *Blagojević and Jokić* cases.¹⁰

5. The final set of documents which the Defence seeks to tender comprise four portions of an interview conducted with Đorđe Đukić on 29 February 1996, other parts of which have already been tendered by the Prosecution and admitted into evidence by the Trial Chamber (“Đukić Proposed Evidence”).¹¹ The Defence notes that the portions of the interview which it now seeks to tender were all on the Prosecution’s 65 *ter* exhibit list, though were not tendered into evidence, and it argues that there is no discernable legal difference between the portions previously admitted into evidence and those it now tenders.¹² Accordingly, the Defence submits that the Đukić Proposed Evidence is reliable and relevant, dealing specifically with the Republika Srpska (“RS”) government’s control over the special purpose industry in the RS, Radovan Karadžić’s role as Supreme Commander of the VRS, the provision of aid by the Yugoslav Army (“VJ”) and other countries, and the levels of materiel possessed by the VRS during the conflict.¹³

6. The Prosecution informally informed the Trial Chamber that it did not intend to file a response and that it does not oppose the Motion.¹⁴

II. APPLICABLE LAW

7. The Trial Chamber notes that in order for the requirements of Rule 92 *quater* to be met, the Trial Chamber must be satisfied that the person is unavailable and that the evidence which is sought to be admitted is reliable.¹⁵

⁷ Motion, para. 13.

⁸ Motion, Annexes B1-B4, respectively.

⁹ Motion, para. 18.

¹⁰ Motion, para. 17. *See* 10 October 2008 Decision, para. 48.

¹¹ Motion, paras 21-22. 10 October 2008 Decision, para. 46.

¹² Motion, para. 24.

¹³ Motion, paras 23 and 25, Annexes C1-C4.

¹⁴ E-mail of 6 April 2010.

¹⁵ Rule 92 *quater*. *See Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2008, para. 29 (“*Popović et al.* Decision”).

8. The following indicia have been identified by the jurisprudence of the Tribunal as being relevant to the assessment of the reliability of the evidence to be admitted pursuant to Rule 92 *quater*:

- (a) the circumstances in which the statement was made and recorded, including:
 - (i) whether the statement was given under oath; or
 - (ii) whether the statement was signed by the witness with an accompanying acknowledgement that the statement is true to the best of his or her recollection; and
 - (iii) whether the statement was taken with the assistance of an interpreter duly qualified and approved by the Registry of the Tribunal;
- (b) whether the statement has been subject to cross-examination;
- (c) whether the statement, in particular an unsworn statement which was never subject to cross-examination, relates to events about which there is other evidence; and
- (d) other factors, such as the absence of manifest or obvious inconsistencies in the statements.¹⁶

9. In addition to the conditions set out in Rule 92 *quater* of the Rules, the Trial Chamber must also ensure that the general requirements of admissibility under Rule 89(C) of the Rules are satisfied, namely that the evidence is relevant and has probative value.¹⁷

10. The Trial Chamber also notes that Rule 92 *quater*(B) allows for the admission of evidence which may go to proof of acts and conduct of an accused as charged in the indictment, although such contents may be a factor mitigating against the admission of the evidence.

III. DISCUSSION

11. The Trial Chamber notes that all three of these witnesses are deceased and is therefore satisfied that each is “unavailable” within the meaning of Rule 92 *quater*.

12. The Trial Chamber has taken into account the fact that the Prosecution does not oppose the Motion. However, prior to admitting the Proffered Evidence into evidence, the Trial Chamber will nevertheless evaluate it in order to ensure that the criteria of admissibility have been met.

¹⁶ 10 October 2008 Decision, para. 19. See also *Prosecutor v. Milutinović et al*, Case No. IT-05-87-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 16 February 2007, para. 7 (“*Milutinović et*

1. Milan Babić

13. With respect to Babić's plea agreement and supplemental factual statement, the Trial Chamber notes that the plea agreement is signed and dated by the witness, his counsels and representatives of the OTP. The accompanying factual statement is meant to demonstrate the adequacy of the underlying factual basis for the witness's guilty plea. The Trial Chamber is satisfied that the documents are reliable and finds that they are relevant strictly for the purposes stated by the Defence, namely demonstrating the credibility and intentions of Babić.

14. The Trial Chamber notes that the Defence submits a second document, a portion of Babić's testimony in the *S. Milošević* case, also for the stated purpose of evaluating the credibility of the witness in testifying before the Tribunal.¹⁸ The witness was under oath when giving testimony and the Trial Chamber is satisfied that this portion is relevant to the aforementioned purpose related to the credibility of Babić.

15. The Defence also seeks the admission of an additional portion of Babić's testimony from the *S. Milošević* case.¹⁹ This section deals with Milošević's stance with regard to the peace process early in the conflict. The Trial Chamber notes that this testimony is corroborated by previously admitted Prosecution evidence, as asserted by the Defence,²⁰ and is of cumulative relevance within the broader trial record.

16. The final document submitted by the Defence as part of the Babić Proposed Evidence is a portion of his interview with the OTP on 26 February 2002. The Trial Chamber notes that in the interview the witness is first reminded of his rights, of which he acknowledges to be aware, though he was not under oath at the time. The Defence contends that this document is relevant as it will allow the Trial Chamber to more fully evaluate the context of a portion of Babić's testimony that was previously tendered by the Prosecution under Rule 92 *quater* and admitted into evidence.²¹ The Trial Chamber is satisfied with the reliability and relevance of the document in light of the purpose for admission as submitted by the Defence, and thus finds no reason not to admit this portion of Babić's interview with the OTP.

al. Decision"); *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on the Admission of Statements of Seven Witnesses Pursuant to Rule 92 *quater*, 16 June 2008, para. 6; *Popović et al. Decision*, para. 31.

¹⁷ 10 October 2008 Decision, para. 20. *See also Milutinović et al. Decision*, para. 4.

¹⁸ Motion, para. 11. *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Transcripts, 18 November 2002, T. 12856:22-12857:22, 12859:9-12861:14.

¹⁹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Transcripts, 21 November 2002, T. 13196:22-13197:8.

²⁰ Motion, para. 12.

²¹ Motion, paras 13-14; Ex. P53, Transcript of Testimony of Milan Babić, *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, 20 November 2002.

17. The Trial Chamber considers that the Babić Proposed Evidence is reliable, relevant and of probative value within the meaning of Rules 89 and 92 *quater*. It is therefore admitted into evidence.

2. Miroslav Deronjić

18. The Trial Chamber notes that the Deronjić Proposed Evidence was given under oath and subject to cross-examination as well as to questions from the Bench. As such, the Trial Chamber finds it to be of sufficient reliability.

19. The Trial Chamber considers that the Deronjić Proposed Evidence concerns, *inter alia*, the hierarchical structure of the VRS, including the relations between civilian and military commanders, the events in Srebrenica, and the procurement of arms and other materiel by the VRS. The Trial Chamber notes that these topics are of direct relevance to issues of central importance to this case. In addition, some of the Deronjić Proposed Evidence goes directly to the credibility of the witness and thus relevant to an examination of the remainder of the witness's testimony.

20. In relation to those parts of the Deronjić Proposed Evidence that are outside the temporal scope of the Indictment period,²² the Trial Chamber finds that they can be useful for a full understanding of the remainder of Deronjić's testimony.²³

21. Taking the foregoing factors into account, the Trial Chamber finds that the Deronjić Proposed Evidence is reliable, relevant and of probative value pursuant to Rules 89 and 92 *quater* and admits it into evidence. However, the Trial Chamber notes that one page of the testimony given before the Appeals Chamber in the *Krstić* case overlaps with a section previously tendered by the Prosecution and admitted by the Trial Chamber. In order to avoid duplicating evidence, the Trial Chamber finds that these lines in the set of transcripts tendered by the Defence should be redacted.²⁴

3. Đorđe Đukić

22. The Trial Chamber recalls that it previously admitted a series of statements from Đukić taken in the context of an interview with him on 29 February 1996, finding the information contained therein to be reliable, relevant and of probative value.²⁵ The Defence now seeks to tender four additional portions of this interview. As was the case with the previous statements, the Đukić

²² See Motion, para. 19.

²³ See also 10 October 2008 Decision, para. 51.

²⁴ Ex. P83, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Transcripts, 21 November 2003, T. 130:10-130:25.

²⁵ 10 October 2008 Decision, para. 46.

Proposed Evidence was not given under oath but was signed and acknowledged by him. The Trial Chamber finds the Đukić Proposed Evidence to be of sufficient indicia of reliability.

23. The Trial Chamber notes that the Đukić Proposed Evidence concerns the structure of the VRS, the procurement of military aid and fuel by the VRS, and the relationship between the civilian and military leadership within RS. The Trial Chamber considers that part of the statements submitted comprise opinions of the witness²⁶ and, as such, will be weighed accordingly by the Trial Chamber. Considering that charges against the Accused include crimes allegedly committed by VRS personnel, the Trial Chamber considers that the Đukić Proposed Evidence is relevant to the present case.

24. Taking the aforementioned considerations into account, the Trial Chamber finds that the Đukić Proposed Evidence is reliable, relevant and of probative value in accordance with the requirements of Rules 89 and 92 *quater*, and is therefore admitted into evidence.

IV. DISPOSITION

25. **FOR THE FOREGOING REASONS and PURSUANT TO** Rules 89 and 92 *quater* of the Rules, the Trial Chamber hereby

GRANTS the Motion;

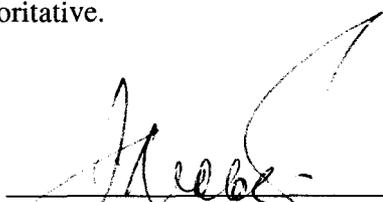
DECIDES that the Proffered Evidence be admitted into evidence, except for the following portion which is to be **redacted**:

- Miroslav Deronjić, witness testimony as provided in Annex B1 to the Motion, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Transcripts, 21 November 2003, T. 130:10-130:25; and

INSTRUCTS the Registrar to assign exhibit numbers to the documents admitted into evidence.

²⁶ See Motion, Annex C4.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this twenty-first day of April 2010

At The Hague

The Netherlands

[Seal of the Tribunal]