



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-95-5/18-T
Date: 23 March 2010
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 23 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR ADMISSION OF
THE EVIDENCE OF KDZ297 (MIROSLAV DERONJIĆ)
PURSUANT TO RULE 92 *QUATER***

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

THIS 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 "Prosecution's Motion for Admission of the Evidence of KDZ297 Pursuant to Rule 92 *quater*", filed on 10 June 2009 ("Motion"), and the "Prosecution's Further Submission for Admission of KDZ297's Evidence Pursuant to Rule 92 *Quater*", filed on 15 October 2009 ("Prosecution's Further Submission"), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor ("Prosecution") seeks the admission into evidence of oral testimony given by Miroslav Deronjić ("Deronjić") in the following cases:

- *Momir Nikolić* ("Nikolić") [on 28 October 2003];¹
- *Radislav Krstić* ("Krstić") [on 21 November 2003];²
- *Slobodan S. Milošević* ("S. Milošević") [on 26 and 27 November 2003];³
- *Vidoje Blagojević and Dragan Jokić* ("Blagojević & Jokić") [on 19, 20, 21, and 22 January 2004];⁴
- *Miroslav Deronjić* [on 27 January 2004];⁵ and
- *Momčilo Krajišnik* ("Krajišnik") [on 12, 13, 16, 18, and 19 February 2004].⁶

It also seeks the admission of an amalgamated witness statement signed by Deronjić on 25 November 2003,⁷ and a number of associated exhibits, pursuant to Rule 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules").⁸ The Prosecution argues that Deronjić is deceased,

¹ Deronjić, transcript from *Prosecutor v. Nikolić*, Case No. IT-02-60-1-S ("Nikolić Transcript"), (28 October 2003), T. 1537–1581.

² Deronjić, transcript from *Prosecutor v. Krstić*, Case No. IT-98-33-A ("Krstić Transcript"), (21 November 2003), T. 101–171.

³ Deronjić, transcript from *Prosecutor v. S. Milošević*, Case No. IT-02-54 ("S. Milošević Transcript"), (26 November 2003), T. 29617–29718, (27 November 2003) T. 29731–29799.

⁴ Deronjić, transcript from *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T ("Blagojević & Jokić Transcript") (19 January 2004), T. 6131–6207, (20 January 2004) T. 6216–6300, (21 January 2004) T. 6304–6392, and (22 January 2004) T. 6398–6510.

⁵ Deronjić, transcript from *Prosecutor v. Deronjić*, Case No. IT-02-61-S ("Deronjić Transcript") (27 January 2004), T. 106–172.

⁶ Deronjić, transcript from *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, ("Krajišnik Transcript") (12 February 2004) T. 856–902, (13 February 2004) T. 908–993, (16 February 2004) T. 1003–1089, (18 February 2004) T. 1096–1181, and (19 February 2004) T. 1182–1248.

⁷ Deronjić, Witness Statement dated 25 November 2003, paras. 1–232.

⁸ Motion, para. 1.

that he previously testified under oath in these six proceedings, that he was subject to extensive cross-examination, and that his evidence is relevant, of probative value, and reliable.⁹

2. The Accused filed his “Response to Prosecution 92*Quater* Motion: Miroslav Deronjić” on 4 August 2009 (“Response”), opposing the Motion on four grounds: (i) Rule 92 *quater* violates his rights under Article 21(4)(e) of the Statute of the Tribunal (“Statute”) “to examine, or have examined, the witnesses against him”;¹⁰ (ii) in the circumstances of this case, the cumulative effect of the Prosecution’s motions for judicial notice of adjudicated facts and motions for the admission of evidence pursuant to Rules 92 *bis* and *quater* shifts the burden of proof from the Prosecution to the Accused, in violation of his right to a fair trial;¹¹ (iii) the evidence of Deronjić is unreliable due to notoriously uncorroborated statements, grave inconsistencies in his testimony, and his status as a convicted war criminal and beneficiary of a plea agreement;¹² and (iv) the nature of the evidence relates to the acts and conduct of the Accused in a way that is pivotal to the Prosecution’s case and this should weigh heavily against its admission.¹³ The Accused further submits that if the Chamber is satisfied that Deronjić’s evidence is admissible pursuant to Rule 92 *quater*, it should redact inconsistent statements, statements relating to acts and conduct of the Accused, and statements going to critical issues of the Prosecution’s case.¹⁴

3. Having been granted leave by the Chamber,¹⁵ the Prosecution submitted the “Prosecution Reply to ‘Response to Prosecution 92*Quater* Motion: Miroslav Deronjić’” on 14 August 2009 (“Reply”), addressing the arguments raised in the Response.¹⁶ It argues that: (i) Rule 92 *quater* does not violate the Statute or shift the burden of proof onto the accused; (ii) Deronjić’s evidence is *prima facie* reliable for the purposes of admission; (iii) evidence which pertains to acts and conduct of an accused is admissible, even when it relates to pivotal elements of the Prosecution’s case;¹⁷ (iv) the jurisprudence of the Tribunal supports the admission of this testimony;¹⁸ and (v) there is no basis for ruling separately on individual elements of Deronjić’s evidence.¹⁹

⁹ Motion, para. 2.

¹⁰ Response, para. 2.

¹¹ Response para. 3.

¹² Response paras. 4, 10–15

¹³ Response, para. 4.

¹⁴ Response, para. 21.

¹⁵ Decision on Prosecution Requests for Leave to Reply: 92 *Quater* Motions, 11 August 2009.

¹⁶ Reply, para. 1.

¹⁷ Reply, paras. 2–12

¹⁸ Reply, paras. 13–16.

¹⁹ Reply, paras. 17.

4. Following a discussion of the volume of evidence proposed in the Motion at the Status Conference held on 20 August 2009,²⁰ the Chamber issued its “Order for Further Submissions Concerning Prosecution’s Motions for Admission of Rule 92 *Quater* Evidence” on 21 August 2009 (“Order”). The Chamber noted that “parts of [Deronjić’s] testimony in the six different cases repetitively cover the same events”,²¹ and instructed the Prosecution to identify only those portions it intended to have admitted into evidence in this case, bearing in mind the requirements of relevance and non-repetition.²² The Chamber additionally allowed the Accused an opportunity to respond with his own submission.²³

5. Following the Order, the Prosecution filed the Prosecution’s Further Submission, in which it withdraws from the Motion the testimony given by Deronjić in the *Nikolić* and *Deronjić* sentencing hearings,²⁴ and 14 related exhibits, including all the Prosecution interviews of Deronjić conducted prior to 25 November 2003.²⁵ The Prosecution submits that it relies primarily on the two testimonies given by him in the *Blagojević & Jokić* and *Krajišnik* cases,²⁶ while the remaining transcripts from the *Krstić* and *S. Milošević* cases expand, clarify or modify particular issues.²⁷ To this end, the Prosecution identifies specific pages and lines of the *Krstić*, *S. Milošević*, *Blagojević & Jokić*, and *Krajišnik* transcripts, which it submits are repetitive or not relevant. However, it retains Deronjić’s statement of 25 November 2003 in full, arguing that it is “concise, well-structured, highly relevant and may be of considerable assistance to the Chamber [...]”.²⁸

6. Having received an extension of time to respond to the Prosecution’s Further Submission,²⁹ the Accused filed his “Supplemental Submissions: Rule 92 *quater* Motion: Babic & Deronjic” on 30 November 2009 (“Accused’s Further Submission”). The Accused reiterates his previous argument that the application of Rule 92 *quater* to this evidence violates his right to a fair trial, and that it should be excluded in its entirety.³⁰ In the event the Chamber finds the evidence admissible, he argues in the alternative that it should also admit some of the evidence proffered in the Motion

²⁰ Status Conference, T. 415–424 (20 August 2009).

²¹ Order, para. 3.

²² Order, para. 7.

²³ Order, para. 7.

²⁴ Prosecution’s Further Submission, para. 2.

²⁵ Prosecution’s Further Submission, para. 3, Appendix B.

²⁶ Prosecution’s Further Submission, para. 7.

²⁷ Prosecution’s Further Submission, para. 8.

²⁸ Prosecution’s Further Submission, para. 9.

²⁹ See Decision on the Accused’s Second Submission for Extension of Time to File Response: Rule 92 *Quater* Submissions (Babić & Deronjić), 26 November 2009 para. 8; Decision on Motion for Extension of Time to File Response: Rule 92 *Quater* Submissions: Babić & Deronjić, 12 November 2009, para. 3.

³⁰ Accused’s Further Submission, para. 2.

but subsequently withdrawn by the Prosecution's Further Submission.³¹ Specifically, the Accused requests the admission of the *Nikolić* and *Deronjić* transcripts in their entirety, along with the transcripts of his evidence in the *S. Milošević* and *Krstić* cases, the Prosecution interviews with *Deronjić* dated 4 February 1998, 21 October 1999, 12 March 2001, and 8 April 2002, and the Prosecution's report on its initial interview with *Deronjić* on 16 December 1997.³²

II. Discussion

7. The Chamber has set out the applicable law, and has discussed the first two of the Accused's arguments against the operation of Rule 92 *quater* in its "Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 [Predrag Radić] and Associated Exhibits Pursuant to Rule 92 *Quater*" issued on 20 August 2009 ("KDZ198 Decision").³³ It will not repeat that discussion here, but reiterates that the evidence of an unavailable witness may be submitted in written form if the Chamber finds: (i) the witness unavailable within the meaning of Rule 92 *quater*(A); (ii) from the circumstances in which the statement was made and recorded that it is reliable; (iii) the evidence is relevant to the proceedings and of probative value; and (iv) that the probative value of the evidence, which may include evidence pertaining to acts and conduct of an accused, is not outweighed by the need to ensure a fair trial.³⁴ Accordingly, the Chamber will only address whether the evidence now sought to be admitted meets the requirements of Rules 89 and 92 *quater*, and the remaining arguments made by the Accused against the admission of *Deronjić*'s evidence pursuant to these Rules.

8. The Accused does not challenge the status of *Deronjić* as "unavailable", and the Chamber accepts he is in fact deceased and therefore unavailable based on the submission of a copy of the witness's death certificate by the Prosecution.

9. As a preliminary matter and in light of the complicated procedural history of this Motion set out in brief above, the Chamber finds it necessary to clarify exactly how it will proceed with the review of *Deronjić*'s evidence and the assessment of whether it meets the relevant standards for admission in this case. The Prosecution has reduced the amount of evidence originally proffered in the Motion, primarily by removing from consideration the transcripts from the *Nikolić* and

³¹ Accused's Further Submission, para. 3, Appendix B.

³² Accused's Further Submission, Appendix B.

³³ KDZ198 Decision, paras. 4–10.

³⁴ KDZ198 Decision, paras. 4–6; Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 *Quater*, 30 November 2009, para. 6. See *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.4, Decision on Beara's and Nikolić's Interlocutory Appeals Against Chamber's Decision on 21 April 2008 Admitting 92 *quater* Evidence, 18 August 2008 (*Popović et al.* Appeal Decision), para. 30.

Deronjić sentencing hearings, and by removing all the Prosecution's interviews with *Deronjić* as associated exhibits. The Prosecution has also eliminated some substantive portions of the *Krstić*, *S. Milošević*, and *Blagojević & Jokić* transcripts, which it views as repetitive or irrelevant. The Accused vigorously opposes the admission of any of *Deronjić*'s evidence, but also argues in the alternative that the evidence withdrawn from the original Motion by the Prosecution contains portions that are both favourable to him and cast doubt on *Deronjić*'s credibility. Thus, should any of *Deronjić*'s evidence be admitted, these portions should be included.³⁵

10. In light of the position taken by the Accused, and the requirement of Rule 92 *quater*(A)(ii) that the proffered evidence must be considered reliable in order for it to be admitted pursuant to this Rule, the Chamber finds it necessary to review all the transcripts of *Deronjić*'s testimony from the six previous proceedings, in their entirety, along with his 25 November 2003 witness statement and his interviews with the Prosecution, to determine whether *Deronjić*'s evidence as a whole satisfies the standards for admission under Rule 92 *quater*, and which portions, if any, should be admitted.

A. Relevance of *Deronjić*'s Evidence

11. The Chamber begins its analysis of *Deronjić*'s evidence by considering whether it meets the basic requirements of relevance and probative value enshrined in Rule 89 of the Rules.

12. During the Indictment period, *Deronjić* was a high ranking member of the Serbian Democratic Party ("SDS") in the municipality of Bratunac, in Bosnia and Herzegovina ("BiH"). He served as the president of the SDS in Bratunac from September 1990 until the spring of 1996, and was appointed president of the Bratunac municipality Crisis Staff from the end of April until the middle of June 1992. In the summer of 1993, he was appointed to the War Staff of Bratunac Municipality and became a member of the Main Board of the SDS. Finally, in July of 1995, he was appointed Civilian Commissioner for the Municipality of Srebrenica and President of the War Presidency for that municipality.

13. In the various cases in which he was a witness, *Deronjić* testified to the actions of the SDS, both at the national and local levels leading up to the commencement of the conflict in 1992, and described the evolution of the party's position from support for a unified Yugoslav state, to one which promoted the division of BiH. He detailed several high-level SDS meetings attended and chaired by the Accused, at which SDS policies were discussed, and he described the implementation of SDS plans in Bratunac municipality. *Deronjić* specifically testified about the arming of Bosnian Serbs in Bratunac, the role of the Yugoslav National Army and paramilitary

³⁵ Accused's Further Submission, Appendix B.

forces in Bratunac, and his own role in orchestrating the take-over of Bratunac and Glogova towns. Finally, Deronjić described his involvement in the events leading up to the take-over of the Srebrenica enclave in the summer of 1995, and specifically detailed several communications between himself and the Accused involving the treatment and ultimate fate of persons captured during that take-over.

14. The Chamber is satisfied that Deronjić's evidence is relevant to the current proceedings as much of it relates to Counts 1 through 8 of the Third Amended Indictment ("Indictment"). Moreover, a significant part of his evidence relates to critical elements of the Prosecution's case, namely the allegations that the Accused participated in joint criminal enterprises to remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as well as to eliminate the Bosnian Muslims in Srebrenica, set out in paragraphs 9–14 and 20–24 of the Indictment respectively. His evidence is also relevant to the allegations concerning the Accused's own design and knowledge of crimes, as well as the Accused's failure to take necessary and reasonable measures to investigate, report, or discipline those responsible for those crimes, as set out in paragraphs 33–35 of the Indictment.

15. It is understood that, to have any probative value, evidence must be *prima facie* reliable.³⁶ There is thus an overlap between the requirements of Rule 89(C) and Rule 92 *quater*(A)(ii).³⁷ The Chamber will further discuss the reliability of Deronjić's evidence below, before addressing the evidence related to the acts and conduct of the Accused, and whether the probative value of his evidence is substantially outweighed by the need to ensure a fair trial.

B. Reliability

16. Deronjić was initially interviewed by the Prosecution on 16 December 1997, and then again on 4 February 1998. On 1 July 1998, the Prosecution informed Deronjić that his status had changed to that of a suspect.³⁸ Deronjić gave four subsequent interviews to the Prosecution on 21 October 1999, 12 March 2001, 8 April 2002, and 4 May 2002. On 3 July 2002, the Prosecution issued the first Indictment against him, and he was arrested on 7 July 2002. Almost a year later, on 1 June 2003, he signed and entered into an "Understanding of the Parties", in which he agreed to be interviewed by the Prosecution in relation to the *S. Milošević* case, on the basis that nothing he said

³⁶ See *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22.

³⁷ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *quater* and 13th Motion for Trial-Related Protective Measures, 7 September 2007, para. 11; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Public Redacted Version* Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rules 92 *bis* and *quater* of the Rules, 27 October 2006, para. 11.

³⁸ *Blagojević & Jokić* Transcript (19 January 2004), T. 6168.

in that particular interview would be used against him in his own proceedings before the Tribunal.³⁹ The Prosecution then conducted several more interviews with Deronjić prior to his guilty plea.

17. On 29 September 2003, Deronjić pleaded guilty to the crimes alleged in his Second Amended Indictment, which related to the take-over of Glogova in May 1992, and signed the Factual Basis appended to his plea agreement. At the same time, he agreed to assist the Prosecution and testify *viva voce* before this Tribunal in other cases.⁴⁰ The Prosecution agreed, *inter alia*, to recommend a sentence of ten years' imprisonment for the crimes to which Deronjić had pleaded guilty.⁴¹

18. In accordance with his plea-agreement, Deronjić testified during the *Nikolić* sentencing hearing on 28 October 2003, and during the *Krstić* appeal hearing on 21 November 2003. Thereafter, the Prosecution compiled an amalgamated statement, which he then reviewed in his own language and signed on 25 November 2003.⁴² On 26 and 27 November 2003, Deronjić testified in the *S. Milošević* case, and, on 19, 20, 21, and 22 January 2004, he also testified in the *Blagojević & Jokić* case. He then gave a statement at his own sentencing hearing on 27 January 2004, and subsequently testified for five days during the *Krajišnik* trial, beginning on 12 February 2004. Following this testimony, Deronjić was recalled on 5 March 2004 by his sentencing Chamber to reconcile inconsistencies between his live testimony and the facts stated in his Second Amended Indictment and the Factual Basis appended to his plea-agreement.⁴³ During this hearing, the parties resolved these inconsistencies through a series of agreed facts.⁴⁴ Finally, Deronjić was sentenced to ten years' imprisonment on 30 March 2004, and this sentence was confirmed by the Appeals Chamber on 20 July 2005.

19. The Prosecution submits that Deronjić's prior testimony is reliable for the purposes of its admission under Rule 92 *quater*, and argues that (i) it was elicited under oath,⁴⁵ (ii) Deronjić was subject to rigorous cross-examinations,⁴⁶ (iii) there is significant corroborating evidence supporting the testimony,⁴⁷ (iv) the Chambers in the *Popović et al.* and *Perišić* cases accepted his testimony

³⁹ Document with Rule 65 *ter* number 04088.

⁴⁰ Document with Rule 65 *ter* number 00607, paras. 1–4, 12.

⁴¹ Document with Rule 65 *ter* number 00607, para. 11.

⁴² See *S. Milošević* Transcript, (26 November 2003), T. 29617–29618.

⁴³ Deronjić, transcript from *Prosecution v. Deronjić*, Case No. IT-02-61-S (5 March 2004), T. 248–337.

⁴⁴ See *Prosecutor v. Deronjić*, Case No. IT-02-61-S, Sentencing Judgement, paras. 35–39.

⁴⁵ Motion, para. 12.

⁴⁶ Motion, paras. 12–13.

⁴⁷ Motion para. 14; Reply, paras. 6–11.

into evidence pursuant to Rule 92 *quater*,⁴⁸ and (v) there exists a record of how the *Blagojević & Jokić* and *Krajišnik* Trial and Appeals Chambers evaluated his *viva voce* testimony.⁴⁹

20. In the Response, the Accused argues that despite the conditions under which Deronjić's evidence was generated, it is unreliable due to: (i) grave inconsistencies in it, which were in part admitted by Deronjić; (ii) his former status as an accused person, which provided Deronjić with an incentive to fabricate evidence in the hope of leniency; and (iii) the presence of "notoriously uncorroborated" testimony.⁵⁰

21. The Prosecution argues in its Reply that: (i) the Accused fails to distinguish between admissibility and the ultimate assessment of evidence at the judgement stage, (ii) the specific statements identified by the Accused as "notoriously uncorroborated" are in fact supported by other evidence, and (iii) the *Popović et al.* Trial Chamber found that inconsistencies in the testimony to be properly evaluated when assessing the evidence at the judgement phase of the proceedings.⁵¹

22. Assessment of reliability remains in the sole discretion of the Trial Chamber.⁵² In determining reliability for the purposes of Rule 92 *quater*(A)(ii), a number of factors may be considered, and those factors may vary from case to case.⁵³ Common factors considered in previous cases before this Tribunal include: (i) the circumstances under which the evidence was generated; (ii) whether the evidence was subject to cross-examination; (iii) whether there is other evidence which relates to the same events described by the witness; and (iv) other factors, including whether there are manifest inconsistencies in the evidence.⁵⁴

23. The Chamber notes that Deronjić's testimony in the *Krstić, S. Milošević, Blagojević & Jokić*, and *Krajišnik* cases was given under oath, with the assistance of an interpreter duly qualified

⁴⁸ Motion, paras. 15–19. See *Prosecutor v. Vujadin 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 ("*Popović et al.* Trial Decision"), paras. 59–63; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Confidential Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 10 October 2008 ("*Perišić* Trial Decision"), paras. 47–54.

⁴⁹ Motion, para. 13. See *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-A, Appeals Judgement, 9 May 2007 ("*Blagojević & Jokić* Appeal Judgement"), para. 117; *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Trial Judgement, 17 January 2005, paras. 24, 78, 130, 135, 203–204, 478. See also; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009 ("*Krajišnik* Appeal Judgement"), paras. 136–151; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Judgement, 27 September 2006, paras. 40–41, 43, 52, 57, 71, 86, 97–98, 298, 311, 313–315, 318, 941, 1203; *Prosecutor v. Radislav Krstić*, IT-98-33-A, Appeal Judgement, 19 April 2004, para. 94.

⁵⁰ Response, paras. 10–16.

⁵¹ Reply, paras. 3–11.

⁵² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defense Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para. 27.

⁵³ *Popović et al.* Appeal Decision, para. 44.

⁵⁴ KDZ198 Decision, para. 5; *Popović et al.* Appeal Decision, para. 30.

and approved by the Registry of the Tribunal, and subject to cross-examination and re-examination. Similarly, in the *Krstić* appeal and *Nikolić* sentencing proceedings, Deronjić was questioned by the Judges, the Prosecution, and the counsel for the accused, in addition to being under oath and assisted by a Registry-approved interpreter. Deronjić also testified in his own case under oath, with the assistance of Registry-approved interpreters, and was questioned by the Judges, and briefly by the Prosecution. Moreover, Deronjić's 25 November 2003 statement was reviewed by him in his own language, and signed on each page. He also attested to its truth and accuracy during the *S. Milošević* case.⁵⁵ The statement was entered into evidence in both the *S. Milošević* and *Blagojević & Jokić* cases, and Deronjić was cross-examined on its contents. All these factors weigh in favour of the reliability of the proffered oral and written evidence.

24. The Accused has identified what he considers to be two "notoriously uncorroborated" statements made by Deronjić in the course of his various testimonies. The first concerns a private conversation between him and Deronjić around 9 July 1995, when the Accused is said to have invoked the "Principle of Western Slavonia" and to have told Deronjić that the Muslims of Srebrenica should be killed.⁵⁶ The second relates to an intercepted telephone conversation between the Accused and Deronjić on 13 July 1995, and the subsequent visit of Colonel Ljubiša Beara to Bratunac during the night of 13 July and morning of 14 July 1995, during which Beara allegedly informed Deronjić that he had "orders from the top" to kill the prisoners being held in Bratunac.⁵⁷ In the Reply, the Prosecution submits that these statements are in fact corroborated by surrounding circumstances, as well by other evidence.⁵⁸ The Chamber notes, however, that the specific contents of each conversation with the Accused cannot be corroborated. In fact, Deronjić admitted that no one can confirm that the Accused said to him that the Muslim population of Srebrenica should be killed,⁵⁹ or that the Accused told him that a "man with instructions" would come to Bratunac, who turned out to be Beara.⁶⁰

25. The Chamber is not, at this stage of these proceedings, in a position to fully assess the extent to which other evidence relates to the same events described by Deronjić. The Prosecution submits that it intends to lead additional evidence relating to most of Deronjić's testimony, and tenders a substantial number of associated exhibits, which do in part corroborate aspects of

⁵⁵ *S. Milošević* Transcript (26 November 2003), T. 29617–T. 29618.

⁵⁶ *Krstić* Transcript (21 November 2003), T. 112–113, 161–162; *S. Milošević* Transcript (27 November 2003), T. 29768; *Blagojević & Jokić* Transcript (22 January 2004), T. 6408.

⁵⁷ *Krstić* Transcript (21 November 2003), T. 117–120; *S. Milošević* Transcript (26 November 2003), T. 29698–29699; *Blagojević & Jokić* Transcript (22 January 2004), T. 6438–6440, 6445–6448, 6464–6467.

⁵⁸ Reply, paras. 7–8.

⁵⁹ *Blagojević & Jokić* Transcript (22 January 2004), T. 6407–6408, (21 January 2004) T. 6388–6389.

⁶⁰ *Blagojević & Jokić* Transcript (22 January 2004), T. 6455, T. 6438–6441.

Deronjić's testimony.⁶¹ Furthermore, after a preliminary review of the small amount of evidence already admitted in this case, the Chamber notes that some parts of Deronjić's testimony are already corroborated. For example, Ahmo Hasić, Mevludin Orić, and Zlatan Čelanović confirm the detention of Muslim prisoners in Bratunac around 13 July 1995.⁶² Furthermore, Witness KDZ107 and Zlatan Čelanović corroborate Deronjić's testimony that Beara was in Bratunac on 13 July 1995,⁶³ and Witness KDZ107 also testifies that Beara was in Deronjić's office that evening.⁶⁴ However, the Prosecution acknowledges that not every aspect of Deronjić's testimony will or can be corroborated.⁶⁵

26. Corroboration is simply a factor to take into consideration as to the reliability of proposed evidence and not a requirement for admissibility under Rule 92 *quater*.⁶⁶ The Chamber reiterates its previous position that the absence of one or more indicia of reliability does not necessarily preclude the admission of the evidence automatically and may be addressed by the Chamber when attributing appropriate weight to the evidence in its overall consideration of the case.⁶⁷

27. The Chamber must, therefore, consider whether there are additional factors bearing upon its determination of the reliability of Deronjić's evidence and, ultimately, whether that evidence should be admitted. Having reviewed all of the various interviews and testimony given by Deronjić, the Chamber is particularly troubled by Deronjić's admission that prior to his final interviews with the Prosecution and subsequent oral testimony, he intentionally omitted aspects of his evidence related to the Accused, and that he generally did not have a complete recollection of all the events in which he participated.⁶⁸ Specifically, Deronjić stated:

⁶¹ Reply, paras. 5–11.

⁶² Ahmo Hasić, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T (6 September 2006), T. 1237, T. 1178–1180; Mevludin Orić, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T, (28 August 2006), T. 889–890, 897–898, 907–909, (29 August 2006) 923–925; Zlatan Čelanović, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T (31 January 2007), T. 6637–6643.

⁶³ Witness KDZ107, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T (23 March 2007), T. 9362, 9365–9369, (26 March 2007) 9414–9417, 9433–9436; Zlatan Čelanović, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T (31 January 2007), T. 6637–6643.

⁶⁴ Witness KDZ107, transcript from *Prosecutor v. Popović et al.* Case No. IT-05-88-T (23 March 2007), T. 9365–9369, (26 March 2007) 9414–9417, 9433–9436;

⁶⁵ See, e.g., Motion, Annex D, Ref. Nos. 6, 7, 16, 19, 21, 24, 30, 33.

⁶⁶ *Popović et al.* Trial Decision, para. 52; *Prosecution v. Milan 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, paras. 10–11.

⁶⁷ Decision on KDZ198, para. 5; *Popović et al.* Trial Decision, paras. 28–32. See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Gvero's Motion for the Admission of Evidence pursuant to Rule 92 *quater*, 3 February 2009, para. 24.

⁶⁸ *Blagojević & Jokić* Transcript, (19 January 2004) T. 6134–6135, 6154–6155, 6182–6185, (21 January 2004) T. 6317, (22 January 2004) T. 6490–6492. Deronjić testified repeatedly that there were a series of factors, which prevented him from speaking truthfully; these included general attitude of the leaders of the Republika Srpska towards the Tribunal, his personal fear for his security, his knowledge that some of the contents of his early interviews were

Well, as far as some events are concerned, I tried to put things together as far as I could. And I had my own reasons. I don't want to repeat them. And I adhered to that position until the bringing of the indictment. And to this day I don't want to say that this was the only reason for my decision, there were several reasons, but the fact is that is what I decided and I am abiding by it. Certain sensitive things that I judged could harm President Karadzic and could perhaps harm my personal status, I decided to keep quiet about.⁶⁹

28. There are, thus, a number of inconsistencies between Deronjić's various statements, and confusion as to when certain events occurred. Some of these inconsistencies are indeed precisely related to Deronjić's crucial interactions and communication with the Accused.

29. Significantly, while he had been interviewed previously by the Prosecution on several occasions, it was only after Deronjić was indicted that he first described his conversation with the Accused around 9 July 1995, when the Accused is said to have invoked the "Principle of Western Slavonia" and to have told Deronjić the Muslims of Srebrenica should be killed. Furthermore, it appears that over the course of his interviews with the Prosecution and again when he testified before this Tribunal, Deronjić significantly altered his statements regarding his 13 July 1995 intercepted telephone conversation with the Accused, and his subsequent meeting with Beara.⁷⁰ Again, having never mentioned this in any of his prior recorded interviews with the Prosecution that have been made available to the Trial Chamber, it was only after he was indicted and pleaded guilty that Deronjić testified that he was told by Beara that he had "orders from the top" to kill the prisoners in Bratunac.⁷¹ In addition, it was only after Deronjić admitted to having seen the transcript of the intercepted telephone conversation between himself and the Accused on 13 July 1995, and after plea negotiations were concluded with the Prosecution, that he testified that the Accused informed him during that telephone conversation that someone with instructions would come to Bratunac, who turned out to be Beara.⁷² The transcript of the intercepted conversation, however, does not record this being said by the Accused.⁷³ Although Deronjić was cross-examined on these inconsistencies, and explained his reasons for not including this

made public, a lack of sufficient memory, and an ongoing investigation of the facts taken by him and his lawyers, even after his arrest.

⁶⁹ *Blagojević & Jokić* Transcript (21 January 2004), T. 6316–6317.

⁷⁰ *Cf.* Document with Rule 65 *ter* number 04089, p. 17; Document with Rule 65 *ter* number 04091, pp. 14–15; Document with Rule 65 *ter* number 04096, pp. 13–14, 66–69, 77–78; Deronjić, Witness Statement dated 25 November 2003, paras. 178–181, 205–206.

⁷¹ The Chamber notes that Deronjić admitted that it was only in his final interview, prior to submitting his guilty plea, that he informed the Prosecution of the details of Beara's statement to him. *See Nikolić* Transcript (28 October 2003), T. 1571.

⁷² Despite being questioned multiple times regarding these events, Deronjić only included these incriminatory details after the indictment was issued on 3 July 2002, and he began to collaborate with the Prosecution in providing evidence for the *S. Milošević* case on 1 June 2003. The Prosecution interviews made available to the Chamber do not include these incriminatory details. *See* Note 70.

⁷³ Document with Rule 65 *ter* number 31036A.

information during his previous discussions with the Prosecution, they nonetheless cast doubt on the reliability of his testimony in relation to the Accused.

30. Furthermore, the Chamber notes that even within Deronjić's *viva voce* testimony regarding these pivotal events, there is an inconsistency regarding the Accused's knowledge of crimes committed in Bratunac. In the *Krstić* case, Deronjić originally claimed that when he called the Accused on the evening of 13 July 1995, he in fact expressed his "concern over the situation in Bratunac and suggested to [the Accused] that there were already murders taking place."⁷⁴ Six days later, during his testimony in the *S. Milošević* case, Deronjić admitted that he in fact never mentioned to the Accused that any "liquidations" had occurred in Bratunac as early as 13 July 1995.⁷⁵ Indeed, in both his *S. Milošević* testimony and the 25 November 2003 Witness Statement, Deronjić stated that it was not until his 14 July 1995 meeting with the Accused in Pale that he informed him of any killings resulting from the evacuation of prisoners from the Srebrenica enclave.⁷⁶

31. The Prosecution argues that Deronjić's status as an accused does not *per se* render the evidence unreliable, and that the *Popović et al.* and *Perišić* Trial Chambers found his evidence sufficiently reliable for the purposes of admission under Rule 92 *quater*.⁷⁷ However, it is for this Trial Chamber to make its own assessment of Deronjić's reliability, and to determine whether to admit his evidence under Rule 92 *quater*, in light of all the circumstances in this particular case, which may differ from those of previous cases. While the Chamber agrees that Deronjić's status as an accused and beneficiary of a plea agreement with the Prosecution does not, by itself, necessarily render his evidence unreliable,⁷⁸ it considers that the inconsistencies in his various statements regarding the Accused's participation in events relevant to the Indictment recommends a cautious approach to his evidence as a whole, as does Deronjić's own admission that he deliberately omitted including this incriminatory information about the Accused until after he was indicted and arrested.

32. The Prosecution also points to the fact that both the *Blagojević & Jokić* and the *Krajišnik* Trial Chambers found aspects of Deronjić's testimony sufficiently reliable to base findings upon in their respective judgements.⁷⁹ However, the Chamber notes that in both those cases he testified *viva voce* and was subject to cross-examination by the defence. The circumstances of the present

⁷⁴ *Krstić* Transcript (21 November 2003), T. 116

⁷⁵ *S. Milošević* Transcript (27 November 2003), T. 29701.

⁷⁶ *S. Milošević* Transcript (27 November 2003), T. 29715–29716; Deronjić, Witness Statement dated 25 November 2003, para. 214.

⁷⁷ Motion, paras. 13, 15. *But see Prosecutor v. Radislav Krstić*, IT-98-33-A, Appeals Judgement, 19 April 2004, para. 94.

⁷⁸ *Blagojević & Jokić* Appeal Judgement, para. 117; *Krajišnik* Appeal Judgement, para. 146.

⁷⁹ Motion, paras 13, 17(c).

case are very different, Deronjić's evidence being offered in writing in lieu of oral testimony and its admission thus being subject to a review of its reliability as a whole by the Chamber prior to its admission.

33. Even if the Chamber were to find that Deronjić's evidence is sufficiently reliable for it to be admitted under Rule 92 *quater*, another factor to be taken into account in deciding whether or not to ultimately admit it is the extent to which it pertains to the acts and conduct of the Accused. In this regard, the *Popović et al.* Trial Chamber held that the "[t]he ultimate determination about whether to admit the evidence despite this factor will be made based on an assessment of all the factors as a whole".⁸⁰ Therefore, the Chamber will consider the extent to which Deronjić's evidence pertains to the acts and conduct of the Accused before concluding on the ultimate admissibility of that evidence in this particular case.

C. Acts and conduct of the Accused

34. In considering the admissibility of evidence pertaining to the acts and conduct of an accused pursuant to Rule 92 *quater*, the Chamber notes that two provisions of the Rules are at work. First, as noted by the Appeals Chamber, Rule 92 *quater*(B) is "inflected with concern for ensuring a fair trial and the reliability of the evidence," and this provision "counsels cautious scrutiny with respect to evidence going to proof of acts and conduct of the accused but also contemplates [its] admission [. . .]"⁸¹ Second, to be admitted, Rule 92 *quater* evidence must also satisfy the basic provisions of Rule 89 and is thus subject to Rule 89(D), which permits the Chamber to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

35. The Accused challenges the admissibility of the entirety of Deronjić's evidence on the grounds that it pertains to his own acts and conduct and to critical issues of the Prosecution's case.⁸² He argues that the Trial Chamber in *Dragomir Milošević* deemed less detailed evidence of the acts and conduct of the accused in that case to be inadmissible under Rule 92 *quater*,⁸³ and cites a Trial Chamber decision in *Ramush Haradinaj et al.* ("*Haradinaj et al.*") for the proposition that evidence pertaining to the acts and conduct of an accused, which is pivotal to the Prosecution's case, is admissible only when it is internally consistent *and* corroborated.⁸⁴ Otherwise, the Accused

⁸⁰ *Popović* Trial Decision, para. 42; *Popović* Appeal Decision, para. 52

⁸¹ *Popović et al.* Trial Decision, para. 32.

⁸² Response, paras. 17, 18, 25.

⁸³ Response, para. 18, citing *Prosecutor v. Dragomir Milošević*, IT-98-29/1-T, Decision on Prosecution's Motion for Admission of Witness Statements Pursuant to Rule 92 *quater*, 19 April 2007, para. 17.

⁸⁴ Response, paras. 19, citing *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-01-84-T, Decision on Prosecution's Motion to Admit Five Statements of Witness 1 into Evidence Pursuant to Rule 92 *quater*, 28 November 2007, para. 11.

argues, Rule 92 *quater* would simply be a portal for the admission of evidence which forgoes the “cautious scrutiny” applied by the Trial Chambers.⁸⁵ In the alternative, the Accused requests that the Chamber rule individually on aspects of Deronjić’s testimony and redact those portions of his evidence that are inconsistent, that relate to the acts and conduct of the Accused, and that discuss critical issues of the Prosecution’s case.⁸⁶

36. In its Reply, the Prosecution distinguishes the more restrictive approach to Rule 92 *quater* evidence taken in the *Haradinaj et al.* and *Dragomir Milošević* decisions on the basis that they were rendered at a later stage of the respective proceedings, and that these Trial Chambers were able to undertake a review of the full evidentiary record when determining the issue of corroboration.⁸⁷ The Prosecution also submits that the Chamber should decline to rule separately on aspects of Deronjić’s testimony, as the Accused’s proposition stems from erroneous legal assumptions.

37. In reviewing the proposed evidence, the Chamber finds that it is replete with references to the Accused and descriptions of the Accused’s acts and conduct during the Indictment period relating to several of the allegations in the Indictment. In the Response, the Accused identifies four of these references, which he argues should weigh heavily against the admission of Deronjić’s evidence as a whole, or those particular parts of it.⁸⁸ These relate to:

- (i) the 9 July 1995 meeting between the Accused and Deronjić where the Accused is said to have stated that all the Muslims in Srebrenica must be killed and that the principle of “Western Slavonia” should apply;⁸⁹
- (ii) the intercepted 13 July 1995 telephone conversation during which the Accused is said to have informed Deronjić that a man would be coming with instructions for the prisoners detained in Bratunac, and the subsequent interaction with Beara who Deronjić claims showed up at his office with instructions “from the top” to kill the prisoners;⁹⁰

⁸⁵ Response, para. 19, citing *Popović et al.* Trial Decision, para. 32.

⁸⁶ Response, para. 21.

⁸⁷ Reply, para 14.

⁸⁸ Response, paras. 13–15, 17–18.

⁸⁹ E.g., *Krstić* Transcript (21 November 2003), T. 105–113. Cross-examination at *Blagojević & Jokić* Transcript (20 January 2004), T. 6294–6297, (21 January 2004) T. 6376–6385, (22 January 2004) T. 6404–6410.

⁹⁰ E.g., *Krstić* Transcript (21 November 2003), T. 116–120. Cross-examination at *Blagojević & Jokić* Transcript (22 January 2004) 6438–6455, 6464–6468; *S. Milošević* Transcript (27 November 2003), T. 29786–29789.

- (iii) the announcement Deronjić claims the Accused made at the April 1991 SDS meeting that in the event the Federal Yugoslavia no longer existed, the only option for Serbs was the creation of a "Greater Serbia";⁹¹ and
- (iv) the relationship between General Ratko Mladić and the Accused.⁹²

38. In addition, Deronjić makes numerous other references to the acts and conduct of the Accused, some of which were the subject of cross-examination in prior proceedings, while others were not. For example, among the evidence never subject to cross-examination is the following:

- (i) Deronjić's claim that he was reprimanded by the Accused for sending 400 civilians detained in Bratunac to Pale;⁹³
- (ii) Deronjić's assertion that he requested that the Accused issue a public appeal for buses to be sent to Bratunac;⁹⁴
- (iii) Deronjić's description of the Accused's anger over the events which occurred in May and early June 1995 in Western Slavonia, including the killing of Serb civilians;⁹⁵
- (iv) Deronjić's description of: (a) doubts the Accused expressed to him about the possibility that the UNPROFOR Command would sign a joint statement confirming that civilians had properly been evacuated from Potočari; (b) the Accused being "delighted" that Deronjić managed to get both the UNPROFOR and the Muslim representatives to sign the joint statement on 17 July 1995; and (c) the Accused's knowledge, in spite of what was said in the joint statement with UNPROFOR, that there had in fact been killings of civilians;⁹⁶

⁹¹ *Krajišnik* Transcript, (12 February 2004) T. 893–894, 896–900. Cross-examination at *Krajišnik* Transcript (16 February 2004) T. 1140–1141.

⁹² *Blagojević & Jokić* Transcript, (21 January 2004) T. 6335, T. 6340–6341, (22 January 2004) 6447.

⁹³ *Krajišnik* Transcript, (16 February 2004) T. 1107.

⁹⁴ *Blagojević & Jokić* Transcript, (12 January 2004) T. 6199–6200.

⁹⁵ *Krstić* Transcript, (21 November 2003) T. 156–157.

⁹⁶ Deronjić, Witness Statement dated 25 November 2003, paras. 221–226.

- (v) Deronjić's assertion that he informed the Accused of two mass graves in Glogova and Kravica, and that the Accused had knowledge of the killings in Zvornik;⁹⁷ and
- (vi) Deronjić's claims that he asked the Accused what the Republika Srpska was going to do about the events in Srebrenica, and that the Accused responded, "We'll see, we'll try to do something", and that Deronjić did not believe there was a serious will to do anything.⁹⁸

39. As the above examples illustrate, there is a significant amount of Deronjić's evidence that pertains to the acts and conduct of the Accused and, furthermore, goes to critical issues in the Prosecution's case.⁹⁹ The Chamber is cognisant of the fact that Deronjić's evidence has been deemed admissible in other cases.¹⁰⁰ However, the circumstances of the present case are distinguished on the basis of the inordinate amount of acts and conduct evidence pertaining to this Accused, coupled with the fact that the Chamber's concern in relation to Deronjić's reliability is very much connected to the veracity of his evidence regarding the Accused.¹⁰¹ For these reasons, and in light of the fact that the Accused will have no opportunity to cross-examine Deronjić, the Chamber must approach this evidence with the utmost caution. Taking into account all the relevant factors, the Chamber is convinced that the probative value of Deronjić's evidence is outweighed by the need to ensure a fair trial. Therefore, the Chamber is of the view that the Prosecution's request for the admission into evidence of Deronjić's entire testimony and witness statement should be denied.

40. In light of this conclusion, there is no need for the Chamber to consider the proposed associated exhibits listed in the Motion.

⁹⁷ Deronjić, Witness Statement dated 25 November 2003, paras. 228–229.

⁹⁸ Deronjić, Witness Statement dated 25 November 2003, paras. 232.

⁹⁹ See Prosecution's Pre-Trial Brief, paras. 216, 219–220, 222, 226, 239.

¹⁰⁰ See *Popović et al.* Trial Decision, para. 64; *Perišić* Trial Decision, paras. 47–53; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Admission of testimony of Miroslav Deronjić Pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence Including the Dissenting Opinion of Presiding Judge Jean-Claude Antonetti in Annex, 20 January 2010.

¹⁰¹ In the *Popović et al.* case Deronjić's evidence concerned only the presence of three of the accused at key intervals, the accused Borovčanin's knowledge of one crime, and one uncorroborated statement of the accused Beara. Similarly, the Prosecution's reliance on *Perišić* and *Šešelj* is unavailing, as the portions of Deronjić's evidence submitted in those cases contain no references to the acts or conduct of the accused in those cases.

III. Disposition

41. For the above stated reasons, pursuant to Rules 89 and 92 *quater* of the Rules, the Trial Chamber hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-third day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]