

IT-09-92-T
D74954-D74950
13 December 2013

74954

**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 December 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 13 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION RULE 92 *QUATER* MOTION
(WITNESS RM-012)**

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 OF THE PARTIES

1. On 5 June 2013, the Prosecution filed its Rule 92 *quater* motion with confidential Annexes A, B, and C ("Motion") seeking to admit into evidence three ICTY witness statements of Witness RM-012, dated 19 April 1996, 13 June 1996, and 21 October 1998 ("Statements"), pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence ("Rules").¹ On 19 June 2013 the Defence filed a response ("Response").² On 24 June 2013, the Prosecution filed its request for leave to reply to the Response ("Reply").³ The Prosecution submits that Witness RM-012 is unavailable because his mental condition renders him objectively unable to testify due to the diagnosis of Alzheimer's disease.⁴ According to the Prosecution, his evidence is reliable, relevant to the Indictment, and cumulative to the testimony of other witnesses, as well as supported by adjudicated facts.⁵ Further, the Prosecution submits that his evidence does not go to the acts and conduct of the Accused and that the admission of the Statements is in the interests of justice.⁶ With regard to the excerpt from Witness RM-012's testimony in the *Prosecutor v. Milorad Krnojelac* trial ("Krnojelac trial"), the Prosecution argues that it is entirely consistent with the evidence in his Statements, when read in context.⁷

2. In its Response the Defence opposes the Motion as it considers the evidence in the Statements to be unreliable and touching upon live issues of the case which should lead to its exclusion.⁸ In this regard it submits that none of the Statements were taken under oath or subjected to cross-examination, but instead only taken by interpreters.⁹ Further, the Defence submits that the evidence of other witnesses identified by the Prosecution cannot be considered to be cumulative because they have not yet been called to testify and may not end up testifying, which would cause the reliability of the evidence in the Statements to remain untested.¹⁰ The Defence also submits that

¹ Prosecution Motion to Admit Evidence of RM012 Pursuant to Rule 92 *quater*, 5 June 2013 (confidential, with Confidential Annexes A, B, and C).

² Defence Response to Prosecution Motion to Admit Evidence of RM012 Pursuant to Rule 92 *quater*, 19 June 2013 (confidential),

³ Prosecution Request for Leave to Reply to Defence Response to Admit the Evidence of RM012 Pursuant to Rule 92 *quater*, 24 June 2013 (confidential, with Confidential Annex), para. 5.

⁴ Motion, paras 2, 7, Confidential Annex C.

⁵ Motion, paras 2, 8-9, 11-13.

⁶ Motion, paras 2, 15.

⁷ Reply, paras 4-5.

⁸ Defence Response to Prosecution Motion to Admit Evidence of RM012 Pursuant to Rule 92 *quater*, 19 June 2013 (confidential), paras 12, 15-16.

⁹ Response, para. 10.

¹⁰ Response, paras 11-12, 14.

portions of the Statements contain improper hearsay evidence and inconsistencies with the witness's previous testimony in the *Krnojelac* trial.¹¹

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *quater* of the Rules, as set out in a previous decision.¹²

III. DISCUSSION

4. The Chamber considers that it is assisted by further submissions from the Prosecution on the matters outlined in the Reply and will therefore grant leave to reply.

5. The Chamber has been provided with a medical assessment of 10 May 2013 by a neuropsychiatrist stating that Witness RM-012 was diagnosed with Alzheimer's disease in 2010.¹³ The neuropsychiatrist notes that Witness RM-012 is disoriented in time and space, often does not know who and where he is and therefore needs to be constantly monitored by his wife and son.¹⁴ Due to his mental and physical state, Witness RM-012's general ability to function is markedly reduced.¹⁵ The Defence does not take issue with the unavailability of Witness RM-012.¹⁶ In light of the medical assessment, the Chamber finds that Witness RM-012 is objectively unable to testify in court owing to his mental and physical condition.

6. With regard to the reliability of the Statements the Chamber notes that they were neither given under oath nor have been subjected to cross-examination. Nevertheless, they were signed by Witness RM-012 with an accompanying acknowledgement that they were true to the best of his recollection, taken with the assistance of a duly qualified interpreter approved by the Registry of the Tribunal. Moreover, the evidence provided in the Statements concerns alleged crimes at KP Dom in Foča, and is cumulative with the testimonies already provided by Witnesses RM-063, RM-046, and RM-013.¹⁷

7. As regards the Defence's assertion that portions of the Statements contain hearsay evidence, the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal. Further the Chamber notes that it is clear from the portions of the Statements indicated by the Defence that

¹¹ Response, paras 18-21.

¹² Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, paras 10-13.

¹³ Motion, paras 2, 7, Confidential Annex C.

¹⁴ Motion, Confidential Annex C.

¹⁵ Motion, Confidential Annex C.

¹⁶ Response, para. 13.

¹⁷ Witness RM-063, T. 5414-5456, Witness RM-046, T. 7005-7052, Witness RM-013, T. 8890-8983.

the witness has no direct knowledge about the subject he's testifying about there. The Chamber does not consider that those portions affect the overall reliability of Witness RM-012's evidence.

8. The Chamber has further reviewed the Statements in light of the Defence's argument that there is some inconsistency between the Statements of Witness RM-012 and his testimony in the *Krnojelac* trial. However, the Chamber considers this argument without merit as the witness's evidence is consistent with the previous testimony when read in context.

9. The Chamber notes that the witness testified about two lists he made, a picture, and a drawing of the KP Dom. Where the BCS version of the statements of 19 April 1996 and 13 June 1996 include pages with attachments listed, the English versions of these statements do not, and the lists, picture, and drawing the witness refers to are not attached and not tendered into evidence. The Chamber considers that this affects the evidentiary value of these portions of the statements. However, the Chamber finds that it does not affect the overall probative value of the witness statements.

10. Based on the foregoing, the Chamber finds the Statements to be sufficiently reliable for the purposes of Rule 92 *quater* of the Rules.

11. The Chamber further considers that the evidence in the Statements of Witness RM-012 does not go directly to the acts and conduct of the Accused. Finally, with regard to the Defence's submission that the evidence in the Statements touches on live and important issues of the case and therefore requires cross-examination, the Chamber recalls its finding in paragraph 6 that there is already other evidence on the related incidents to which the Statements are cumulative. No prejudice therefore arises for the Accused by the lack of cross-examination in relation to the present evidence.

12. With respect to the requirements of Rule 89 (C) of the Rules, the Chamber finds that all three Statements are relevant to the case, as they relate to Scheduled Incidents B.5 and C.6 of the Indictment. Since reliability is a component of the probative value of a piece of evidence, the Chamber considers there is no need to re-examine this aspect of the probative value where a determination of reliability has already been made pursuant to Rule 92 *quater* (A) (ii) of the Rules.

13. The Chamber notes that it has not referred to Witness RM-012's name since this witness has been accorded protective measures in the *Krnolejac* trial. Pursuant to Rule 75 F of the Rules the ordered protective measures, including the use of pseudonym, shall continue in this case.

IV. DISPOSITION

14. For the foregoing reasons, pursuant to Rules 54, 89 (C) and 92 *quater* of the Rules, the Chamber

GRANTS the Prosecution's request for leave to reply;

GRANTS the Motion;

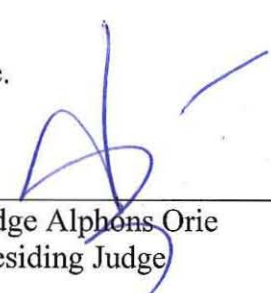
ADMITS into evidence, **UNDER SEAL**:

- (a) The ICTY Witness Statement of Witness RM-012, dated 19 April 1996, bearing ERN 0039-1693-0039-1699 (Eng);
- (b) The ICTY Witness Statement of Witness RM-012, dated 13 June 1996, bearing ERN 0040-2470-0040-2474 (Eng);
- (c) The ICTY Witness Statement of Witness RM-012, dated 21 October 1998, bearing ERN 0065-0004-0065-0009 (Eng);

INSTRUCTS the Prosecution to upload the admitted documents into eCourt within two weeks of the date of issuance of this decision; and

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

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



Judge Alphons Orie
Presiding Judge

Dated this thirteenth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]