

IT-09-92-T  
D 62726 - D 62718  
28 June 2013

62726 vs.



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: 28 June 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:** 28 June 2013

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION MOTION TO ADMIT  
EVIDENCE PURSUANT TO RULE 92BIS: WITNESS RM-159**

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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 AND SUBMISSIONS OF THE PARTIES

1. On 10 December 2012, the Prosecution filed a motion pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking to admit into evidence material with regard to Witness RM-159 ("Motion").<sup>1</sup> On 24 December 2012, the Defence filed its response ("Response").<sup>2</sup>

2. The Prosecution seeks to admit a Rule 92 *bis* witness package consisting of an amalgamated statement of Witness RM-159's prior testimonies and statements and eight associated exhibits.<sup>3</sup> The Prosecution has redacted the evidence where it recognised a significant overlap between the evidence and the adjudicated facts.<sup>4</sup> The Prosecution considers the evidence relevant and probative, particularly in regard to the shelling campaign in Sarajevo and scheduled incidents G.7, G.10, and G.15.<sup>5</sup> It submits that the evidence neither addresses the acts and conduct of the Accused, nor the participation of the Accused in a joint criminal enterprise, nor issues of command and control.<sup>6</sup> Moreover, the evidence was subject to cross-examination in prior cases.<sup>7</sup> The Prosecution also submits that the Chamber will receive evidence that will corroborate, and is cumulative to, the testimony of Witness RM-159.<sup>8</sup>

3. The Defence opposes the Motion on five grounds.<sup>9</sup> First, the Defence contests the conditional admission of uncertified statements on the basis that it infringes upon the Accused's due process rights.<sup>10</sup> Second, the Defence submits that since the evidence concerns a live issue between the parties forming a critical part of the Prosecution's case, Witness RM-159 should be called for cross-examination.<sup>11</sup> Third, the Defence contends that the evidence contains expert and hearsay expert testimony that should, at least, be subject to cross-examination.<sup>12</sup> Fourth, the Defence objects to the admission of the associated exhibits as they are not substantively discussed in the amalgamated statement and are therefore not integral to the statement and should be denied

<sup>1</sup> Prosecution Motion to Admit Evidence Pursuant to Rule 92 *bis*: RM159, 10 December 2012 (Confidential).

<sup>2</sup> Defence Response to Prosecution Motion to Admit Evidence Pursuant to Rule 92 *bis*: RM159, 24 December 2012 (Confidential).

<sup>3</sup> Motion, paras 3-4, 13-14.

<sup>4</sup> Motion, para. 8.

<sup>5</sup> Motion, paras 6, 13.

<sup>6</sup> Motion, para. 12.

<sup>7</sup> Motion, paras 2, 12.

<sup>8</sup> Motion, paras 9-10.

<sup>9</sup> Response, paras 8-20.

<sup>10</sup> Response, para. 8.

<sup>11</sup> Response, paras 9-10.

<sup>12</sup> Response, paras 11-15.

admission.<sup>13</sup> Fifth, the Defence submits that the amalgamated statement is unreliable as it contradicts evidence adduced from other witnesses at trial and that the amalgamated statement should not be admitted under Rule 92 *bis* of the Rules, or the witness should be subject to cross-examination.<sup>14</sup>

## II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.<sup>15</sup> In regard to the admission of associated exhibits, the Chamber recalls and refers to the applicable law discussed in a previous decision.<sup>16</sup>

## III. DISCUSSION

### (a) Preliminary Matters

5. After a thorough review of the evidence of Witness RM-159, the Chamber notes that although there are redactions to the amalgamated statement, there appears to be a substantial overlap with Adjudicated Facts numbers 2436, 2473, 2474, 2530, 2531, 2540, 2541, 2561, and 2562, of which the Chamber has taken judicial notice. Since the witness materials add relevant evidence to the adjudicated facts, but also provide relevant evidence outside the scope of the adjudicated facts, the Chamber admits the evidence subject to the admissibility requirements.

6. The Chamber will now assess the admissibility of Witness RM-159's evidence under Rule 92 *bis* of the Rules.

### (b) Witness RM-159

#### i. Attestation and Declaration

7. The amalgamated statement of Witness RM-159 has no corresponding Attestation or Declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B)

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<sup>13</sup> Response, paras 16-17.

<sup>14</sup> Response, paras 18-20.

<sup>15</sup> Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012 ("Decision on Third 92 *bis* Motion"), paras 5-8.

<sup>16</sup> Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.



of the Rules.<sup>17</sup> In line with this practice, the Chamber will conditionally admit the unattested witness statement, pending the submission of the required Attestation and Declaration, provided that all other admissibility requirements are met.

ii. Relevance and Probative Value

8. The Chamber considers the evidence of Witness RM-159 relevant to Scheduled Shelling Incidents G.7, G.10, and G.15 of the Indictment.<sup>18</sup> The witness's evidence is therefore relevant pursuant to Rule 89 (C) of the Rules.

9. With regard to probative value, the Defence objects to portions within paragraphs 7, 18, and 24 of the amalgamated statement.<sup>19</sup> The Chamber notes that within these paragraphs, the witness discusses conclusions from "ballistics experts". Since the Chamber cannot identify the source of knowledge of the experts and since the distinction between the experts' opinions and those of the witness are somewhat unclear, the Chamber considers these parts of paragraphs 7, 18, and 24 to include unsupported and/or unsourced opinions concerning the direction of fire. With regard to the Defence objection to paragraph 14, the Chamber considers this paragraph to also contain unsupported or unclarified opinions. The Chamber nevertheless refrains from redacting these portions from the amalgamated statement, in line with its approach on these matters.<sup>20</sup> Further, the Chamber considers these unsupported or unclarified opinions to not affect the reliability of the witness.

10. The Defence also argues that a portion of paragraph 26 contains testimony contradictory to evidence on the record.<sup>21</sup> The Chamber notes that while the witness provides an unsupported opinion in this paragraph with regard to the devastating power of a projectile, the fact that this evidence might contradict other evidence on the record is no ground for denying admission. Either way, the Chamber considers this issue to not affect the overall reliability of the witness.

11. Based on the above, the amalgamated statement of Witness RM-159 has probative value pursuant to Rule 89 (C) of the Rules.

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<sup>17</sup> Decision on Third 92 *bis* Motion, para. 27 and references cited therein.

<sup>18</sup> Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, Public Annex A ("Indictment"), Schedule G, Incident 7; Schedule G, Incident 10; Schedule G, Incident 15.

<sup>19</sup> Response, para. 14.

<sup>20</sup> Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

<sup>21</sup> Response, paras 18-20.

iii. Admissibility Pursuant to Rule 92 bis of the Rules

12. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find, that Witness RM-159's evidence relates to the acts and conduct of the Accused.

13. The Chamber considers that the evidence relates to the crime base part of the case. Moreover, other witnesses have already given or are expected to give evidence with regard to Scheduled Shelling Incidents G.7, G.10, and G.15 of the Indictment, including the use of modified air bombs during these incidents. Witness RM-174 is expected to testify pursuant to Rule 92 *ter* of the Rules and was part of the expert team which investigated Scheduled Incident G.15.<sup>22</sup> Another investigator, Witness RM-157, testified pursuant to Rule 92 *ter* of the Rules regarding Scheduled Incident G.7.<sup>23</sup> Witness Refik Sokolar, a victim of Scheduled Incident G.7 has already provided testimony pursuant to Rule 92 *ter* of the Rules. The evidence of Witness Ziba Šubo and Witness RM-155, who were victims of Scheduled Incidents G.10 and G.15, has also been admitted into evidence pursuant to Rule 92 *bis* of the Rules.<sup>24</sup> Also in relation to Scheduled Incidents G.10 and G.15, the evidence of Witness Đorđe Đukić has been admitted pursuant to Rule 92 *quater* of the Rules,<sup>25</sup> Witnesses RM-108 and Thorbjorn Overgard have already testified,<sup>26</sup> and Witness RM-160 is expected to testify pursuant to Rule 92 *ter* of the Rules. The Chamber, therefore, finds that the evidence of Witness RM-159 is of a cumulative nature to other evidence the Chamber already has received or expects to receive. The Chamber also notes that there are no indications of unreliability of Witness RM-159 and that the amalgamated statement does not address live and important issues.

14. For the above reasons, the amalgamated statement is conditionally admissible under Rule 92 *bis* of the Rules, pending the submission of the missing Attestation and Declaration.

iv. Associated Exhibits

15. Seven of the eight associated exhibits which are part of Witness RM-159's Rule 92 *bis* witness package consist of photographs, diagrams, sketches or documents relating to investigations of the scheduled incidents that Witness RM-159 provides evidence upon. The Chamber is of the view that these seven associated exhibits form an inseparable and indispensable part of Witness RM-159's amalgamated statement and will conditionally admit them into evidence. The eighth associated exhibit, an Official Note of the Novi Grad Public Security Station no. 19/13-4-255/95

<sup>22</sup> Prosecution Rule 65 *ter* Witness List, 10 February 2012 (Confidential) ("Prosecution Witness List"), pp. 232-233.

<sup>23</sup> T. 8039-8141.

<sup>24</sup> Prosecution Witness List, pp. 284-285, 287.

<sup>25</sup> P1052.



with 65 *ter* no. 10139, has already been admitted into evidence in a prior decision and will therefore not be admitted as part of Witness RM-159's Rule 92 *bis* witness package.<sup>27</sup>

#### IV. DISPOSITION

16. For the foregoing reasons, pursuant to Rules 73, 89, and 92 *bis*, the Chamber **GRANTS** the Motion **IN PART**;

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL**

- (a) the Amalgamated Statement of Witness RM-159 dated 21 October 2012, bearing ERNs 0684-3948-0684-0305, into evidence pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules; and
- (b) a Sketch depicting the 4 February 1994 Incident in Sarajevo, annotated by Witness RM-159 in *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, 65 *ter* no. 23087.

**CONDITIONALLY ADMITS** into evidence

- (a) the report concerning the Forensic On-site Investigation of the KDZ Forensics and Counter-Terrorism Department concerning the shelling of Dobrinja Oslobodilaca Sarajeva and DZ Nehrua Streets on 4 February 1994, 65 *ter* no. 09995;
- (b) a diagram relating to shelling of Dobrinja, 65 *ter* no. 15694;
- (c) the forensic report on on-site investigation prepared by the RBiH Ilidža Public Security Station Crime Squad Department regarding the explosion of a modified aircraft bomb fired from VRS positions located northwest at Ilidža, 65 *ter* no. 10114;
- (d) the on-Site Investigation Report no. 1241/95 of the KDZ Forensics and Anti-Terrorism Department regarding the on 16 June 1995, 65 *ter* no. 10160;
- (e) the on-Site Sketch prepared by the Novi Grad Public Security Station regarding the shelling on 16 June 1995, 65 *ter* no. 10161; and
- (f) Photographs relating to the shelling on 16 June 1995, 65 *ter* no. 10140.

<sup>26</sup> T. 8988-9091 and T. 9159-9242 respectively.

<sup>27</sup> The Official Note was admitted as part of the Rule 92 *bis* witness package of Witness RM-155 in the Decision on Prosecution Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 11 January 2013.

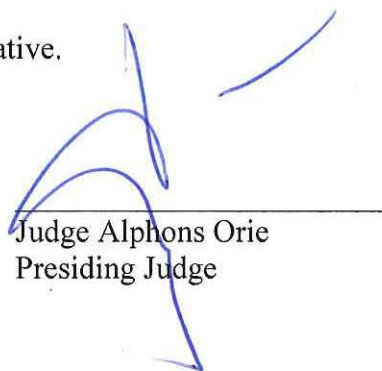
**DECLARES MOOT** the tendering of the Official Note of the Novi Grad Public Security Station no. 19/13-4-255/95, 65 *ter* no. 10139;

**INSTRUCTS** the Prosecution to file the Attestation and Declaration to the Amalgamated Statement of Witness RM-159 within four weeks of the filing of this decision;

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

**INSTRUCTS** the Registry to assign exhibit numbers to the documents above 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 Orié  
Presiding Judge

Dated this twenty-eighth day of June 2013  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**