

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 21 January 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes

MOTION TO ADMIT TESTIMONY OF
BORIVOJE JAKOVLJEVIC
PURSUANT TO RULE 92^{quater}

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rule 92 *quater* for admission of the testimony of Borivoje Jakovljevic in the *Blagojevic* trial.¹

2. Mr. Jakovljevic was a military policeman in the Bratunac Brigade in July 1995. He was providing close protection to General Ratko Mladic in Konjevic Polje on the afternoon of 13 July 1995. He testified that contrary to the testimony of Momir Nikolic, General Mladic and Nikolic never spoke at Konjevic Polje that day nor did General Mladic make a hand signal as claimed by Nikolic.

3. On 29 October 2013, Dr. Karadzic moved for the admission of Mr. Jakovljevic's testimony pursuant to Rule 92 *bis*.² On 29 November 2013, the Trial Chamber denied the motion, finding that the deadline for Rule 92 *bis* motions had not been met and that Mr. Jakovljevic's evidence related to the acts and conduct of General Mladic, a person sufficiently proximate to the accused and for whose acts and conduct the accused is charged with responsibility, and touched upon such a live and important issue between the parties such as to require him to appear for cross-examination.

4. Upon receipt of the decision, Dr. Karadzic had his case manager, Aleksandar Vujic, contact Mr. Jakovljevic and arrange for him to give testimony in his case. Mr. Jakovljevic advised that he had undergone surgery for a brain tumor in July 2013 and no longer had a good memory of the events to which he had testified in the *Blagojevic* case. He told Mr. Vujic that he was simply incapable of giving testimony anymore. A declaration of Mr. Vujic is attached as Confidential Annex "A".

5. Mr. Vujic requested that Mr. Jakovljevic obtain a letter from his doctor verifying the fact that he is not capable of giving evidence. Mr. Jakovljevic then provided such a letter, along with attachments verifying that he had undergone brain surgery. The English translations of those documents are attached as Confidential Annex "B".

6. Mr. Jakovljevic is willing to undergo a medical examination conducted at the expense of the Trial Chamber should the Chamber believe that his inability to testify needs independent verification.

7. This Trial Chamber has already found that the testimony of Mr. Jakovljevic is relevant and of probative value to Dr. Karadzic's case. While it has found that the testimony goes to acts

¹ A transcript of this testimony is available in e-court as Rule 65 *ter* #1D09175.

² *Motion to Admit Statements Pursuant to Rule 92 bis (Srebrenica Component)*

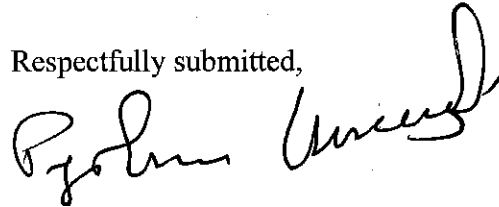
and conduct of a person proximate to the accused, Rule 92 *quater*, unlike Rule 92 *bis*, allows the admission of such evidence.³

8. Trial Chambers have held that persons suffering memory impairment may be considered unavailable pursuant to Rule 92 *quater*.⁴ Dr. Karadzic believes that Mr. Jakovljevic meets those criteria. Should the Trial Chamber have any doubt, Dr. Karadzic requests that the Trial Chamber order an independent medical examination.

9. For all of the foregoing reasons, it is respectfully requested that the testimony of Borivoje Jakovljevic in the *Blagojevic* case be admitted pursuant to Rule 92 *quater*.

Word count: 729

Respectfully submitted,



Radovan Karadzic

³ *Decision on Prosecution's Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 quater* (30 November 2009) at para. 6; *Decision on Prosecution Motion for Admission of the Evidence of KDZ172 (Milan Babic) Pursuant to Rule 92 Quater* (13 April 2010) at para. 43

⁴ *Prosecutor v Hadzic*, No. IT-04-75-T, *Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 quater...* (9 May 2013) at para. 29, 41, 95; *Prosecutor v Mladic*, No. IT-09-92-T, *Decision on Prosecution Rule 92 quater Motion (Witness RM-012)* (13 December 2013) at para. 5; *Prosecutor v Hadzic*, No. IT-04-75-T, *Decision on Prosecution Motions for Admission of Evidence of GH-079, GH-083, and GH-142 Pursuant to Rule 92 quater* (18 July 2013) at paras. 12,17