

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: 25 July 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO ADMIT EVIDENCE
OF RADISLAV KRSTIC 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 the admission of the transcript of testimony of Radislav Krstic, commander of the VRS Drina Corps, as a witness in his own trial. General Krstic testified from 16 October to 2 November 2000.¹ General Krstic was found to have a reasonable excuse not to testify in this trial by virtue of his suffering from Post Traumatic Stress Disorder (PTSD).²

2. Rule 92 *quater* provides that:

1. the evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:
 - a. is satisfied of the person's unavailability as set out above; and
 - b. finds from the circumstances in which the statement was made and recorded that it was reliable
2. if the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

3. The Pre-Trial Chamber in this case has held that Rule 92 *quater* "requires that two conditions be cumulatively satisfied; the unavailability of a person whose written statement or transcript is sought to be admitted, and the reliability of the evidence therein."³

4. The Trial Chamber must also: (a) "ensure that the general requirements for admissibility of evidence in Rule 89 are satisfied and the proffered evidence is relevant and has probative value as provided in Rule 89(C)".⁴

5. All of these requirements are satisfied in the present motion.

6. General Krstic has been found unavailable to testify before the Tribunal by virtue of his PTSD condition. Trial Chambers in other cases have, at the request of the prosecution, found that a witness who suffered from PTSD was unavailable for purposes of Rule 92 *quater*.⁵

7. The testimony given in the *Krstic* trial was reliable for the purpose of admission pursuant to Rule 92 *quater* because it was given under oath with procedural safeguards and the

¹ A transcript of the testimony is available at 65 ter #1D07142.

² *In the Contempt Case of Radislav Krstic*, No. IT-95-5/18-R77.3, *Judgement* (18 July 2013) at para. 30

³ *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater* (21 April 2009) at para 29.

⁴ *Ibid*, para. 30.

⁵ *Prosecutor v Stanisic & Zupljanin, Decision Granting in part Prosecution's Motion for Admission of Evidence of ST020 Pursuant to Rule 92 quater* (19 January 2011) at para. 17; *Prosecutor v Mladic*, No. 09-92-T, *Decision on Prosecution Rule 92 quater Motion (Witness RM-132)* (28 June 2013) at para. 8

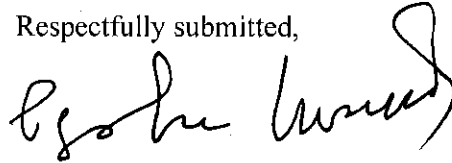
opportunity for cross examination. Any issues as to the credibility of the testimony go to the weight, not admissibility, of the evidence.⁶

8. The trial testimony contains information that has relevance and probative value to the defence of Dr. Karadzic. General Krstic testified that he did not know of the execution of prisoners from Srebrenica. This is relevant to refute the allegation that Dr. Karadzic planned the killings with General Krstic or had been informed about them by General Krstic.⁷

9. For all of the above reasons, it is respectfully requested that the transcript of General Krstic's testimony be admitted into evidence pursuant to Rule 92 quater.⁸

Word count: 557

Respectfully submitted,



Radovan Karadzic

⁶ *Decision on Accused's Motion for Admission of Evidence of Milorad Krnojelac Pursuant to Rule 92 quater* (^ December 2012) at para. 21

⁷ See *Motion for Subpoena: General Radislav Krstic* (3 October 2012) at paras. 13-14

⁸ Dr. Karadzic does not seek the admission of associated exhibits as virtually all of the relevant documents used during General Krstic's testimony have already been admitted as exhibits in this case.