

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Date Filed: 17 June 2014

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DEFENCE MOTION PURSUANT TO RULE 92TER TO ADMIT THE
WRITTEN TESTIMONY OF VESELINKO SIMOVIĆ (GRM255)**

The Office of the Prosecutor:

Mr. Dermot Groome
Mr. Peter McCloskey

Counsel for the Accused:

Mr. Branko Lukić
Mr. Miodrag Stojanović

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DEFENCE MOTION PURSUANT TO RULE 92TER TO ADMIT THE
WRITTEN TESTIMONY OF VESELINKO SIMOVIĆ (GRM255)**

The Accused, **RATKO MLADIĆ**, by and through his counsel of record, respectfully submits the instant Motion pursuant to Rule 92ter of the Rules of Procedure and Evidence, and in support thereof states as follows:

I. INTRODUCTION

1. Pursuant to the Guidance previously expressed by the Trial Chamber, motions offering written statements under Rule 92ter of the Rules of Procedure and Evidence are to be filed at least 30 days before the anticipated testimony of a given witness. Witness Veselinko Simović is currently scheduled to testify approximately of 17 July 2014, and thus the Defence hereby files the instant motion in compliance with the Chamber's guidance, and applying for the evidence of this witness to be heard pursuant to Rule 92ter. This Motion is filed publicly, as the witness does not require protective measures.

2. Herein this application is made to tender one written witness statement of the witness, without any associated exhibits. At this time the Defense estimates that the evidence-in-chief of this witness will last up to 30 minutes.

3. The Defence does not otherwise seek to deviate from the Chamber's Guidelines in tendering this witness' evidence.

II. APPLICABLE LAW

4. Under Rule 92*ter* of the Rules of Procedure and Evidence (hereinafter “Rules”) a Trial Chamber is permitted to admit the evidence in whole or in part in the form of a witness statement or transcripts of a proceeding before the Tribunal, under the following conditions: i) the witness is present in court; ii) the witness is available for cross-examination and any questioning by the Judges; and iii) the witness attests that the written statement or transcript accurately reflects the witness’s declaration and what the witness would say if examined.¹

5. A party calling a witness pursuant to Rule 92*ter* may seek to admit into evidence documents that have been discussed by the witness in his or her witness statement of previous testimony.²

III. DISCUSSION OF ARGUMENTS

6. Witness Simović’s statement is relevant, reliable and probative, as set forth in greater detail herein below. A copy of the statement is attached at Public Annex A, whereas the 65*ter* Number is identified in Public Annex B.

7. The witness will be present at trial, and thus will be able to attest to the evidence and will be available to be cross-examined by the Prosecution. Thereby the requirements of Rule 92*ter* will be fulfilled, and fairness to the Prosecution will be observed.

8. The Defence submits that due to the nature of the witness’s testimony 30 minutes will be necessary in order to conduct a limited and focused direct examination of the witness to clarify, expand on, and contextualize aspects of his evidence directly relevant to the Defence case.

¹ Rule 92*ter* of the Rules of Procedure and Evidence.

² *Prosecutor v. Karadzic*, Case No. IT-95-5/18-T, “Decision on Prosecution’s Submission regarding Additional Transcript Pages from Momcilo Mandić’s Stanisic and Zupljanin Testimony for Admission into Evidence.” 8 September 2010, para. 5

9. Witness Simović was a marksman in the 5th Battalion, beginning on approximately 15 April 1992. He later transferred to the Dragan Nikolić intervention unit, where he was platoon commander. Both were Territorial Defence units located in Foča.

10. Witness Simović's testimony is relevant to and probative of salient and material issues pertaining to the Indictment. The Defence is confident in that it will, among other things, establish the following:

- a. Muslims began issuing threats and establishing paramilitary units before the conflict began, but the Serbian side did not.³
- b. Before 1992, Muslims erected barricades on roads leaving Foča and posted guards with weapons.⁴
- c. Upon rumours of preparations to wipe out the Serbian population, Serbs organized locally and defensively.⁵
- d. The Muslims from Donje Polje were the first to fire on Foča, causing Serbian refugees to flee predominantly Muslim areas.⁶
- e. Before the VRS was established, the people organized in accordance with the Territorial Defence principles.⁷
- f. The Crisis Staff in Foca was to protect Serbs from persecution.⁸
- g. Various armed groups and individuals were under no one's control.⁹
- h. These groups operated independently when they provoked incidents. Some left after clashes with the Foča population during 1992, but some remained.¹⁰
- i. These groups could not be brought under control and Simović never received, or heard of, an unlawful order.¹¹

³ Statement para. 2

⁴ Statement para. 3

⁵ Statement para. 4

⁶ Statement para. 5

⁷ Statement para. 6

⁸ Statement para. 6

⁹ Statement para. 8

¹⁰ Statement para. 9-10

¹¹ Statement para. 11

- j. Mališ, a Military Police commander, came to Foca, in attempt to resolve the issue with those individuals.¹²
- k. Simović never heard of anything lawful in his formation.¹³

III. CONCLUSION

WHEREFORE, for the foregoing arguments, the Defence respectfully requests that the Chamber issue an order:

- a. Granting the Defence leave to call Veselinko Simović as a witness pursuant to Rule 92*ter*.
- b. Granting the Defence leave to admit the proffered statement, (attached hereto as Annex A) under Rule 92*ter*.

Word Count: 754

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

¹² Statement para. 12

¹³ Statement para. 13

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

ANNEX A

**INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS
RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL LAW
COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA
SINCE 1991**

WITNESS STATEMENT

WITNESS DETAILS:

Last name: SIMOVIĆ

First name: Veselinko

Father's name: Gojko

Date of birth: 17 November 1960

Ethnicity: Serbian

Interview Date(s): 15 February 2014

Interview(s) conducted by: Milenko DUNĐER and Boris ZORKO

Languages used in interview: Serbian

Signature of witness: _____

WITNESS STATEMENT

1. My name is Veselinko SIMOVIĆ, father's name Gojko. I was born on 17 November 1960 in Foča. I am a machine technician by occupation. In 1990 some ethnic turmoil already started. The Serbs went to their cafés and the Muslims to theirs, open divisions began, and that was one year before the war. I was working at the time, I was employed at the *Magli* company.
2. Just before the outbreak of the conflict, it was clear to the Serbian population in Foča that the Green Berets were being established in Sarajevo and paramilitary units were being set up. The Muslims were issuing threats, saying that this was not 1942, while the Serbs did not have any organisations of their own, but they were aware of the impending danger. Practically all the Serbs opted to remain in Yugoslavia, and when members of a Serbian wedding party were murdered in Sarajevo, it was clear that something was going to happen in Bosnia and Herzegovina.
3. Even before April 1992, barricades were set up in Foča town, on the road leading out of the town towards Livade. In the Muslim villages in the Foča municipality, the posting of guards was widespread, and the guards moved around the villages and could be seen carrying weapons.
4. I knew that something evil was afoot, that things would no longer be the same, there were opinions that preparations were under way to wipe out the Serbian population from the area. The Serbs organised themselves locally, through the Territorial Defence, in order to defend their homes.
5. As far as I know, in April 1992 or thereabouts the Crisis Staff was formed in the Foča municipality. The Muslims from Donje Polje near Foča were the first to fire at the Serbian population. As a result, some refugees arrived in Foča town, and there were also refugees from Konjic and Sarajevo, i.e. from those areas that had a predominantly Muslim population.
6. Before the establishment of the VRS /Army of Republika Srpska/, all the people organised themselves in accordance with the Territorial Defence principles. The responsibility of the Crisis Staff in Foča was to protect the Serbian people from persecution. At the time, it had the *de facto* power in the Foča municipality.
7. The first unit I joined was the 5th Battalion on around 15 April 1992, and I was a marksman. I then transferred to the *Dragan NIKOLIĆ* intervention unit. Those were Territorial Defence formations in Foča. At the time, many units were coming from Belgrade, including paramilitary formations.
8. I am not familiar with the setting up and operation of the tactical group in Foča, but I did notice that in addition to it, there were also various armed groups and individuals who were not under anyone's control.

9. In many instances they operated separately and independently, they provoked incidents and came into conflict with the population of Foča, so that they left Foča during 1992.
10. Some of them remained there even after June 1992 and I know that there were clashes with them. They had access to the KP Dom /Penal and Correctional Facility/ in Foča. I am aware that there were prisoners in that facility and that these individuals used to go there.
11. These undisciplined volunteers could not be brought under control. They were told that they had to place themselves under control, but they refused this. I categorically state that I never received any unlawful order, nor have I ever heard about any such order.
12. I remember that one time a Military Police officer, MALIŠ, who was a Military Police commander from the VRS, came to Foča. I did not see him, but I heard that he came in order to resolve the issue of those individuals.
13. In the formation that I joined, I never saw or heard that anything unlawful was done. The commander of the unit in which I was engaged was Marko KOVAČ.
14. I am not familiar with the circumstances of the incidents charged in the indictment, but I do know that in the area of Foča there was a number of armed individuals who were not under anyone's control.

WITNESS ACKNOWLEDGEMENT

I have read this statement consisting of _____ pages and it contains everything I said and is true to the best of my knowledge and recollection. I have given this statement voluntarily and am aware that it may be used in proceedings before the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991, and that I may be called to testify in public before the Tribunal.

Signature: _____

Date: _____

MEĐUNARODNI SUD ZA KRIVIČNO GONJENJE OSOBA ODGOVORNIH ZA
TEŠKA KRŠENJA MEĐUNARODNOG PRAVA NA TERITORIJI BIVŠE
JUGOSLAVIJE OD 1991

IZJAVA SVEDOKA

PODACI O SVEDOKU:

Prezime: SIMOVIĆ

Ime: Veselinko

Ime oca: Gojko

Datum rođenja: 17.11.1960.

Nacionalnost: srpska

Datum(i) razgovora: 15.02.2014.

Razgovor (e) vodili: Milenko Dunder, Boris Zorko

Jezici korišćeni u toku razgovora: srpski

Potpis svedoka: Веселинко Симовић

IZJAVA SVEDOKA

1. Zovem se Simović (Gojka) Veselinko, rođen sam 17.11.1960. godine u Foči. Po zanimanju sam mašinski tehničar. Tokom 1990. već počinje neko etničko komešanje, Srbi idu u svoje, Muslimani u svoje kafiće, počinju otvorene podele, i to godinu dana prije rata. Tada sam radio, bio sam zaposlen u firmi „Maglić“.
2. Neposredno pred početak sukoba, srpskom stanovništvu u Foči je bilo jasno da se u Sarajevu formiraju „Zelene beretke“, da se formiraju paravojne jedinice, muslimanski narod je pretio, govoreći da ovo nije 1942., a Srbi nisu imali nikakve organizacije, i bili su svesni da preči opasnost. Srbi su bili listom opredeljeni za ostanak u Jugoslaviji, a kada je došlo do ubistva srpskih svatova u Sarajevu, i bilo je jasno da će se nešto desiti u BiH.
3. I pre aprila 1992. godine, postavljene su barikade u samom gradu Foči, i to na izlasku iz grada, prema Livadama, zatim uveliko po selima u opštini Foča, držane su muslimanske straže koje su se kretale po selima, i koje su primećene sa oružjem.
4. Znao sam da se sprema neko zlo, da stvari neće biti iste, da je bilo mišljenja da se sprema nestanak srpskog naroda sa ovih prostora. Srbi su bili organizovani preko teritorijalne odbrane, na lokalnu, a radi odbrane svojih ognjišta.
5. Približno aprila 1992. godine, po mojim saznanjima formira se Krizni štab u opštini Foča. Muslimani iz Donjega Polja u blizini Foče, su prvi otvorili vatru ka srpskom stanovništvu, što je dovelo do toga da je bilo izbeglih lica koja su stizala u sam grad Foču, bilo je izbeglica iz Konjica, iz dela Sarajeva, iz onih delova gde je pretežno bilo muslimansko stanovništvo.
6. Pre formiranja VRS, svo stanovništvo se organizovalo po principu teritorijalne odbrane. Ingerencije Kriznog štaba u Foči su bile na očuvanju srpskog stanovništva od progona. Ono tada ima faktičku vlast na teritoriji opštine Foča.
7. Prva jedinica u kojoj sam bio je bio 5. Bataljon, to je bilo približno 15 aprila 1992. godine, i bio sam strelac. Zatim sam prešao u interventnu jedinicu „Dragan NIKOLIĆ“. To su formacije teritorijalne odbrane u Foči. Mnoge jedinice su u to vrijeme dolazile iz Beograda, dolaze i paravojne formacije.
8. Nisam upoznat sa funkcionisanjem i osnivanjem taktičke grupe u Foči, ali sam primetio da osim nje, postoje i razne oružane grupe i pojedinci koji nisu pod bilo čijom kontrolom.
9. Delovali su zasebno, samostalno, povodom mnogih stvari, pravili su incidente, i bilo je sukoba između stanovnika Foče i njih, tako da su napustili Foču tokom 1992.

10. Deo njih je ostao i posle juna 1992., godine, i poznato mi je da je bilo sukoba sa njima. Oni su imali pristup KP Domu u Foči. Poznato mi je da je bilo zatvorenika u tom domu, i da su ova lica odlazila do KP Doma.
11. Ovi nedisciplinovani pripadnici dobrovoljaca se nisu mogli staviti pod kontrolu. Njima je rečeno da se moraju staviti pod kontrolu, što su oni odbijali. Odgovorno tvrdim da nisam ni dobio, ni čuo za bilo kakvo nezakonito naređenje.
12. Sećam se da je jednom prilikom došao u Foču, oficir vojne policije MALIŠ iz VRS, komandir vojne policije. Nisam ga video, ali sam čuo da je dolazio radi rešavanja pitanja ovih pojedinaca.
13. U formaciji u kojoj sam bio, nisam ni čuo ni video da je učinjeno nešto nezakonito. Komandant jedinice u kojoj sam bio angažovan je bio Marko KOVAČ.
14. Nisu mi poznate okolnosti u pogledu incidenata u optužnici, ali mi je poznato da je na teritoriji Foče postao jedan broj naoružanih pojedinaca koji nisu ni pod čijom kontrolom bili.

POTVRDA SVEDOKA

Pročitao sam ovu izjavu od 4 strana i ona sadrži sve što sam rekao, po svom znanju i sećanju. Izjavu sam dao dobrovoljno i svestan sam da se može upotrebiti u sudskom postupku pred Međunarodnim sudom za krivično gonjenje osoba odgovornih za teška kršenja međunarodnog prava počinjena na teritoriji bivše Jugoslavije od 1991, kao i da mogu biti pozvan da javno svedočim pred Sudom.

Potpis: Борислав Семецкић

Datum: 08. 06. 2014

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

ANNEX B

SIMOVIC Veselinko GRM255			
Witness Statement to be admitted pursuant Rule 92ter			
Statement	Date	65ter Number	Closed Session/Under seal
Witness Statement of SIMOVIC Veselinko	8 June 2014	RM 65ter 1D01656	/
Associated Exhibits wich the Defence seeks to tender pursuant to Rule 92ter			