

**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: 8 September 2014

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC
WITH PUBLIC ANNEX A and PUBLIC ANNEX B

**DEFENCE MOTION PURSUANT TO RULE 92TER TO ADMIT THE WRITTEN
TESTIMONY OF MILENKO RAJAK**

The Office of the Prosecutor:

Mr. Dermot Groome
Mr. Peter McCloskey

Counsel for the Accused:

Mr. Branko Lukić
Mr. Miodrag Stojanović

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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 MILENKO RAJAK is currently scheduled to testify approximately within 30 days and thus the Defense 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 Defense does not otherwise seek to deviate from the Chamber's Guidelines in tendering this witness' evidence.

II. APPLICABLE LAW

4. Under Rule 92ter 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 92ter 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

a) The Chamber Should Admit the Witness Statement

¹ Rule 92ter 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 Mandic's Stanisic and Zupljanin Testimony for Admission into Evidence." 8 September 2010, para.5.

6. The Defence seeks leave of the Chamber to call **MILENKO RAJAK** as a witness pursuant to Rule 92ter. The Defence submits that the proffered statement, (attached hereto as Annex A) with corresponding 65ter number for the statement (attached as Annex B), meets the requirements of Rule 92ter, and thus should be admitted under that Rule.

7. Witness Rajak's statement is relevant, reliable and probative, as set forth in greater detail herein below.

8. 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 92ter will be fulfilled, and fairness to the Prosecution will be observed.

9. The Defense 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 Defense case.

10. Witness Rajak was born on 3 February 1965 in Rogatica and he is a KV lathe operator.³ Rajak was in the VRS Rogatica Brigade, VP 7084 as a soldier;⁴ the territorial defence was the organised armed formation in Rogatica before the creation of the Rogatica Brigade.⁵ In April 1992, witness Rajak was engaged in the Serbian forces and he was a member of the TO of the Serbian forces in Rogatica municipality.⁶ Milenko Rajak was in the 2nd Infantry Battalion of the Rogatica Brigade 2nd Company; he was a platoon commander.⁷ Witness Rajak was wounded on July 1992, after his recovering

³ Statement, para.1

⁴ Statement, para.2

⁵ *Id.*

⁶ Statement, para.3

⁷ Statement, para.6

Rajak joined a military police unit in the Rogatica Brigade and remained there until 1st June 1994.⁸

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

- a. The organization of the Serbian forces in Rogatica municipality.⁹
- b. The Muslim organization in Rogatica municipality.¹⁰
- c. There were no armed clashes between Muslims and Serbs at the beginning of April 1992.¹¹
- d. The displacement of Serbs from Muslim territory to Serb villages.¹²
- e. The incident in the Rasadnik and V. Vlahović buildings.¹³
- f. The situation with the Crisis Staf and the negotiations with the Muslims.¹⁴
- g. No orders were issued or system was directed against the Muslims.¹⁵

III. CONCLUSION

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

- a. Granting the Defense leave to call Milenko Rajak as a witness pursuant to Rule 92*ter*.
- b. Granting the Defense leave to admit the proffered statement, (attached hereto as Annex A) under Rule 92*ter*.
- c. Granting the Defense leave to admit the corresponding 65*ter* number for the statement (attached hereto as Annex B) under Rule 92*ter*.

⁸ Statement, para.8

⁹ Statement, paras.3, 7

¹⁰ Statement, para.4

¹¹ Statement, paras.4, 6

¹² Statement, para.5

¹³ Statement, para.9

¹⁴ Statement, para.10

¹⁵ Statement, para.11

Word Count: 933

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

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PUBLIC

ANNEX A

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

WITNESS STATEMENT

WITNESS INFORMATION:

Last name: RAJAK

First name: Milenko

Father's name: Stevan

Date of birth: 3 February 1965

Ethnicity: Serbian

Date(s) of interview: 6 March 2014

Interview(s) by: Milenko DUN\ER, Boris ZORKO

Languages used during the interview: Serbian

Signature of witness: /signed/

WITNESS STATEMENT

1. My name is Milenko RAJAK, I am a KV /qualified/ lathe operator with secondary school education. I was born on 3 February 1965 in Rogatica.
2. I was in the VRS /Army of Republika Srpska/ Rogatica Brigade, VP /military post/ 7084 as a soldier. Prior to the formation of the Rogatica Brigade, the Territorial Defence was the organised armed formation in Rogatica municipality.
3. In Rogatica municipality the Serbian forces organised themselves and they protected the territory with a majority Serbian population. First, I was engaged in these forces from the beginning of April 1992, and was a member of the TO of the Serbian forces in Rogatica municipality.
4. There was also a company or a squad in the Kozi}i MZ /local commune/, with a minority Serbian population. The Serbs organised themselves because that was what the Muslims did as well. They held their guards opposite ours. Everyone protected their own home. At the beginning of April 1992 there were no armed clashes between the Muslims and Serbs.
5. In our MZ there were some villages deep inside Muslim territory, so we had to organise for the Serbs to be moved from those territories to our villages.
6. The fighting in Rogatica started around 20 May 1992. There had been incidents before, but no armed clashes. The commander in our battalion was the late Dragomir PAUNOVI], who had served a prison sentence for war crimes. He was sentenced in Sarajevo. I was in the 2nd Infantry Battalion of the Rogatica Brigade 2nd Company. I was platoon commander. This was an ordinary infantry platoon.

7. There was some self-organisation before we entered the Rogatica Brigade which was formed in June 1992. After some time, all the units in the territory of Rogatica municipality became a part of the brigade, which, in turn, was a part of the Corps.
8. I was wounded on 14 July 1992 by five bullets, in both arms, my right leg and head. I was recovering until about New Year in 1993. Then, I joined a military police unit in the Rogatica Brigade, where I remained until 1 June 1994. After this, I had a work obligation and was not involved in military tasks as I am a category VIII disabled veteran.
9. I was asked directly about the incident in the *Rasadnik* and *V. Vlahovi}* buildings. I was never engaged there. I have some direct knowledge that certain war criminals were held at the *V. Vlahovi}* school and that these people were later exchanged in Sarajevo.
10. The Crisis Staff was formed at the end of May/beginning of June, after the negotiations with the Muslims, who had actual power, failed. *Vlahovi}* and *Rasadnik* were outside its purview and under the control of the Rogatica Brigade. There were various civilian and military authorities and one could not give orders to the other. Responsibilities were not mixed.
11. Not a single illegal order was issued that I know about, nor was there any system directed against the Muslims.

WITNESS ACKNOWLEDGMENT

I have read this statement consisting of _____ pages. It contains everything I stated according to my knowledge and recollection. I provided the statement voluntarily and I am aware that it can be used in proceedings before 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: /signed/

Date: 6 June 2014

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

IZJAVA SVEDOKA

PODACI O SVEDOKU:

Prezime: RAJAK

Ime: Milenko

Ime oca: STEVAN

Datum rođenja: 03.02.1965.

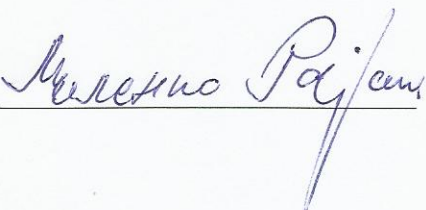
Nacionalnost: srpska

Datum(i) razgovora: 06.03.2014.

Razgovor (e) vodili: Milenko Dunder, Boris Zorko

Jezici korišćeni u toku razgovora: srpski

Potpis svedoka:



IZJAVA SVEDOKA

1. Zovem se Milenko Rajak, po struci sam KV metalostrugar, srednja strucna sprema, rođen sam 03.02.1965. godine u Rogatici.
2. Nalazio sam se u VRS pri Brigadi Rogatica VP 7084, kao vojnik. Pre formiranja Rogatičke brigade, na teritoriji opštine Rogatica, postojala je teritorijalna odbrana na teritoriji opštine Rogatica kao organizovana oruzana formacija.
3. U opštini Rogatica, bile su samoorganizovane srpske snage koje štite teritoriju sa većinskim srpskim stanovništvom. Angažovan sam najpre u tim snagama od početka aprila 1992. godine, a najpre sam bio pripadnik TO/teritorijalne odbrane/ srpskih snaga opštine Rogatica.
4. Postojala je četa - odeljenje MZ/mesna zajednica/ Kozići, sa manjinskim srpskim stanovništvom. Srbi su se samoorganizovali, jer su Muslimani to isto radili, držali svoje straže, naspram naših. Svako je štitio svoje kuće. Početkom aprila 1992. godine nije bilo oružanih sukoba između Muslimana i Srba.
5. U našoj MZ je bilo sela koja su u dubini muslimanske teritorije, pa smo morali da organizujemo premeštaj Srba sa tih teritorije u naša sela.
6. Borbe u Rogatici počinju oko 20. maja 1992. godine. Incidenata je bilo i ranije, ali nije bilo okružanih sukoba. Komandant našeg bataljona bio je pok. PAUNOVIĆ Dragomir, koji je izdržao zatvorsku kaznu za ratni zločin, osuđen u Sarajevu. Ja sam bio u 2. pešadijskom bataljonu Rogatičke Brigade, 2. četa, bio sam komandir voda. Reč je o običnom pešadijskom vodu.
7. Postojala je samoorganizacija pre ulaska u sastav Rogatičke Brigade, koja je fomirana u junu mesecu 1992. Posle izvesnog vremena, sve jedinice na teritoriji opštine Rogatice su u sastavu te brigade, koja je u sastavu Korpusa.

8. Dana 14. jula 1992. godine sam ranjen, pogodilo me je 5 metaka, u obe ruke, desna noga i glava. Oporavljao sam se do negde Nove Godine 1993. godine, nakon toga dolazim u jedinicu vojne policije Rogatičke brigade, tu sam do 01.06.1994. godine, a nakon toga sam imao radnu obavezu i nisam obavljao vojne zadatke kako imam VIII kategoriju invaliditeta.
9. Na direktno pitanje oko incidenata povodom objekta Rasadnik i V Vlahović nisam nikada bio anagžovan u vezi ovih objekata. Imam posredna saznanja da su ratni zarobljenici držani u objektu u školi V. Vlahović, i da su ta lica kasnije bila razmenjena u Sarajevu.
10. Krizni štab se formira krajem maja početkom juna, nakon što su propali pregovori sa Muslimanima, koji je imao faktičku vlast. Vlahovic i Rasadnik van njegove nadležnosti, pod kontrolom su Rogatičke brigade. Postoje različite civilna i vojna vlast, i jedna drugoj ne mogu da naređuju. Nisu se mešale nadležnosti.
11. Nijedno nezakonito naređenje nije izdato za koje znam, niti je postojao nekakv sistem usmeren protiv Muslimana.

POTVRDA SVEDOKA

Pročitao sam ovu izjavu od _____ 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: Miroslav Rajcan

Datum: 06.06.2014 i.

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ANNEX B

RAJAK Milenko			
Witness Statement to be admitted pursuant Rule 92ter			
Statement	Date	65ter Number	Closed Session / Under seal
Witness Statement of RAJAK Milenko	6 June 2014	1D01700	/
No Associated Exhibits wich the Defence seeks to tender pursuant to Rule 92ter			