

**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 Flüge

Registrar: Mr. John Hocking

Date Filed: 5 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 TRIVKO PLJEVALJČIĆ**

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 TRIVKO PLJEVALJČIĆ 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 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

a) The Chamber Should Admit the Witness Statement

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 Mandic's Stanasic and Zupljanin Testimony for Admission into Evidence." 8 September 2010, para.5.

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

7. Witness Pljevaljčić'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 92*ter* 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 Pljevaljčić' was born on 6 August 1955 in Orahovo, municipality of Foča.³ During the conflict Trivko Pljevaljčić was in the 3rd Company of the 5th Battalion.⁴ Pljevaljčić's unit was deployed on the right bank of the Drina River in the area between Foča and Crvena Ravan.⁵ Witness Pljevaljčić and others decided to self-organize in order to protect Serbian territory.⁶

11. Witness Pljevaljčić'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:

³ Statement, para.1

⁴ Statement, para.4

⁵ *Id.*

⁶ *Id.*

- a. The arming of Foča Serbs during the relevant period.⁷
- b. The Užice Corps of the JNA did not arm Serbs in Foča.⁸
- c. The self-organization of Serbs in order to protect Serbian territory in Foča.⁹
- d. No aim was established to capture territory toward Goražde.¹⁰
- e. The Muslims units were the first to attack, it was constantly and carried out slaughters were Serbs were killed.¹¹
- f. The Muslim forces used their religious facilities for military purposes.¹²
- g. The Serbs were the fist to suffer damage, harm by the Muslim forces.¹³
- h. Muslim forces were the first to set up barricades in Foča.¹⁴
- i. Civilians were leaving before the war broke up but also as a consequence to clashes occurred in April 1992.¹⁵
- j. The accommodation of Muslims in some facilities.¹⁶

III. CONCLUSION

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

- a. Granting the Defense leave to call Trivko Pljevaljčić 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*.

Word Count: 929

⁷ Statement, para.2

⁸ Statement, para.3

⁹ Statement, para.4

¹⁰ Statement, para.6

¹¹ Statement, paras.6-7, 10

¹² Statement, paras.8-9

¹³ Statement, paras.10-11

¹⁴ Statement, para.10

¹⁵ statement, paras.12-13

¹⁶ Statement, para.14

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

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Case No. IT-09-92-T

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PUBLIC

ANNEX A

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

WITNESS STATEMENT

WITNESS INFORMATION:

Last name: PLJEVALJČIĆ

First name: Trivko

Father's name: Mile

Date of birth: 6 August 1955

Ethnicity: Serbian

Date(s) of interview: 9 March 2014

Interviewed by: Milenko DUNĐER, Boris ZORKO

Languages spoken during interview: Serbian

Witness signature: _____

WITNESS STATEMENT

1. My name is Trivko PLJEVLJAČIĆ, father's name Mile. I was born on 6 August 1955 in Orahovo, the municipality of Foča.
2. As regards the proceedings against General Ratko MLADIĆ, I wanted to say the following concerning events in Foča: When it comes to the arming of Foča Serbs during the relevant period, some of them had had weapons as members of the police reserve force. It was only on the first day of the conflict that the TO /Territorial Defence/ warehouse at Livade was broken into and some infantry weapons taken.
3. The Užice Corps of the JNA /Yugoslav People's Army/ did not give us weapons. It only got as far as Goražde. As far as I know, this JNA Corps did not reach Foča and it is incorrect that we were armed by the JNA.
4. I was in the 3rd Company of the 5th Battalion. The unit was deployed on the right bank of the Drina River in the area between Foča and Crvena Ravan. Without any military or political leadership, we decided to self-organize in order to protect Serbian territory facing the Muslim settlements in Foča.
5. The line held by the 5th Battalion and the Company spread from the banks of the Drina to the hills at Čajnič and it was some 15 kilometres long.
6. We had no ambition to capture territory towards Goražde. Throughout the conflict, which is to say for almost four years, I stayed in the same spot. The line did not change at all. It basically stayed the same until the signing of the Dayton Accords. On the other hand, we were almost constantly attacked by Muslim forces. For example, in December 1992, on the Serbian religious holiday of St. Nicholas' Day, Muslim forces burst into the village of Jošanica and killed more than 60 Serbian civilians. The Muslim units which carried out this slaughter in the village of Jošanica were from Goražde.

7. I know that the Muslim forces carried out other attacks in the municipality of Foča in 1993, like the attacks on the village of Bregove in the Slatina sector, when some Serbs were killed, as well as that there were incursions in other Serbian villages, like in Preljuša.
8. I was wounded on 14 July 1992. Concerning the fighting in the town of Foča itself, it lasted for some 10 days. Ever since the conflict broke out, all our activity focused on defending or reacting to the Muslim forces' attacks. Our first casualty happened on the first day of the fighting and he was killed by fire opened from the minaret of the *Aladža* mosque. I know that the Muslim forces used their religious facilities for military purposes. They carried out training and stored weapons in them.
9. As far as I know, the first fighter to be killed in Foča was Rodoljub TRIFKOVIĆ. He was the one who was shot from the *Aladža* mosque. I was some 10 metres from him when it happened. Dragan NIKOLIĆ was killed on that occasion as well.
10. I also wanted to say that the first houses to be set on fire in Foča belonged to ethnic Serbs. I can provide the examples of the houses belonging to Dr. Milisav, Savo OBRENOVIĆ, KOVAČ and Pavle PLEVIĆ. The first attacks were carried out by the Muslim forces. The first barricades to be set up in Foča were also erected by the Muslim forces near the *Aladža* mosque and Dobro Polje. All of this was happening before 8 April 1992. There were armed members of Muslim formations in combat fatigues at the barricades.
11. As far as I know, the first woman to be raped at the time was a Serbian woman. The headquarters of the Muslim forces was in the *Foča Trans* company.

12. Some of the Muslim inhabitants of Foča left even before the conflict. When the fighting broke out in Foča itself and as the Muslim forces began sustaining losses, the civilian population, too, started to leave Foča in columns under cover of night. Some Muslims remained in the town even after the conflict. I believe that it was on their request that buses were provided between 15 and 20 days after the liberation of Foča to take them to Serbia or Macedonia.
13. Part of the Muslim population remained in Foča after the conflict broke out, but people left town of their own accord between April and August 1992. They were allowed to safely leave Foča. From a territorial point of view, the municipality of Foča was a large one. After Foča was liberated, some Muslim fighters remained in the villages populated by Muslims, for example the villages of Zlatišta, Sutjeska and Tjentište. There were occasional skirmishes involving those straggling Muslims forces which launched attacks on villages mainly populated by Serbs.
14. When the conflict broke out some Muslim inhabitants had to be accommodated and that is why some of them were placed in the Čodor-mahala /quarter of town/, the *Partizan* DTV /Physical Education Association/ and the KP Dom /Penal and Correctional Facility/. We had some difficulty with their accommodation. It even so happened that a volunteer who had come from elsewhere was killed by a guard providing security at these facilities.
15. The first religious facility to be destroyed in Foča was an Orthodox shrine called *Jabuka*. As far as I know, I think that men who came from elsewhere, like Serbia and Montenegro, were the ones involved in the destruction of religious facilities. The religious facilities in Donje Polje and Gornje Polje were used to store weapons or to train the Muslim side.
16. I do not know whether General MLADIĆ ever came to Foča. I also do not know when or if at all the armed formations in Foča that existed at the beginning of the conflict and later on, were united.

WITNESS CONFIRMATION

I read this ____ page statement and it contains everything I said, to the best of my knowledge and recollection. I gave this statement voluntarily and I am aware that it may be used in the 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: _____

IZJAVA SVEDOKA

PODACI O SVEDOKU:

Prezime: PLJEVALJČIĆ

Ime: Trivko

Ime oca: Mile

Datum rođenja: 06.08.1955.

Nacionalnost: srpska

Datum(i) razgovora: 09.03.2014.

Razgovor (e) vodili: Milenko Dunder, Boris Zorko

Jezici korišćeni u toku razgovora: srpski

Potpis svedoka: Trivko Pljevaljčić

1. Zovem se Trivko PLJEVALJČIĆ, od oca Mileta, rođen sam 06.08.1955. godine, u mestu Orahovo, opština Foča.
2. U vezi događaja u Foči za potrebe postupka protiv Generala Ratka Mladića, želim da kažem sledeće. Kada je reč o naoružavanju Srba u Foči u relevantnom periodu, napominjem da je deo Srba imao oružje još iz rezervnog sastava policije. Tek prvog dana sukoba se desio upad u magacin TO/teritorijalne odbrane/ na Livadama iz koga je izvučeno nešto pešadijskog naoružanja.
3. Užički korpus JNA nas nije naoružavao, on je dolazio do Goražda. Prema mom saznanju, ovaj korpus JNA nije ni fizički dolazio do Foče, i nije tačno da smo naoružavani od strane JNA.
4. Ja sam bio u trećoj četi 5. bataljona, pri čemu je ova jedinica bila razmeštena na desnoj obali Drine, odnosno na predelu od Foče do Crvene Ravni. Mi smo bez vojnog i političkog rukovodstva, rešili da se samoorganizujemo radi zaštite srpske teritorije ka muslimanskim naseljenim mestima u Foči.
5. Linija koju je držao 5. bataljon i četa, je obuhvatala deo od obale Drine, brdima ka Čajniču, i bila je duga nekih 15-tak kilometara.
6. Nismo imali nikakvih ambicija da se osvaja teritorija ka Goraždu, jer sam sve vreme sukoba, dakle gotovo 4 godine sukoba, bio na istom mestu, i koja linija se nije uopšte menjala, odnosno faktički je ostala nepromenjena sve do potpisivanja Dejtonskog sporazuma. Na drugom mestu, mi smo gotovo stalno bili pod napadima muslimanskih snaga. Tako su muslimanske snage u decembru 1992. godine upali u selo Jošanica kada je ubijeno preko 60 srpskih civila, i to na dan pravoslavne svetkovine - slave Nikoljdan. Te muslimanske jedinice koje su izvršile pokolj u selu Jošanica su bile jedinice iz Goražda.



7. Pomalo mi je da je od strane muslimanskih snaga bilo još napada tokom 1993. godine u opštini Foča, i to na selo Bregove, rejon Slatine, gde je bilo ubijenih Srba, i upada u srpska sela, zatim na Preljući.
8. Ja sam bio ranjen 14. Jula 1992. godine. U vezi borbi u samom gradu Foča, one su trajale nekih 10-tak dana. Od izbijanja sukoba, svaka naša aktivnost se svodila na odbranu ili reakciju na napade muslimanskih snaga. Prvog dana sukoba, naš prvi borac koji je poginuo je poginuo od vatre otvorene sa minareta Aladža džamije, a poznato mi je da su muslimanske snage upotrebljavale svoje verske objekte za vojne svrhe. U njima je vršena obuka, vršeno je skladištenje naoružanja.
9. Prvi poginuli borac u Foči, po mojim saznanjima zove se Rodoljub TRIFKOVIĆ, on je pogođen sa Aladža džamije. Bio sam 10-tak metara od njega, kada se to desilo. U isto vreme je poginuo Dragan Nikolić.
10. Takođe želim da kažem, da su prve paljevine u Foči, bile su paljevine kuća vlasnika srpske nacionalnosti, i mogu navesti kuće Dr. Milisava, Sava OBRENOVIĆA, KOVAČA, Pavla PLEVIĆA. Faktički su prve napade izvele muslimanske snage. Takođe su prve barikade u Foči postavljene od strane muslimanskih snaga kod Aladža džamije i Dobrog polja. Ovo je sve prije 08.04.1992. godine. Na barikadama je bilo naoružanih pripadnika muslimanskih formacija, u maskirnim uniformama.
11. Prema mojim saznanjima, u relevantnom periodu, prva žena koja je pretrpela silovanje je bila žena srpske nacionalnosti. Štab Muslimanskih snaga je bio u „Foča transu“.
12. Jedan broj muslimanskog življa je napustio Foču još i prije sukoba. Takođe sa početkom borbi u samoj Foči, te kako su muslimanske snage počele da trpe gubitke i da se povlače tako je i civilno muslimansko stanovništvo pod okriljem noći u kolonama napuštalo Foču. Deo Muslimana je ostao u gradu i posle sukoba, i mislim da je autobusima, na njihov zahtjev, u tih 15-ak, 20-ak dana, po oslobađanju Foče, njima je omogućen prevoz za Srbiju ili Makedoniju.
13. Deo muslimanskog življa je po izbijanju sukoba i dalje ostao u Foči, ali je u periodu od Aprila do Avgusta 1992. godine bilo samoinicijativnog napuštanja Foče, a tim



neima je omogućeno da bezbjedno mogu napustiti Foču. Opština Foča je teritorijalno posmatrano, bila velika opština. Nakon oslobađanja Foče, deo muslimanskih boraca se zadržao u selima u kojima ima muslimanskog življa, i to konkretno u selima Zlatišta, Sutjeske i Tjentišta. Povremeno smo imali sukobe sa tim zaostalim muslimanskim snagama koji su vršili napade na sela u kojima je živjelo većinsko srpsko stanovništvo.

14. Po izbijanju sukoba, dio muslimanskog življa je morao biti zbrinut, kada dolazi do smještanja određenog broja lica u Čodor – mahal, „DTV Partizan“, ili KP Dom, pri čemu smo imali problema prilikom njihovog smještaja. Tako se čak desilo da je tokom tog obezbjeđenja tih objekata, od strane stražara ubijen jedan dobrovoljac koji je došao u Foču sa strane.
15. Prvi verski objekat u Foči koji je uništen bio je pravoslavni verski objekat Jabuka. Koliko je meni poznato, mislim da su ljudi koji su došli sa strane, iz Srbije i Crne gore bili protagonisti uništavanja verskih objekata. Verski objekti u Donjem polju i Gornjem polju su korišćeni za skladištenje naoružanja, ili radi obuke muslimanskih strana.
16. Nije mi poznato da li je Gen. Mladić dolazio u Foču, niti mi je poznato kada je i da li je došlo do objedinjavanja oružanih formacija koje su se nalazile u Foči početkom sukoba i kasnije.

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: Stjepan Miloš Japuro

Datum: 10.07.2014

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

Case No. IT-09-92-T

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ANNEX B

PLJEVALJCIC Trivko			
Witness Statement to be admitted pursuant Rule 92ter			
Statement	Date	65ter Number	Closed Session / Under seal
Witness Statement of PLJEVALJCIC Trivko	10 July 2014	1D01671	/
NO Associated Exhibits wich the Defence seeks to tender pursuant to Rule 92ter			