



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-02-54-T
Date: 31 May 2005
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision: 31 May 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

DECISION ON ADMISSION OF EXHIBIT 538

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

HAVING MARKED FOR IDENTIFICATION exhibit 538, which was tendered as evidence by the Prosecution during its case-in-chief,

NOTING the Trial Chamber’s “Order Concerning Exhibits Marked for Identification During the Prosecution Case”, issued 20 July 2004, wherein the Trial Chamber ordered that (1) the Prosecution shall, within two weeks from the date of that Order, file its submissions on whether or not exhibits marked for identification during its case-in-chief should be admitted into evidence, and inform the Trial Chamber of any duplicate exhibits that may have been tendered under more than one exhibit number; and (2) the Accused and *Amici Curiae* shall file a response, if any, within two weeks from the date of the Prosecution’s filing,

NOTING the following:

- (1) partially confidential “Prosecution Submissions in Response to the Trial Chamber’s 20 July 2004 ‘Order Concerning Exhibits Marked for Identification During the Prosecution Case’”, filed 3 August 2004, making provisional submissions, setting out reasons why final submissions could not be submitted by the date set by the Order of 20 July 2004, and stating that final submissions would be filed the next day on 4 August 2004; and
- (2) partially confidential “Supplement to ‘Prosecution Submissions in Response to the Trial Chamber’s 20 July 2004 ‘Order Concerning Exhibits Marked for Identification During the Prosecution Case’””, filed 4 August 2004, (a) setting forth its final submissions regarding the reasons why certain exhibits marked for identification during its case-in-chief should be admitted into evidence (collectively referred to as “Prosecution Submission”); and, (b) in particular, requesting admission into evidence of exhibit 538, which are transcripts and minutes of the Assembly of Republika Srpska (“RS Assembly materials”), and arguing as follows: (i) “the minutes are clearly relevant to the Accused’s mens rea and to the actions of the Bosnian Serb leadership”; (ii) “it would be easier for the minutes to be admitted at this stage rather than to admit them piecemeal later as may become necessary”; (iii) “[t]here is no ground not to admit and every reason to have them admitted as important documents of record”; and (iv) “sufficient foundation [was] laid during Mr. Donia’s testimony”,

NOTING that the Accused and *Amici Curiae* did not respond to the Prosecution Submission,

NOTING the “Decision and Order on Admission of Exhibits Marked for Identification During Prosecution Case-in-Chief”, issued 15 February 2005, wherein the Trial Chamber (1) considered that exhibit 538 was only partially translated; (2) ordered that exhibit 538, which is marked for identification, shall not be admitted into evidence and shall be removed from the record; and (3) ordered that the Prosecution shall produce within three months of the date of this Order a fully translated version of exhibit 538, at which time the Trial Chamber would consider its admission into evidence,

NOTING that the Prosecution, via a memorandum dated 13 May 2005, provided to the Trial Chamber and parties a fully-translated version of exhibit 538,

NOTING that Rule 89(C) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) provides that the Trial Chamber may admit any relevant evidence that it deems to have probative value and that Rule 89(E) of the Rules provides that the Trial Chamber may request verification of the authenticity of evidence obtained out of court,

CONSIDERING that the RS Assembly materials were tendered as evidence through Prosecution Expert Witness Robert Donia, who testified, *inter alia*, that the RS Assembly materials were produced to the Prosecution by the Ministry of Justice of Republika Srpska in February 1998, December 2001, and January 2002,¹

CONSIDERING FURTHER that the RS Assembly materials are relevant and have probative value,

PURSUANT to Rules 54, 89, and 127 of the Rules,

HEREBY ADMITS exhibit 538 into evidence.

Done in both English and French, the English text being authoritative.



Judge Robinson
Presiding

Dated this thirty-first day of May 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ T. 24678-24679, 24681-24682 (12 September 2003).