

IT-00-39-T
D14242 -D14236
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UNITED
NATIONS



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: IT-00-39-T

Date: 21 August 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr Hans Holthuis

Decision of: 21 August 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

DECISION ON ADMISSION OF EXHIBITS

Office of the Prosecutor

Mr Mark Harmon
Mr Alan Tieger

Counsel for the Defence

Mr Nicholas Stewart, QC
Mr David Josse

P1281 - P1285

1. On 4 July 2006, during its cross-examination of Witness Velibor Ostojić, the Prosecution presented five documents, marked as P1281 through P1285, including media reports regarding the situation in Foča in April 1992 which quote the witness.¹ The Defence objected to the manner of the presentation of the documents, and submitted that the witness be questioned on each document individually.² On 10 August 2006, the Defence filed a written objection to the admission of exhibits P1281 through P1285 on the grounds that the witness did not have a proper opportunity to deal with the documents, or alternatively that it was an attempt by the Prosecution to adduce further evidence.³

2. The Prosecution responded on 16 August 2006, asserting that the documents were introduced to assist the Chamber in assessing Witness Ostojić's evidence and credibility regarding his stated inability to have spoken to the media regarding Foča at the relevant time due to his engagement in personal matters. The Prosecution noted that the witness was made aware of the inconsistency between his testimony and the exhibits, and was given an opportunity to comment.⁴

3. The Chamber finds that the documents are relevant to the question of credibility of the witness. Moreover, the manner of the cross-examination of the witness does not justify non-admission of the documents. The Prosecution posed a long question quoting these documents in order to support its contention that, contrary to his testimony, Witness Ostojić was not prevented from dealing with matters other than of a personal nature in April 1992, and gave statements to the media regarding the situation in Foča. At this time, the Prosecution's position was also explained to the witness by the Chamber, the witness was given an opportunity to comment, and he did so.⁵ The Defence had the option to revisit the matter during its cross-examination of the witness, but did not do so.

4. The Chamber hereby admits exhibits P1281, P1282, P1284, and P1285 into evidence. With respect to the document currently marked P1283, the Chamber instructs the Prosecution to file a redacted version of the document, in accordance with previous communication with the Chamber. This redacted document will be a public exhibit, with exhibit number P1283.

¹ T. 26733-39.

² T. 26738.

³ Defence Objection to Exhibits Tendered by the Prosecution, 10 August 2006, para. 3.

⁴ Prosecution's Response to Defence Objection to Admission of Exhibits P1281-1285, 16 August 2006.

⁵ T. 26738-39.

D174 & D175

5. Exhibits D174 (Minutes of the 21st session of the Bosnian-Serb Presidency, dated 2 August 1992) and D175 (Minutes of the 32nd session of the Bosnian-Serb Presidency, dated 28 September 1992) were tendered on 11 April 2006, and English translations were received on 7 July 2006. No objections were raised to the admission of these exhibits, and they are hereby both admitted into evidence.

D248

6. On 29 May 2006 the Chamber granted the Accused's request to submit a number of documents for possible admission into evidence.⁶ Among these were documents which the Accused sought to tender in order to demonstrate his absence from a meeting of the Serbian cultural society, Prosvjeta, on 18 May 1991 in Brčko. The Accused submitted the documents in Serbo-Croatian, and they were marked together as exhibit D248.⁷ English translations for these documents were received on 13 July 2006. D248 consists of five documents: a newspaper article dated 18 May 1991 entitled "Mission of Noble Intentions"; the text of a speech by a representative of the Napredak Croatian Society delivered during the 18 May 1991 meeting; the text of a speech by a representative of the Preporod Muslim Cultural Society delivered during the 18 May 1991 meeting; a statement by Reverend Stavroforos dated 8 February 2004; and a statement by Nikola Bosić dated 1 March 2004.

7. On 10 August 2006 the Prosecution filed an objection to the admission of D248, on the grounds that the newspaper article has no probative value and the statements do not comply with Rule 92 bis of the Rules of Procedure and Evidence. The Prosecution did not separately address the two speeches from 1991. In its response of 17 August 2006, the Defence notes the possible "material difference as to the admissibility between the various documents that comprise" D248 and asserts that the newspaper article is of probative value as it provides an account of the introductory speech delivered at the 18 May 1991 meeting which

⁶ T. 24835-36.

⁷ T. 24848-50.

does not correspond with the atmosphere of the meeting described by another witness, Isak Gaši.⁸ The Defence did not separately address the other items.

8. The Chamber finds that the statements by Nikola Bosić and Reverend Stavroforos do not comply with the requirements of Rule 92 bis, and are therefore inadmissible. Regarding the newspaper article and the contemporaneous speeches, these documents do not name any attendees at the meeting, and therefore the stated purpose of their submission into evidence is not fulfilled. Furthermore, the Chamber finds that the question of the presence of the Accused at the 1991 meeting and the characterisation of the language used at this very meeting, even if the Accused would have attended it, is of minor relevance, and any evidence regarding this particular point from any witness will be treated as such. The newspaper article and the contemporaneous speeches are not sufficiently relevant to warrant their admission. The items marked D248 are, therefore, not admitted into evidence.

D258

9. Exhibit D258, a report of the Šabac District Public Prosecutor dated 9 November 1993, was tendered on 30 June 2006. No objections were raised to admission of this exhibit, and the Chamber hereby admits it into evidence.

D260

10. Witness Bogdan Subotić gave evidence that fear that Bosnia-Herzegovina would be transformed into an Islamic state, and that a civil war would ensue marked by a massacre of Serbs, stemmed in part from the Islamic Declaration allegedly authored by Alija Izetbegović.⁹ The Defence expressed its intention to tender portions of the Islamic Declaration into evidence in order to demonstrate that it contained threats supporting the witness's contention.¹⁰ On 14 July 2006, exhibit number D260 was provisionally assigned to the declaration, although the portions which the Defence wished to tender into evidence had not yet been submitted.¹¹ On 10 August 2006, the Chamber received the Islamic Declaration, which the Defence now wishes to tender into evidence in its entirety. The Prosecution did not

⁸ Defence Filing in Relation to D248 and Other Matters of Concern to Mr. Krajišnik, 17 August 2006 ("Defence filing"), paras 3-4; T. 400-402.

⁹ C3 (Subotić, witness statement, 20 May 2006), para. 16; T. 26503-04.

¹⁰ T. 26585-86, 27089.

¹¹ T. 27254.

object to admission of this document, and the Chamber hereby admits exhibit D260 into evidence. In addition, the Defence provided a list of page references to the declaration which it would like the Chamber to pay particular attention to. The Registrar is instructed to file this list as a regular filing.

Photographic material on destruction of property

11. On 21 June 2006, the Chamber invited the Accused to submit photographic material depicting destruction of property in 1992 in Bosnia-Herzegovina.¹² The Chamber received photographic material from the Defence on 10 August 2006.¹³ The Prosecution did not raise any objections to the admission of the photographs. The Registrar is instructed to assign exhibit number D261 to the photographic material, and the Chamber hereby admits it into evidence.

Kozarski Vjesnik article regarding detention facilities

12. On 28 June 2006, the Chamber requested the parties' assistance in identifying and locating an article or interview in the Kozarski Vjesnik newspaper to which the Accused referred during his testimony on 15 June 2006.¹⁴ On 10 August 2006 the Defence submitted to the Chamber two articles from the 14 August 1992 edition of Kozarski Vjesnik, and indicated that it wished to tender them both into evidence.¹⁵ The Prosecution did not raise any objections to admission of these articles. The Registrar is instructed to assign exhibit number D262.A to the article entitled "No Wartime Censorship" and exhibit number D262.B to the article entitled "Foreign Journalists Visit Collection Centres at Omarska and Trnopolje", and the Chamber hereby admits them into evidence.

Documents submitted by the Accused

13. On 14 July 2006 the Defence informed the Chamber that the Accused had "about a dozen" documents which he wished to tender into evidence. The Chamber instructed the Defence to identify the documents, and to disclose them to the Prosecution in order to give the

¹² T. 26118.

¹³ Defence Filing in Response to Destruction Material, 10 August 2006.

¹⁴ T. 26468.

Prosecution an opportunity to raise any objections. A deadline of 10 August 2006 was set for submission of the documents.¹⁶

14. No documents from the Defence were received by the Chamber by the 10 August deadline. In an email dated 11 August 2006, the Defence informed the Chamber that it had reviewed a group of documents which the Accused had wished to tender, and all but one were already in evidence. The Defence stated that the Accused had additional documents, however due to time constraints, Defence counsel was “unable to spend any more time on the other documents that our client would like adduced and admitted.”¹⁷

15. On 17 August 2006, one day before the deadline for the filing of final briefs, the Defence filed three documents which it now wishes to tender into evidence on behalf of the Accused: excerpts from the 36th session of the Bosnian-Serb Assembly; a joint declaration between Muslims and Serbs purportedly signed by the Accused in 1993; and decisions relating to the purported appointment of non-Serb judges published in the Official Gazette between 20 June 1992 and 10 August 1992.¹⁸ In its filing, the Defence explains that the documents were not given priority on their part, due to time constraints such as the 18 August 2006 deadline for submission of final briefs. In addition, the Defence stated that there remain “a significant quantity of further documents” which the Accused would like to tender.¹⁹

16. Due to the late submission of the documents, namely one week after the deadline (10 August 2006²⁰), and 24 hours before the deadline for the parties to submit their final briefs, there is no meaningful opportunity for the Prosecution to review and raise any objections to the documents. The Chamber is not prepared to extend the deadline for finalizing the admission of evidence any further. The Chamber recalls that it allowed the Accused to submit additional material at the end of his examination-in-chief on 29 May 2006, at which time he submitted 18 documents and maps marked as exhibits D240 through D248.²¹ There was ample time prior to and following that date for the Accused to request the admission of further material. The documents attached to the Defence filing not only have arrived too late, they are

¹⁵ Email from Defence counsel to Chambers legal officer, 10 August 2006.

¹⁶ T. 27255-57.

¹⁷ Email from Defence counsel to Chambers legal officer, 11 August 2006.

¹⁸ Defence filing, annex.

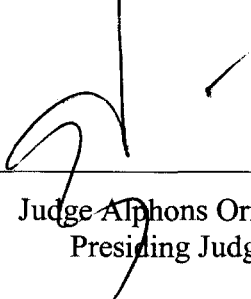
¹⁹ Defence filing, para. 9.

²⁰ T. 27256-57.

²¹ T. 24835, 24839-52.

submitted without any explanation as to why they should be considered for admission and why they Accused was not able to proffer them at an earlier stage in the proceedings. Therefore, the documents annexed to the Defence filing are rejected.

Done in English and French, the English version being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this 21st day of August 2006
At The Hague
The Netherlands

[Seal of the Tribunal]