



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-08-91-T
Date: 8 December 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Order of: 8 December 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION DENYING PROSECUTION'S REQUEST
FOR ADMISSION OF UNEXHIBITED DOCUMENTS
THROUGH WITNESS ST161**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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 (“Tribunal”);

BEING SEISED of the Prosecution’s oral request of 25 November 2009 for the admission into evidence of 27 documents pertaining to ST161, which the Prosecution did not “manage to get through” with this witness, “in the same way [as documents] were for Mr. Djerić”, noting that the documents were grouped into categories (“Unexhibited Documents”);¹

RECALLING that ST161 testified from 17 to 20 November 2009;

RECALLING the oral ruling of 26 October 2009, by which the Trial Chamber set out a five-step procedure for the tendering and admission into evidence of the large number of substantively similar documents that the Prosecution sought to tender through Branko Đerić (ST111) (“Oral Ruling”):

[1] In proofing, the Prosecution would have or should have asked the witness ST-111 whether he’s unfamiliar with any of the documents such as he is unable to testify about them, and in which case such documents would *prima facie* be inadmissible through that witness.

[2] And in an effort to assist the Registrar, the Prosecution shall provide the Registrar and copy to the Defence and the Chamber an electronic list of the documents to which the witness can testify.

[3] And at the beginning of the witness’s testimony, using one or two examples from each of the three categories of documents [...], the Prosecution will explain their relevance to the particular case.

[4] Following that, the Chamber will then mark for identification the documents to which the witness can testify and the Registrar will thereafter circulate to the parties and the Chamber an electronic list indicating the relevant MFI numbers, and

[5] the Chamber will rule upon the admission into evidence of the documents after the conclusion of cross-examination;²

RECALLING that the Trial Chamber also indicated that “this would be a template for future exercises”;³

RECALLING that on 4 November 2009 the parties were reminded that documents “must be sought to be admitted [into evidence] while the witness is here, and only in cases where we are

¹ Hearing, 25 Nov 2009, T. 3847. On 13 November 2009, the Prosecution gave notice via email of 126 documents that it may use with ST161, organised into 13 categories, and stated that it “propose[d] to (as with ST-111) tender all the documents from a category after putting a few from each category to the witness”. On 16 and 18 November 2006, the Prosecution gave notice via email that it may use six additional documents and three additional photographs with ST161.

² Hearing, 26 Oct 2009, T. 2014. The Trial Chamber notes that the transcript erroneously reads “familiar” where it ought to read “unfamiliar”.

³ Hearing, 26 Oct 2009, T. 2016.

dealing with a complex situation such as the introduction of a very large number of documents will we then require a motion in advance of the witness so as to deal with it”;⁴

NOTING the concern expressed by the Defence that “the burden of proof is by [the Oral Ruling] being shifted to the Defence” where documents “would be admitted on the basis of cross-examination [which] puts on the shoulder of the Defence a certain obligation with respect to each of the documents tendered by the OTP in this speedy manner”;⁵

CONSIDERING on the contrary, that by virtue of the Oral Ruling the Defence in cross-examination, would have an opportunity to show why the documents should not be admitted as exhibits;⁶

RECALLING that the Oral Ruling shall be read in light of Rule 89(C), pursuant to which, in order for documents to be admitted the Trial Chamber must be satisfied that every document is relevant and has probative value;

CONSIDERING that the Oral Ruling constitutes an effort by the Trial Chamber, in accordance with its duties pursuant to Rule 90(F)(ii) of the Rules of Procedure and Evidence (“Rules”) and in the interest of a fair and expeditious trial while ensuring full respect of the rights of the accused, to facilitate the process of tendering and admitting into evidence large numbers of substantively similar documents through a witnesses;

NOTING that the Prosecution failed to put the Trial Chamber on notice through a motion in advance of the testimony of ST161 to have documents admitted through this witness following the procedure as set out in the Oral Ruling, but simply notified the Legal Officer of its intention through an email;

CONSIDERING that as of this date, in the interest of efficiency and clarity, when parties seek to utilise the procedure in the Oral Ruling the Trial Chamber will require a written motion in advance;

NOTING that during the testimony of ST161 the Prosecution did not explain the categories into which it had grouped the documents and, further, did not explain, using one or two examples from each category, how they relate to the indictment;

FINDING that the Prosecution did not follow the procedure as laid out in the Oral Ruling;

PURSUANT TO Article 20 and 21 of the Statute and Rules 54, 89 and 90(F)(ii) of the Rules;

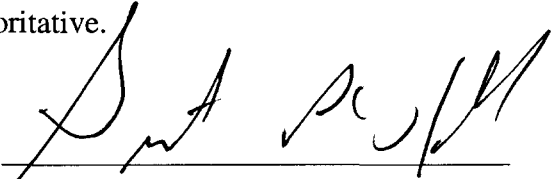
⁴ Hearing, 4 Nov 2009, T. 2600-2601.

⁵ Hearing, 26 Oct 2009, T. 2017.

⁶ *Id.* T. 2019.

DENIES the Prosecution's request to tender the Unexhibited Documents through ST161.

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



Judge Burton Hall
Presiding

Dated this eighth day of December 2009

At The Hague

The Netherlands

[Seal of the Tribunal]