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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 No. IT-03-69-T
Date: 10 March 2011
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 10 March 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF EXCERPTS FROM MLADIĆ NOTEBOOKS AND SECOND
PROSECUTION NOTIFICATION OF EXCERPTS FROM
MLADIĆ NOTEBOOKS**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 7 October 2010, the Chamber granted the Prosecution leave to add 18 military notebooks (“Notebooks”) to its 65 *ter* exhibit list.¹ Simultaneously, the Chamber also granted the Prosecution leave to use in Court 21 portions of the Notebooks that the Prosecution had already identified as relevant to its case (“Excerpts”)², and set out the conditions for use of the Excerpts.³ On 10 December 2010, the Prosecution requested that the Excerpts be admitted into evidence from the bar table.⁴ The Prosecution also tendered P378 and gave notice (“Notification”) of two further excerpts (“New Excerpts”) it intended to use pursuant to the 7 October 2010 Decision.⁵ Through an informal communication on 17 December 2010, the Chamber informed the parties that the New Excerpts could be used in Court from 10 January 2011. Furthermore, on 13 January 2011, the Chamber informed the parties through an informal communication that it would like to receive Defence responses to the Motion, if any, by 21 January 2011. On 21 January 2011, the Stanišić Defence informed the Chamber through an informal communication that it would not respond to the Motion. The Simatović Defence responded to the Motion on 21 January 2011, requesting the Trial Chamber to deny it.⁶

II. SUBMISSIONS OF THE PARTIES

A. Prosecution Motion

a) Relevance of the Excerpts

2. The Prosecution submits that the Excerpts are relevant to the case against the Accused as they show communication and cooperation among the members of the alleged joint criminal enterprise (“JCE”) pleaded in the Indictment; they contain evidence of the purpose of the alleged JCE; they demonstrate the Accused’s contribution to the alleged JCE; they contain information regarding the activities of other members of the State Security of Serbia (“DB”); they contain

¹ Decision on Sixteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex (Mladić Notebooks), 7 October 2010 (“7 October 2010 Decision”).

² *Ibid.*

³ According to the 7 October 2010 Decision the Chamber is to determine the specific interval between notice and use of newly identified portions on a case by case basis, taking into consideration, *inter alia*, the time period between notifications and the size of specific portions, allowing adequate time; see the 7 October 2010 Decision, para. 15.

⁴ Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, filed publicly with confidential Annexes A and B, 10 December 2010 (“Motion”).

⁵ *Ibid.*

⁶ Defence Response to Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, filed confidentially on 21 January 2011 (“Response”).

details about matters related to some of the charged crimes; and they corroborate other testimonial and documentary evidence in the case.⁷

3. The Prosecution submits that the Excerpts demonstrate that the Accused, and Stanišić in particular, directly communicated and cooperated with other members of the alleged JCE. The Excerpts relate to descriptions of meetings at which Stanišić was present with Slobodan Milošević, Milan Martić, Radovan Karadžić and other key members of the alleged JCE.⁸ The Prosecution submits that the Excerpts make it clear that the purpose of this communication was the achievement of the goal of creating ethnically pure Serb areas over which the members of the alleged JCE could consolidate their control.⁹

4. The Prosecution provides detailed submissions on the relevance of each of the Excerpts in Annex A to the Motion.¹⁰

b) Probative Value of the Excerpts

5. The Prosecution firstly points to the fact that the Notebooks were seized from the apartment of Bosilijka Mladić, General Ratko Mladić's wife, as proof of the Notebooks' authenticity. In addition the Prosecution relies on the testimony of Manojlo Milovanović ("Milovanović"), who testified that he recognised the handwriting in the Notebooks to be that of Ratko Mladić ("Mladić"). The Prosecution submits that Milovanović and Mladić knew each other since 1981 and that Milovanović had the opportunity to see Mladić's handwriting on a daily basis during the war and was present for many meetings where Mladić took notes.¹¹

6. The Prosecution argues that the Excerpts are contemporaneous accounts that appear to have been kept for Mladić's own private use. The Prosecution contends that this would indicate that Mladić likely recorded events as accurately as he was able. The Prosecution further submits that the Excerpts are richly corroborated by other documentary and testimonial evidence.¹²

c) Notification and Tending of P378

7. The Prosecution gives notice of its intent to use the New Excerpts in accordance with the terms of the 7 October 2010 Decision.¹³ Finally, the Prosecution also tenders P378, the chart on

⁷ Motion, para. 7.

⁸ Motion, para. 8.

⁹ Motion, para. 9.

¹⁰ Motion, paras 4, 23-27; Annex A.

¹¹ Motion, para. 12.

¹² Motion, para. 13.

¹³ Motion, para. 14; Annex B.

which Milovanović indicated that he recognised the handwriting of Mladić, and which has been marked for identification, for admission into evidence.¹⁴

B. Simatović Response

8. The Simatović Defence concedes that there is some evidence to suggest that the handwriting in the Notebooks is that of Mladić. At the same time, however, it denies that they have probative value, submitting that there is no indication as to when the Notebooks came into existence.¹⁵ The Simatović Defence dismisses the Prosecution's presumption that the Notebooks came into existence during the war as being uncorroborated.¹⁶ It submits that the chain of custody of the Notebooks has not been proven.¹⁷ The Simatović Defence further points to their late seizure as indicating that the Notebooks are not contemporaneous and therefore are not reliable and should not be included in the evidence of this case.¹⁸

9. In addition, the Simatović Defence submits that the Prosecution has not shown that the Excerpts are sufficiently relevant to the Prosecution's case against Simatović. The Simatović Defence highlights four particular excerpts that mention Simatović either directly or indirectly by the Prosecution's 'creative' understanding of the Excerpts.¹⁹

III. APPLICABLE LAW

10. Rule 89 of the Rules of Procedure and Evidence ("Rules") provides, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

11. The Trial Chamber requires that "the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case".²⁰

IV. DISCUSSION

¹⁴ Motion, para. 1.

¹⁵ Response, para. 4.

¹⁶ Response, paras 4-5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Response, para. 7.

²⁰ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 18; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution Submission on the Admission of Documentary Evidence, 16 January 2008, para. 9.

12. The Chamber recalls that in its 7 October 2010 Decision, it found that the Notebooks are *prima facie* probative.²¹ This decision was based on consideration of the positive indications that Mladić was in a unique position and privy to such information, as to be likely to keep such notes, as well as the fact that the Notebooks were discovered in his wife's residence. Furthermore, witness Milovanović testified that he recognised the writing in the notebooks to be that of Mladić.²² The Chamber further notes that the Simatović Defence does not dispute the evidence put forward by the Prosecution that suggests the handwriting in the Notebooks is Mladić's. The Stanišić Defence did not raise any objection in this regard.

13. The Trial Chamber considers that the fact that the Notebooks may not be contemporaneous does not of itself negate their probative value, especially if the content of the Notebooks is sufficiently corroborated by other evidence. The time during which the Notebooks were produced is a factor to be taken into consideration when assessing the weight to be given to them by the Chamber in light of the entire record. Moreover, the Chamber is satisfied that there is corroboration of the accounts contained in the Excerpts by witnesses whose evidence is already before this Chamber.²³ The Chamber notes that the Simatović Defence did not present any convincing argument to support its assessment that the Notebooks are not contemporaneous. However, the Chamber will cautiously and continuously assess all evidence that comes before it that may contradict the apparent contemporaneous nature of the Notebooks.

14. Taking the above factors into consideration, the Chamber is satisfied that the Excerpts are of probative value.

15. The Simatović Defence objects to the relevance of the Excerpts "in respect of Simatović". It further raises particular objections to four of the Excerpts that expressly refer to Simatović, namely Excerpts 1, 10, 12 and 16, 65 *ter* numbers 5887, 5896, 5898 and 5902 respectively.

16. The Chamber considers that the Excerpts indicate that named members of the alleged JCE communicated and cooperated together. The Accused are also named as members of the alleged JCE in the Indictment and are sometimes referred to in the Notebooks. Such evidence cannot be said to be irrelevant "in respect of Simatović" irrespective of whether, and in what way, he is referred to.

²¹ See 7 October 2010 Decision, para. 13.

²² *Ibid.*

²³ See e.g. testimony of Witness JF-039 corroborating evidence of Excerpt 1, T.4679-4681 and T.4782-4806; testimony of Witness JF-061, T.10923-10982, corroborating evidence of Excerpt 2; testimony of Dejan Slišković T.5074-5264 and testimony of Manojlo Milovanović, T.4365-4464, both corroborating evidence in Excerpts 9, 10 and 18-21.

17. The Simatović Defence objects to the interpretation of portions of Excerpts 1, 10, 12 and 16 as given by the Prosecution in the Motion. The Chamber in principle understands the concern of the Simatović Defence, however, at the same time it considers that it is not bound by the interpretation of the evidence submitted by the parties. The Prosecution's submissions in the Motion concerning the relevance of the Excerpts are solely aimed at assisting the Chamber in establishing whether the documents are *sufficiently* relevant to the case in question. The exact role of the Excerpts within the fibre of the case will be determined by the Chamber based on the entire trial record.

18. Taking the above factors into consideration, the Chamber is satisfied that the Excerpts are relevant *to the present case*.

19. With regard to two specific excerpts, Excerpt 1, 65 *ter* 5887 and Excerpt 14, 65 *ter* 5900, the Chamber notes that in both the original BCS versions and the English translations proffered by the Prosecution, there are no specific dates mentioned for the events referred to therein. Having considered Excerpts 1 and 14 in the context of the relevant sections of the Notebooks, the Chamber finds it necessary to admit an extended version of these excerpts for the purposes of ascertaining the specific dates in question. The Chamber notes that ERN numbers have only been given to the Notebooks as a whole rather than on the usual page by page basis, therefore the Chamber refers to traditional page numbering when highlighting which pages are to be added to the Excerpts. Excerpt 1 is to be extended to include pages 172 to 176 of the English Translation of the 27 May – 31 July 1992 Notebook, so that the date Saturday 20 June 1992 is indicated in the updated Excerpt.²⁴ Excerpt 14 is to be extended to include the page marked B. M1. 109 of the English Translation of the 9 January – 21 March 1994 Notebook, so that the date Thursday 17 February 1994 is indicated in the updated Excerpt.²⁵ In both cases, the updated Excerpts should begin from where those specific dates are mentioned.

20. With regard to the Notification, the New Excerpts total nine pages of the English translations and refer mainly to meetings that were held between members of the alleged JCE. Considering the limited size of the identified excerpts and the fact that the Defence teams had been on notice since the Prosecution filed its Motion on 10 December 2010, the Chamber found that in allowing the New Excerpts to be used in Court from 10 January 2011, the Defence were provided with sufficient preparation time.

²⁴ ERN no. 0668-3197 - 0668-3595-ET.

²⁵ ERN no. 0668-2185 – 0668-2290-ET.

21. The Chamber notes that the Simatović Defence did not raise any specific objections relating to the admission into evidence of P378 and is satisfied that this document is relevant and of probative value.

V. DISPOSITION

22. For the reasons set out above and pursuant to Rule 89 of the Rules, the Chamber:

ADMITS into evidence publicly the following excerpts:

65 *ter* numbers: 5888, 5889, 5890, 5891, 5892, 5893, 5894, 5895, 5896, 5897, 5898, 5899, 5901, 5902, 5903, 5904, 5905, 5906,²⁶ 5907;

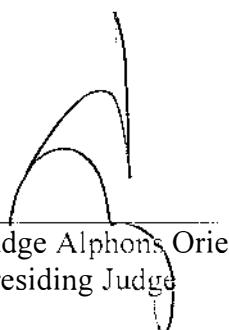
ADMITS into evidence 65 *ter* 5887 (Excerpt 1) and 65 *ter* 5900 (Excerpt 14) in an extended form, with Excerpt 1 being extended to include pages 172 to 176 of the English Translation of the May-July Notebook 1992 and Excerpt 14 being extended to include page B. M1. 109 of the January – March Notebook 1994; and

INSTRUCTS the Prosecution to upload them into E-court accordingly;

ADMITS into evidence P378; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted and to inform the Chamber and the parties of the numbers so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this tenth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁶ The Chamber notes that 65 *ter* numbers 5904-5906 are also tendered into evidence under MFI P1628. Since the Chamber's finding on their admission is made in the present decision, MFI P1628 is therefore vacated.