



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: 24 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: 24 March 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF "THE UNIT" DOCUMENTARY FROM THE BAR TABLE**

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 AND SUBMISSIONS

1. During the testimony of Witness JF-048 on 15 June 2010, a clip from the documentary entitled “The Unit” was shown.¹ The Simatović Defence objected to the admission of the clip on the ground that the sound was muffled.² The Prosecution sought to have the clip marked for identification pending translation³ and the Chamber marked it as P535.⁴ At the housekeeping session on 22 June 2010, the clip was further discussed.⁵ On 13 December 2010, the clip was admitted into evidence.⁶ Other clips and stills from “The Unit” have also been admitted and shown to several witnesses.⁷

2. On 4 February 2011, the Prosecution filed a motion for admission of further parts of “The Unit” from the bar table (“Motion”).⁸ Neither the Stanišić nor the Simatović Defence teams responded to the Motion.

3. The Prosecution seeks to have admitted Parts I and II of “The Unit” (“Proffered Evidence”).⁹ “The Unit” is a three part documentary about the Special Operations Unit of the Republic of Serbia (“Serbia”) State Security Service (“DB”).¹⁰ It was produced and directed by Filip Švarn in conjunction with Vreme news agency and B92 television station.¹¹

4. The Prosecution submits that the Proffered Evidence is relevant to the Prosecution case¹² and suggests that the previous admission of several clips and stills from “The Unit” indicates the Chamber found it relevant.¹³ The Prosecution asserts that “The Unit” is “rich with additional footage” that is relevant to its case and corroborates other evidence.¹⁴ Further, it submits that admitting the Proffered Evidence would allow the Chamber to assess the previously admitted segments in their appropriate context.¹⁵

¹ T.5731-5738.

² T.5732.

³ T.5735.

⁴ T.5737.

⁵ T.5933-5940.

⁶ T.10251-10252.

⁷ P58 admitted through Kovačević, at T.6669; P376 (2 clips) and P377 (3 clips) admitted through Milovanović, at T.4387 and T.4399 respectively; P507, P508 and P509 admitted through JF-035, at T.5435; Stills P505 admitted through JF-035, at T.5417; and Stills P2158 admitted through JF-024, at T.11060.

⁸ Prosecution Motion for Admission of “The Unit” Documentary from the Bar Table, 4 February 2011.

⁹ Motion, para. 1.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Motion, paras 2, 10-16.

¹³ Motion, para. 10.

¹⁴ *Ibid.*

¹⁵ Motion, paras 11-12.

5. The Prosecution provides examples of relevant clips from “The Unit”.¹⁶ It asserts that several segments and images from “The Unit” show various members of groups allegedly affiliated with the DB wearing or displaying the insignia of the DB, partaking in training operations and reciting oaths.¹⁷

6. The Prosecution submits that it does not rely on the comments of the narrator of the documentary.¹⁸ It argues that the existence of commentary should not be a bar to admission and suggests that the Chamber disregard the commentary.¹⁹

7. The Prosecution also submits that the Proffered Evidence should be available to the Chamber in order to assess the Defence allegation that Prosecution Witnesses have been influenced by viewing the documentary on television.²⁰

II. APPLICABLE LAW

8. The Chamber recalls the applicable law governing the admission of evidence as it has previously set out and refers to it.²¹

III. DISCUSSION

9. The Chamber recalls its previous admission into evidence of clips and stills from “The Unit”.²² It further notes that the Defence has not objected to the current Motion.

10. The Chamber considers the Proffered Evidence to be relevant as it shows footage of alleged members of the Joint Criminal Enterprise (“JCE”) as outlined in the Indictment. Further, the Chamber finds that the Proffered Evidence may be of assistance in determining the credibility of witnesses. In addition, the Chamber considers it will be assisted by being able to assess previously admitted clips from “The Unit” in their full context, when determining the weight ultimately to be given to them.

¹⁶ Motions, paras 13-15, see also Annex A.

¹⁷ *Ibid.*

¹⁸ Motion, para. 16.

¹⁹ *Ibid.*

²⁰ Motion, para. 3; For evidence of implied Defence allegations of fabrication see the cross-examination of Prosecution Witnesses, for example testimony of JF-008, 18 February 2010, T.3621-3622; Testimony of Kovačević, 2 September 2010, T.6813-6814; Testimony of JF-057, 23 November 2010, T.9406-9407; Testimony of JF-030, 26 January 2010, T.10700-10701.

²¹ See Decision on Prosecution Second Motion for Admission of Exhibits from the Bar Table, 10 March 2011, paras 10-11.

²² See *supra*, footnote 7.

11. Taking the above factors into consideration, the Chamber finds the Proffered Evidence to be relevant and of probative value and that it therefore meets the requirements for admission. However, as suggested by the Prosecution, the Chamber will disregard the narrator's commentary.

IV. DISPOSITION

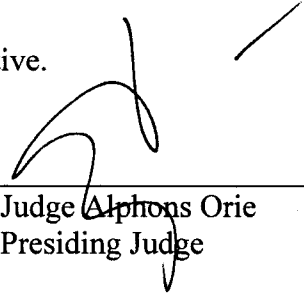
12. For the reasons set out above and pursuant to Rule 89 of the Rules, the Chamber:

GRANTS the Motion; and

ADMITS into evidence 65 *ter* numbers 2608 and 2609;

REQUESTS the Registry to assign exhibit numbers to Parts I and II of "The Unit" and to inform the Chamber and the Parties of the numbers so assigned.

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



Judge Alphonse Orié
Presiding Judge

Dated this twenty-fourth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]