



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: 14 September 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 14 September 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART THE STANIŠIĆ
DEFENCE BAR TABLE MOTION**

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. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. 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”) is seised of the “Stanišić Defence Bar Table Motion”, filed on 22 July 2011 with annexes A, B, and C (“Motion”), whereby the Defence of Mićo Stanišić (“Defence”) seeks the admission into evidence of 156 documents contained in Annex A from the bar table.¹ On 26 July 2011, the Defence filed a supplement to its Motion (“Supplement”), providing the English translation of Annex C, which was pending at the time of filing of the Motion.²

2. On 5 August 2011, the Prosecution responded, partially opposing the Motion (“Response”).³ On 12 August 2011, the Defence sought leave to reply and filed a proposed reply (“Reply”).⁴

II. SUBMISSIONS

1. Motion

3. Recalling the Trial Chamber’s Order on Revised Guidelines on the Admission and Presentation of Evidence (“Guidelines”)⁵ and the general practice of admission of documents from the bar table, the Defence requests the admission into evidence of 156 documents from its Rule 65 *ter* exhibit list.⁶ The Defence submits that the documents proposed for admission are relevant and probative to live issues between the parties in this case and provides detailed submissions on their relevance and provenance in Annex A to the Motion.⁷ According to the Defence, the submissions demonstrate, with clarity and specificity, where and how each document fits into its case.⁸

4. With respect to the authenticity and reliability of the documents, the Defence submits that they come from several sources, such as OTP disclosure, including via the Electronic Disclosure System, the Ministry of the Interior of Republika Srpska (“RS MUP”), the Republic of Croatia and

¹ Motion, para. 1, Annex A. Annexes B and C are letters from the RS MUP and “Criminal Defence Section” of the State Court of Bosnia Herzegovina, respectively, confirming the documents that each provided to the Defence pursuant to its request for such material. See *id.*, Annexes B, C.

² Supplement to the Stanišić Defence bar table motion, 26 Jul 2011.

³ Prosecution’s response to the Stanišić Defence bar table motion, 5 Aug 2011.

⁴ Request for leave to reply and reply to Prosecution’s response to the Stanišić Defence bar table motion, 12 Aug 2011.

⁵ Order on revised guidelines on the admission and presentation of evidence, 2 Oct 2009.

⁶ Motion, paras 1-4, referring to the Guidelines issued on 2 Oct 2009.

⁷ *Id.*, paras 1, 4-5, Annex A. Regarding general submissions on relevance of the categories of documents proposed for admission, see also *id.*, paras 6-20.

⁸ *Id.*, para. 5.

the “State Court of Bosnia and Herzegovina – Criminal Defence Section”.⁹ The Defence also notes that the Trial Chamber has held that “there is no rule preventing the admission into evidence of documents simply because the source was not called to testify, or the document has no signature or stamp.”¹⁰

5. Pursuant to the leave of the Trial Chamber,¹¹ the Defence also requests the opportunity to supplement its bar table submission in respect of information to be received pursuant to a confidential order of the Trial Chamber issued on 15 July 2011.¹²

2. Response

6. The Prosecution opposes the admission into evidence of 73 of the 156 documents that the Defence seeks to tender from the bar table.¹³ The Prosecution’s specific submissions as to each of the objected documents are set out in Annex A to the Response.¹⁴

7. Regarding the assessment for admission, the Prosecution argues that documents should be denied admission where “their relevance is ambiguous, rather than self-evident, or where relevance can be inferred only on the basis of several steps of reasoning” as well as generally where their “reliability is facially doubtful”.¹⁵

8. The opposed documents from the bar table, as identified by the Prosecution, fall within one or more of the following six categories: (i) documents that have already been admitted; (ii) documents that lack full translations; (iii) documents that have insufficient indicia of origin or authorship; (iv) documents whose relevance and/or probative value is not adequately articulated in the Motion; (v) documents which would be better tendered through upcoming witnesses; and (vi) documents related to the issue of Party of Democratic Action (“SDA”) candidates selected for training in Croatia.¹⁶

⁹ *Id.*, para. 4.

¹⁰ *Ibid.*

¹¹ Hearing, 20 Jul 2011, T. 23594-23595.

¹² Motion, para. 22.

¹³ Response, para. 1.

¹⁴ *Id.*, para. 4, Annex A.

¹⁵ *Id.*, para. 2.

¹⁶ *Id.*, paras 4-17.

3. Reply

9. In reply, the Defence provides further submissions on the relevance and probative value of particular documents to which the Prosecution objects.¹⁷ The Defence also makes specific clarifications in respect of certain documents.¹⁸

10. The Defence submits that the documents objected to by the Prosecution on the basis of authorship and origin were all provided to the Defence by the 'Team for Investigation and Documentation of War Crimes' of the RS MUP and that Simo Tuševljak, the coordinator of this team, testified during the Defence case about the methods of collection and provision of such documents to the Defence.¹⁹

11. The Trial Chamber will address specific submissions on individual, or categories of, documents in the discussion section below.

III. APPLICABLE LAW

12. Admission of evidence from the bar table is a practice established in the case-law of the Tribunal.²⁰ Evidence may be admitted from the bar table if it fulfils the requirements of Rule 89 of the Tribunal's Rules of Procedure and Evidence ("Rules"), specifically that the item proposed for admission into evidence has sufficient reliability, relevance and probative value in respect of issues in the case.²¹ The Trial Chamber may nevertheless exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. The Trial Chamber recalls that it has previously held that tendering documents through bar table motions at the end of a party's case is a safety clause designed to ensure that certain documents, which for some reason were not tendered through a witness, can still be included in the trial record.²² The tendering party must still demonstrate, with clarity and specificity, the relevance of each document and where and how it fits into the party's case.²³ However, even when the requirements of Rule 89 are satisfied, the Chamber retains discretionary power over the admission of the evidence.

¹⁷ Reply, paras 5-8, 10.

¹⁸ Reply, paras 3, 9.

¹⁹ *Id.*, para. 4.

²⁰ Decision granting in part the Prosecution's bar table motion and granting the Prosecution's supplemental bar table motion, 1 Feb 2011 ("Prosecution Bar Table Decision"), para. 12, and references cited therein.

²¹ *Ibid.*

²² *Ibid.*; Hearing, 26 Nov 2009, T. 3878.

²³ Prosecution Bar Table Decision, para. 12, and references cited therein.

IV. DISCUSSION

A. Documents to be admitted into evidence

13. The following three documents have already been admitted into evidence, and therefore, the Defence's request in relation to these documents is moot: Rule 65 *ter* numbers 569D1 as P1800, 593D1 as P1514 and 665D1 as P1858.

14. As a complete English translation has not been provided for Rule 65 *ter* number 659D1, the Trial Chamber will mark the document for identification, pending the provision of a full translation.

15. The Trial Chamber finds that the following 92 documents from Annex A of the Motion are relevant and probative to issues in the case. It is satisfied as to their authenticity for the purposes of Rule 89(C) in light of the evidence on the record and the documentation provided in Annexes C and B of the Motion. In respect of the three documents previously marked for identification, the Chamber is now satisfied as to their admissibility. The following documents, therefore, will be admitted into evidence Rule 65 *ter* numbers 12D1, 17D1, 36D1, 39D1, 63D1, 76D1, 78D1, 103D1, 104D1, 118D1, 121D1, 123D1, 125D1, 131D1, 136D1, 175D1, 180D1, 235D1, 280D1, 298D1, 351D1, 352D1, 353D1, 354D1, 356D1, 357D1, 358D1, 366D1, 395D1, 451D1, 452D1, 453D1, 454D1, 455D1, 456D1, 457D1, 458D1, 459D1, 462D1, 464D1, 472D1, 473D1, 508D1, 509D1, 522D1, 525D1, 539D1, 570D1, 571D1, 572D1, 573D1, 574D1, 575D1, 576D1, 577D1, 594D1, 601D1, 606D1, 647D1, 650D1, 657D1, 661D1, 664D1, 677D1, 682D1, 686D1, 691D1, 694D1, 746D1, 762D1, 774D1, 823D1, 824D1, 898D1, 899D1, 914D1, 916D1, 918D1, 925D1, 931D1, 935D1, 936D1, 942D1, 944D1, 945D1, 946D1, 953D1, 956D1, 957D1, and 960D1, and the documents currently marked for identification as 1D203 and 1D206.

16. 1D540 was previously marked for identification, pending the provision by the Defence of further information on the provenance of this document.²⁴ The Defence has now provided information confirming that this document was received from the RS MUP upon the request of the Defence,²⁵ and the Prosecution no longer opposes admission of the document. The Trial Chamber is satisfied as to the document's provenance and therefore will now admit it.

17. The Prosecution objected to the admission of nine documents, 1D262MFI, 1D267MFI, 1D409MFI, 1D534MFI, 1D535MFI, 501D1, 521D1, 545D1, 551D1, on the basis that it would be "more appropriate" for these documents to be tendered through the Župljanin Defence military

²⁴ Mladen Bajagić, 5 May 2011, T. 20237-20238.

²⁵ Motion, Annex A, p. 14, Annex B, item 20.

expert, Vidosav Kovačević, so that they “can be properly authenticated and put into context.”²⁶ The Trial Chamber considers that the ability of Vidosav Kovačević to comment on these documents does not preclude their admission from the bar table at this time. Furthermore, the Trial Chamber notes that admission of these documents into evidence does not prevent any of the parties from nonetheless putting them to a witness. The Trial Chamber is satisfied as to the relevance, probative value and reliability of these documents and therefore admits them into evidence.

18. The Defence seeks the admission of six documents, 1D125MFI, 1D126MFI, 1D127, 728D1, 896D1, 897D1, that relate to SDA candidates selected for training in Croatia and which the Defence submitted are “relevant to challenges of Christian Nielsen's report and reasons for the break-up of the MUP of the Socialist Republic of Bosnia and Herzegovina”.²⁷ The Defence submitted that the records on how many SDA candidates were trained in the Ministry of the Interior of Croatia (“Croatian MUP”) can only be assessed if exhibit 1D123, a compilation of referrals by the SDA of candidates for such training, is considered in connection with Rule 65 *ter* number 897D1, which is a list of persons trained at the 6th course conducted by the Croatian MUP and which also states the ethnicity of those trainees.²⁸ The Defence further submitted that, similarly, the documents marked for identification as 1D125, 1D126, 1D127, which are lists of all candidates put forward for this training, also contain the names of some of the candidates nominated by the SDA and contained in exhibit 1D123.²⁹ The Prosecution objected to the admission of these documents, arguing that the Defence failed to adequately demonstrate the connection between these documents and exhibit 1D123.³⁰

19. The Trial Chamber is satisfied that some of the names listed in exhibit 1D123 are also present in the six documents that the Defence seeks to admit. The Trial Chamber considers that the Defence has demonstrated the connection between candidates recommended by the SDA for training in the Croatian MUP (as contained in 1D123) and the lists of persons who received such training (as contained in 1D125MFI, 1D126MFI, 1D127, 728D1, 896D1, 897D1), illustrating that at least some of the candidates referred by the SDA to the Croatian MUP for training did in fact take part in training in Croatia. In light of the analysis submitted and in consideration of the limited purpose of this evidence to challenge the credibility of the witness Christian Nielsen, the Trial Chamber is satisfied as to relevance, probative value and reliability of these six documents, and therefore admits them into evidence.

²⁶ Response, para. 13.

²⁷ Motion, Annex A, pp 25-26, 28.

²⁸ Motion, para. 20.

²⁹ *Id.*, para. 18.

³⁰ Response, paras 14, 15-17.

B. Documents to be denied admission into evidence

20. The Trial Chamber will deny admission into evidence of the following 46 documents from Annex A of the Motion for the reasons set out below.

21. Rule 65 *ter* numbers 314D1, 317D1, 318D1, 319D1, 320D1, 321D1, 322D1, 323D1, 324D1, 325D1, 330D1, 335D1, 345D1, 368D1, 369D1 and 373D1 as well as documents marked for identification as 1D373, 1D374, 1D655, 1D656 and 1D657 are criminal reports filed by the police as well as reports from various on-site investigations. The Trial Chamber, having previously admitted a representative number of such documents,³¹ will not receive further materials which are repetitive, add nothing new and have limited or no probative value.

22. Rule 65 *ter* numbers 579D1, 600D1, 923D1 and 951D1 concern matters or events outside the temporal or geographic scope of the indictment. The Trial Chamber finds that these documents are neither relevant nor probative to any issues in the proceedings, nor relevant as contextual information.

23. With respect to Rule 65 *ter* numbers 276D1, 460D1, 461D1, 658D1, 666D1, 720D1, 721D1, 741D1, 748D1, 826D1, 828D1, 895D1, 911D1, 937D1, 941D1 and 950D1, the Trial Chamber finds that these documents lack sufficient relevance and/or probative value to the present case.

24. Rule 65 *ter* number 820D1 is a record of the remarks and proposals of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) on the “Statement on the principles for the new constitutional structure of Bosnia and Herzegovina” related to Cutiliero's plan and pre-war negotiations. The Trial Chamber considers the contents of this document to be relevant and potentially probative to the present case. However, the Trial Chamber notes that the Defence's only submission as to its provenance is that it is from “Tudjman book”, with no further details.³² Accordingly, the Trial Chamber finds that the document as tendered by the Defence lacks sufficient reliability for admission into evidence. In this regard, the Trial Chamber considers that, given the relevance and potential probative value, it will permit the Defence to tender the original or official archived version of this record of remarks and proposals of the HDZ in order to satisfy the reliability requirement for admission into evidence.

25. The document marked for identification as 1D19 contains a chronology of significant events in Bosnia and Herzegovina in 1992. The document is neither signed nor dated, nor is there any indication of its source. As noted by the Prosecution, although this document was provided to the

³¹ See, e.g., Simo Tuševljak, 20 Jun 2011, T. 22447-22450.

³² Motion, Annex A, p. 26.

Defence by the RS MUP, no further information was provided as to where it was obtained, who authored it, or when it was created.³³ Furthermore, Branko Bašara, the witness to whom this document was shown, did not confirm its contents, other than indicating that he had heard about two events listed in the document and, as regards its author or source, only suggested that it was “probably” drafted with the assistance of the military organs.³⁴ In light of these considerations, the Trial Chamber finds that this document lacks sufficient reliability for admission into evidence.

26. Rule 65 *ter* 834D1 is a letter by one Jasmin Odobašić, who describes himself as “Amor Masović’s deputy” addressed to the Prosecutor of the Tribunal, regarding alleged mistakes committed in relation to exhumations. The submissions of the Defence do not provide any context and background for the allegations and statements contained in the letter. The Trial Chamber finds that it has insufficient information to make an evaluation of the relevance and reliability of this document and therefore denies its admission into evidence.

V. DISPOSITION

27. Pursuant to Rules 65 *ter*, 89 and 126 *bis* of the Rules, the Trial Chamber:

GRANTS the Defence leave to reply to the Response;

ADMITS INTO EVIDENCE:

- the documents with the following Rule 65 *ter* numbers: 12D1, 17D1, 36D1, 39D1, 63D1, 76D1, 78D1, 103D1, 104D1, 118D1, 121D1, 123D1, 125D1, 131D1, 136D1, 175D1, 180D1, 235D1, 280D1, 298D1, 351D1, 352D1, 353D1, 354D1, 356D1, 357D1, 358D1, 366D1, 395D1, 451D1, 452D1, 453D1, 454D1, 455D1, 456D1, 457D1, 458D1, 459D1, 462D1, 464D1, 472D1, 473D1, 501D1, 508D1, 509D1, 521D1, 522D1, 525D1, 539D1, 545D1, 551D1, 570D1, 571D1, 572D1, 573D1, 574D1, 575D1, 576D1, 577D1, 594D1, 601D1, 606D1, 647D1, 650D1, 657D1, 661D1, 664D1, 677D1, 682D1, 686D1, 691D1, 694D1, 728D1, 746D1, 762D1, 774D1, 823D1, 824D1, 896D1, 897D1, 898D1, 899D1, 914D1, 916D1, 918D1, 925D1, 931D1, 935D1, 936D1, 942D1, 944D1, 945D1, 946D1, 953D1, 956D1, 957D1 and 960D1; and
- the documents marked for identification as 1D203, 1D206, 1D125, 1D126, 1D127, 1D262, 1D267, 1D409, 1D534, 1D535 and 1D540;

³³ Response, para. 8, Annex A.

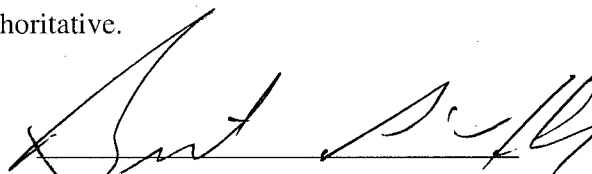
³⁴ See Branko Bašara, 13 Oct 2009, T. 1307-1308.

MARKS FOR IDENTIFICATION the document with Rule 65 *ter* number 659D1 pending the provision by the Defence of the English translation;

DENIES the admission of the document with Rule 65 *ter* number 820D1, without prejudice to the Stanišić Defence tendering an official archived version of the original document; and

DENIES the Motion in all other respects.

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



Judge Burton Hall
Presiding

Dated this fourteenth day of September 2011

At The Hague

The Netherlands

[Seal of the Tribunal]