



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-05-88/2-T

Date: 3 November 2011

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 3 November 2011

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON PROSECUTION'S SUBMISSION PURSUANT TO TRIAL
CHAMBER'S 20 SEPTEMBER 2011 ORDER**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

THIS 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 “Prosecution’s Submission Pursuant to Trial Chamber’s 20 September 2011 Order”, filed on 27 September 2011 (“Submission”), and hereby renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. On 13 September 2011, the Office of the Prosecutor (“Prosecution”) advised the Chamber that it would be submitting a motion regarding the admission of several exhibits.¹ On 20 September 2011, the Chamber ordered the Prosecution to file all motions on the matters raised on 13 September by 27 September 2011.²

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution requests that the Chamber admit the following updated versions of exhibits into evidence pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”): Rule 65 *ter* numbers (1) 07569 (“Bosnian Muslim Identification Book”); (2) 07570 (“Confidential Index”); (3) 07536 (“Prosecution Trial Video”);³ and (4) 07460 (“Trial Video Stills Book”).⁴ The Prosecution also tenders Ex. P01251 MFI and one page of Ex. P02198 MFI into evidence.⁵

3. The Prosecution submits that the Bosnian Muslim Identification Book, Confidential Index, Prosecution Trial Video, and Trial Video Stills Book are all updated versions of exhibits already admitted into evidence or previously marked for identification.⁶ The Prosecution further submits that it signalled its intention to tender these updated exhibits during the testimony of Erin Gallagher and Dušan Janc.⁷ Collectively, the Prosecution argues, the testimonies of these two witnesses establish the reliability, relevance, and probative value of the Bosnian Muslim Identification Book, Confidential Index, Prosecution Trial Video, and Trial Video Stills Book.⁸

¹ See T. 17920–17921 (13 September 2011).

² Order Regarding the Scheduling of the Defence Case and Related Matters, 20 September 2011, p. 3.

³ The Chamber notes that the correct Rule 65 *ter* number for this proposed exhibit is 07563 and proceeds with the Decision on this basis.

⁴ *Ibid.*, para. 8.

⁵ *Ibid.*, para. 8. The Prosecution seeks to tender only one page of Ex. P02198; page 25 in English and the corresponding page 27 in BCS. Submission, para. 7.

⁶ *Ibid.*, para. 1.

⁷ *Ibid.*, para. 2.

⁸ *Ibid.*, para. 2.

4. The Prosecution submits that Ex. P01251 consists of stills from a video admitted in this case and that Zoran Petrović, the creator of the video, authenticated the video.⁹ The Prosecution argues that this authentication also impliedly authenticates the stills.¹⁰ The stills were used during the testimony of Tomasz Blaszczyk, which the Prosecution submits, establishes their relevance.¹¹

5. In relation to Ex. P02198 MFI, the Prosecution submits the exhibit was marked for identification solely because the Prosecution had not yet decided which pages would be tendered.¹² It now tenders only one page of this exhibit.¹³

6. The Defence did not respond to the Submission.

III. APPLICABLE LAW

7. The requirements of Rule 89(C) and (D) provide that the Chamber may admit any evidence if it is relevant and probative, provided that its probative value is not substantially outweighed by the need to ensure a fair trial.

IV. DISCUSSION

8. The Bosnian Muslim Identification Book and the accompanying Confidential Index contain new identifications updating the status of individuals identified in Ex. P01369 MFI.¹⁴ These updates were explained and authenticated by Erin Gallagher,¹⁵ thereby establishing the relevance and probative value of these exhibits. The Chamber deems it appropriate to admit into evidence the Bosnian Muslim Identification Book and the Confidential Index.

9. A review of the transcript of the subtitles of the Prosecution Trial Video indicates that there have been several changes to the original exhibit¹⁶ that have not been adequately explained or identified in the Submission.¹⁷ Particularly, the Chamber notes changes to the footage regarding Srebrenica and Potočari which are not mentioned in the Submission, as well as the incorporation of several clips of footage concerning Žepa from which the Chamber is unable to distinguish the

⁹ *Ibid.*, para. 6. The video from which the stills were created is Ex. P01349. Submission, para. 6.

¹⁰ *Ibid.*, para. 6.

¹¹ *Ibid.*, para. 6.

¹² *Ibid.*, para. 7.

¹³ Page 25 in English and the corresponding page 27 in BCS. Submission, para. 7.

¹⁴ Submission, para. 3.

¹⁵ Erin Gallagher, T. 7732 (15 November 2011), T. 7822 (17 November 2010).

¹⁶ Ex. P00991.

¹⁷ The Prosecution submits that the Prosecution Trial Video incorporates additional footage concerning the events in Žepa. Submission, para. 4. The Prosecution also submits that the Prosecution Trial Video incorporates a compilation of other footage already admitted into evidence, although this was not addressed in the Submission itself. T. 17920 (13 September 2011). The specific location and changes to the original video have not been identified.

specific footage referenced in the Submission as having been “separately authenticated through the testimony of the Investigator Janc”.¹⁸ The testimony of Dušan Janc as referenced in the Submission does not assist on this point.¹⁹ The Chamber is therefore unable to assess the relevance or probative value of the new exhibit without further detail. The question of admission of the updated Trial Video Stills Book, which captures additional still images from the updated Prosecution Trial Video and identifies the persons captured in these images,²⁰ necessarily depends on the admission of the updated Prosecution Trial Video itself. Therefore, neither the Prosecution Trial Video nor the Trial Video Stills Book will be admitted into evidence at this stage.

10. The Chamber notes that Ex. P01251 MFI was marked for identification when tendered through Zoran Petrović because the Chamber had previously ordered, *inter alia*, that it would require an additional showing of relevance to the present case prior to admitting material which had not been admitted through the same witness in the prior proceedings,²¹ and that the Chamber had been unable to make a determination of such relevance at the time the document was tendered.²² During his testimony, Zoran Petrović identified the stills in Ex. P01251 MFI as being taken from his own reporting video.²³ The Chamber has previously deemed the reporting video admissible.²⁴ On this basis, the Chamber considers that Ex. P01251 MFI is relevant and probative, and will be admitted into evidence.

11. The page of Ex. P02198 MFI which is tendered by the Prosecution was used during the testimony of Petar Salapura²⁵ in relation to events and circumstances surrounding the issuance of Directive 7, Ex. P01214, an exhibit the Chamber has previously deemed admissible.²⁶ The Chamber therefore considers that Ex. P02198 MFI is relevant. Although Petar Salapura was unable to authenticate Ex. P02198 MFI, the document, on its face, is of probative value, and the weight accorded to the exhibit can be determined by the Chamber at the relevant time. Therefore, the Chamber considers Ex. P02198 MFI to be both relevant and probative, and will admit it into evidence.

V. DISPOSITION

For these reasons, pursuant to Rule 89(C), the Chamber hereby:

¹⁸ Submission, para. 4.

¹⁹ See Dušan Janc, T. 6661 (21 October 2010), as cited in Submission, para. 2, fn 2.

²⁰ Submission, para. 5.

²¹ Decision on Prosecution’s Motion for Admission of Written Evidence Pursuant to Rules 92 *bis* And 94 *bis*, 7 July 2010 (“7 July Decision”), paras. 2(c)–(d), 4.

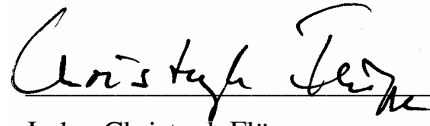
²² Zoran Petrović, T. 14417–14418 (23 May 2011).

²³ Ex. P01349; see Submission, para. 6.

²⁴ Zoran Petrović, T. 14494–14495 (23 May 2011).

- (1) **GRANTS** the admission into evidence of Rule 65 *ter* numbers 07569 and 07570 (Bosnian Muslim Identification Book and the accompanying Confidential Index, respectively), as well as Ex. P01251 MFI and Ex. P02198 MFI, and **REQUESTS** the Registry to assign exhibit numbers to them;
- (2) **DENIES**, without prejudice, the admission into evidence of Rule 65 *ter* numbers 07563 and 07460 (the Prosecution Trial Video with the accompanying transcript of subtitles, and the Trial Video Stills Book, respectively), and **INVITES** the Prosecution to make further submissions setting out the particular changes to the Prosecution Trial Video from the original video and identifying on what basis these changes have been made, along with a copy of the updated Prosecution Trial Video by 8 November 2011, with a response by the Defence, if any, within two days of the filing of the Prosecution's further submission.

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



Judge Christoph Flügge

Presiding Judge

Dated this third day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁵ Petar Salapura, T. 13507–13510 (2 May 2011).

²⁶ See Petar Salapura, T. 13506–13507 (2 May 2011).