



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-95-5/18-T

Date: 9 November 2011

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 9 November 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF ITEMS
PREVIOUSLY MARKED FOR IDENTIFICATION**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 Motion for Admission of Items Previously Marked for Identification with Appendix A”, filed on 10 October 2011 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests that the Chamber admit into evidence ten items previously marked for identification (“MFI”). Nine of these were marked for identification pending English translation, namely P1506, P1738, P2397, P2399, P2402, P2738, P2841, P3150, and P3354,¹ while the last one, MFI P2927, was marked for identification as the Chamber had not “reached a consensus” on its admission and was not satisfied that there were sufficient indicia of its authenticity.²

2. More specifically in relation to MFI P2927, which is a report dated 9 April 1994 purporting to have been issued by an intelligence group identified by the Greek letter “Sigma” and tendered during the testimony of Milorad Davidović, the Prosecution argues in the Motion that the “identification and nature of” Sigma has now not only been clarified by Davidović himself, but also by Christian Nielsen and exhibits P2926, P2979, and P2980.³ The Prosecution contends that Nielsen gave relevant testimony about the group’s background and work, in particular the fact that the group initially operated under the code-name “Tajfun” but later changed to the code-name “Sigma”.⁴ The Prosecution argues that exhibits P2926, P2979, and P2980 clarify that “Sigma” was formerly known as “Tajfun” and that the Accused issued orders and decisions relating to the “Tajfun Informative Center”.⁵

3. In the “Response to Prosecution Motion for Admission of Items Previously Marked for Identification”, filed on 18 October 2011 (“Response”), the Accused states that he does not object to the admission of the nine documents marked for identification pending translation.⁶ However, the Accused objects to the admission of MFI P2927 on the grounds that the document should be tendered through a witness who can speak to its central allegation—that Vojislav Đurković shared the proceeds of Bosnian Muslim expulsions with the Accused—and that this “allegation has so little probative value that it would be unfair to admit it” without the right to

¹ Motion, para. 2.

² T. 15832 (1 July 2011).

³ Motion, paras. 3–11.

⁴ Motion, para. 10.

⁵ Motion, paras. 7–9.

⁶ Response, para. 2.

confront such a witness.⁷ The Accused also objects to its admission on the grounds that the document is not “credible”, the authorship is “basically unknown”, the information is “attributed to unknown individuals”, and Davidović had never previously seen the document.⁸

4. The Chamber recalls the “Order on the Procedure for the Conduct of the Trial” issued on 8 October 2009 (“Order on Procedure”), in which it stated, *inter alia*, that any item marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.⁹

5. On the basis of the information provided by the Prosecution in the Motion, and having reviewed the documents, their proposed translations, and the relevant transcripts, the Chamber is satisfied that the following nine items should now be marked as admitted: MFI P1506, P1738, P2397, P2399, P2402, P2738, P2841, P3150, and P3354.

6. With regard to MFI P2927, the Chamber notes that P2926—an “Official Note” from the State Security Department of the Republic of Serbia (the “Department”)—is dated 27 June 1994 and explicitly states that an intelligence group named Tajfun would “from now on contact [the Department] under the pseudonym *Sigma*”. The Chamber also recalls that, during his testimony, Nielsen stated that Typhoon was disbanded around early 1994 but “resurfaced, now under the protection of the Serbian state security and allegedly with the permission of the RS authorities, in June 1994 as *Sigma*.”¹⁰ Nielsen also stated that “there was nothing called *Sigma* until the summer of 1994”.¹¹ The Chamber thus considers that, at this stage, there are not sufficient indicia of authenticity for the admission of MFI P2927 as the document is dated 9 April 1994, a period in which *Sigma* had supposedly not yet “resurfaced” to operate as a group. Finally, the Chamber considers that, though Davidović testified about Đurković’s public statements about paying to the Accused a percentage of the money he collected for each group of Bosnian Muslims expelled from Bijeljina, such corroborating evidence does not alter the Chamber’s assessment that there are insufficient indicia of authenticity to admit MFI P2927 at this stage.¹²

⁷ Reponse, para. 3–4.

⁸ T.15827–28 (1 July 2011).

⁹ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O, Q.

¹⁰ T.16307 (7 July 2011).

¹¹ T.16307 (7 July 2011).

¹² T.15724–26 (30 June 2011)

7. Accordingly, the Trial Chamber, pursuant to Rule 89 of the Rules, hereby:

- (A) **GRANTS** the Motion and **ADMITS** into evidence the items currently marked for identification as: MFI P1506, P1738, P2397, P2399, P2402, P2738, P2841, P3150, and P3354; and
- (B) **DENIES** the Motion in all other respects and **INSTRUCTS** the Registry to mark MFI P2927 as not admitted, removing its MFI status.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]