



International Tribunal for the Prosecution of Case No: IT-08-91-T
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in the Date: 15 December 2011
Territory of the former Yugoslavia since 1991 Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 15 December 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING PROSECUTION'S
SUPPLEMENTAL BAR TABLE MOTION TO ADMIT
NINE MAPS**

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 “Prosecution’s Second Supplemental Bar Table Motion”, filed on 20 September 2011 (“Motion”), whereby the Prosecution seeks the admission into evidence of nine maps of the ethnic composition of municipalities in the indictment (“Maps”).¹ The nine municipalities covered by these maps are Bijeljina, Bileća, Bosanski Šamac, Brčko, Donji Vakuf, Gacko, Kotor Varoš, Višegrad and Vlasenica.² All the Maps originate from exhibit P2321, a book published by the State Bureau of Statistics of the Republic of Croatia in April 1995 (“CroStat Book”),³ which created colour-coded visual depictions of the spread and concentration of various ethnic groups across municipalities, villages and hamlets.⁴ The source of the data used to create the Maps is the census held in Bosnia and Herzegovina in 1991 (“1991 Census”).⁵

2. On 4 October 2011, the Defence of Mićo Stanišić (“Defence”) responded to the Motion (“Response”), opposing the admission of the Maps into evidence.⁶ On 5 October 2011, the Prosecution sought leave to reply and filed a proposed reply (“Reply”).⁷ The Defence of Stojan Župljanin did not respond to the Motion.

II. SUBMISSIONS

A. Motion

3. The Prosecution submits that it distributed a court binder containing 19 maps on 24 August 2010, 17 of which displayed the ethnic compositions of municipalities in Bosnia and Herzegovina, while two displayed the ethnic composition of the entire country and that the court binder was “prepared with the intention of being admitted in full”.⁸ The Prosecution accepts that the Maps

¹ Motion, paras 1, 11. From the Motion it appears that only nine maps are being tendered, i.e. all the remaining ethnic composition maps of municipalities in the court binder. However, the Prosecution mentioned 10 maps in its oral submission, Hearing, 7 Sep 2011, T. 23793. Of the 19 originally contained in the binder, only 17 maps are of municipalities, and since 8 of these were admitted, only nine remain.

² Motion, para. 11.

³ *Id.*, para. 3.

⁴ So far nine maps of municipalities from the CroStat Book have been admitted. The eight previously admitted maps from the court binder are of the municipalities of Sanski Most (exhibit P364), Ključ (P921), Banja Luka (P1075), Dobož (P1344), Sarajevo (P1449), Skender Vakuf (P1570), Zvornik (P1691), and Prijedor (P1714). An additional map of Teslić was not in the court binder (P1348, under seal).

⁵ Motion, para. 1; Response, para. 9.

⁶ Mr. Mićo Stanišić’s response to the Prosecution’s second supplemental bar table motion, 4 Oct 2011.

⁷ Prosecution’s motion seeking leave to reply and reply to Mićo Stanišić’s response to Prosecution’s second supplemental bar table motion, 5 Oct 2011.

⁸ Motion, para. 3.

should have been included in the bar table motion of 3 December 2010, but were omitted due to an “internal oversight”.⁹

4. The Prosecution adds that additional excerpts from the CroStat Book – the origin of all the maps – were admitted on 12 May 2010 through the Defence demographics expert Stevo Pašalić.¹⁰ The Prosecution argues that the Maps are reliable as similar maps for other municipalities charged in the indictment have already been admitted, and in each case, the accuracy of the maps was affirmed by witnesses.¹¹ The Prosecution also submits that no evidence has been advanced by the Defence to support the claim that the CroStat Book was biased or that it was used as propaganda and any statements to this effect should be regarded simply as counsel testifying.¹² Moreover, the Prosecution argues, the admission of the Maps will assist the Trial Chamber in its analysis by providing a complete set of maps for each of the municipalities in the indictment.¹³

5. The Prosecution submits that the Defence has had ample opportunity to challenge the content of similar map exhibits from the CroStat Book, and there is no indication that any further challenges are forthcoming.¹⁴ The Prosecution thus asserts that the Defence has not explained how the late admission of the Maps will unfairly prejudice the Accused.¹⁵

B. Response

6. The Defence opposes the admission into evidence of the Maps on the ground that the Motion is untimely.¹⁶ It asserts that the Maps should have been submitted as part of the Prosecution’s case-in-chief and can only be admitted at this late stage through cross-examination, rebuttal or a motion to re-open its case.¹⁷

7. The Defence argues that the Motion “does not meet the ‘interests of justice’ standard necessary to modify the sequence of presentation of evidence provided for in Rule 85(A)” of the Rules of Procedure and Evidence (“Rules”), since the only justification for delay is “the fact that the Prosecution ‘forgot’”.¹⁸ It notes that the Prosecution had expressly indicated that it would seek to tender these maps in its bar table motion before the close of its case.¹⁹

⁹ *Id.*, para. 10 & fn. 14 referring to Prosecution Bar Table Motion, 3 Dec 2010.

¹⁰ See Hearing, 12 May 2010, T. 20647.

¹¹ Motion, para. 12; See *supra* fn. 4.

¹² *Id.*, paras 13-14, referring to Hearing, 7 Sep 2011, T. 23795.

¹³ *Id.*, para. 2.

¹⁴ *Id.*, paras 16-17.

¹⁵ *Id.*, para. 17.

¹⁶ Response, paras 3-4.

¹⁷ *Ibid.*

¹⁸ *Id.*, para. 5.

¹⁹ *Ibid.*, referring to Hearing, 21 Oct 2010, T. 16333.

8. The Defence further submits that the Maps do not meet the standards for admissibility of evidence.²⁰ It argues that the Prosecution merely made a general assertion that the Maps are reliable and that they can assist the Trial Chamber in gaining an overview of the ethnic composition of municipalities.²¹ Unless the Maps can be corroborated by a witness, they are, according to the Defence, insufficiently reliable.²²

9. Furthermore, the Defence submits that the Maps are cumulative of existing evidence, referring to both the adjudicated facts and the testimony of the two demographics experts, Ewa Tabeau and Stevo Pašalić, called by the Prosecution and the Defence respectively, and therefore are both unnecessary and repetitive.²³

C. Reply

10. In reply, the Prosecution emphasises that the failure to tender the Maps during its case-in-chief was an “accidental omission” and that the Defence has failed to demonstrate any “real prejudice” to the Accused.²⁴ The Prosecution further points to the rulings on the nine previously submitted maps as a clear indication that the Maps are not cumulative of existing evidence, but instead are relevant, necessary and helpful.²⁵

III. APPLICABLE LAW

11. The Trial Chamber refers to the applicable law on admission of evidence from the bar table set out in its decision of 15 September 2011.²⁶

12. Pursuant to Rule 85(A), the Prosecution must, as a general rule, present the evidence in support of its case in its case-in-chief,²⁷ “[u]nless otherwise directed by the Trial Chamber in the interests of justice”. The importance of the sequence of presentation of evidence “stems from the rights of the accused under Article 21(4)(b) and (e) of the Statute, pursuant to which ‘when evidence is tendered by the prosecution there must be a fair opportunity of the accused to challenge it’”.²⁸ If evidence is tendered by the Prosecution after the close of its case, the Trial Chamber may

²⁰ *Id.*, para. 6.

²¹ *Ibid.*

²² *Id.*, para. 8.

²³ *Id.*, paras 9-10.

²⁴ Reply, para. 2.

²⁵ *Id.*, para. 6.

²⁶ Decision granting in part the Stanišić Defence bar table motion of 15 September 2011, para. 12.

²⁷ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.14, Appeals Chamber’s decision on the interlocutory appeal against the Trial Chamber’s decision on presentation of documents by the Prosecution in cross-examination of Defence witnesses, 26 Feb 2009 (“*Prlić Decision*”), para. 23 and references cited therein.

²⁸ *Prlić Decision*, para. 23.

use its discretion to admit the evidence “where it is in the interests of justice”.²⁹ The Trial Chamber should proceed carefully, analysing the evidence on a case-by-case basis.³⁰ The Trial Chamber must, as always, be duly mindful of Rules 89(C) and (D) and “strike the appropriate balance between the right of the accused to a fair trial and the Prosecution’s duty to prove its case beyond a reasonable doubt”.³¹

IV. DISCUSSION

13. As a general rule, the presentation of evidence should follow the order set forth in Rule 85 of the Rules. Following such order, the Prosecution should have tendered the Maps during its case-in-chief. However, Rule 85 allows the Trial Chamber to depart from this order when it is in the interests of justice to do so. The Trial Chamber considers the Maps to be tools which will prove useful in working with the evidence on the ethnic composition of the municipalities in the indictment. Similar maps from the same source have already served this purpose in prior judgements.³² Under these circumstances, the Trial Chamber is satisfied that it is in the interests of justice to allow the Prosecution to tender the Maps at this stage of the proceedings, and it will examine below whether the Maps fulfil the requirements for their admission into evidence, and whether the admission would prejudice the Accused. However, the Trial Chamber notes that the intention of the Prosecution to admit the court binder in full was not expressed on 24 August 2010, as suggested by its motion,³³ and only became clear at a much later point.³⁴

14. The Trial Chamber does not view the testimony of Stevo Pašalić, the Defence demographics expert, as challenging the accuracy of the data in any of the Maps, but only the overall context of the publication of the CroStat Book.³⁵ No concrete examples were given of improper methodology used in generating the Maps, or specific inaccurate facts.

15. Moreover, the Trial Chamber’s prior ruling admitting only the cover page and pages 36 to 37 of the CroStat Book³⁶ should not be interpreted as an analysis of the reliability of the book, but only a preference for condensing the record as much as possible and admitting excerpts of

²⁹ *Ibid.*

³⁰ *Id.*, para. 24.

³¹ Order further amending guidelines on the admission and presentation of evidence, 19 Aug 2011, Annex A (“Guidelines”), para. 15A. The Prosecution in its motion cited to an earlier version of the guidelines.

³² See, e.g., *Prosecutor v. Momčilo Krajišnik*, Case no. IT-00-39-T, Judgement, 27 Sep 2006, para. 41 & fns. 93 (citing to exhibit P567, map of Rogatica from Crostat Book in reference to arming of Serb municipalities); *Id.*, para. 450 & fn. 1015 (citing to exhibit P310, map of Ključ from Crostat Book in reference to deportation).

³³ Motion, para. 3.

³⁴ See Hearing, 1 Oct 2010, T. 15216-15217; Hearing, 21 Oct 2010, T. 16333; finally Hearing, 5 Sep 2011, T. 23605-23606.

³⁵ See, e.g., 1D541, Expert report by witness Stevo Pašalić, dated March 2011, para. 215 (noting absurdity of the publication in another country); *id.* paras 222-223 (noting data is unverified).

³⁶ Exhibit P2321, admitted by Oral ruling, 12 May 2011, T. 20647-20648.

documents, “when only certain passages thereof are relevant to the testimony of the witness through whom the document is presented”.³⁷ Similarly, no extrapolations should be made from the later ruling by the Trial Chamber on the Skender Vakuf map.³⁸ On these bases, the Trial Chamber finds the Maps sufficiently reliable.

16. While the adjudicated facts³⁹ and the demographic experts⁴⁰ refer to data from the 1991 Census, only the Maps arrange the data in a clear visual format. Nine similar maps have already been admitted into evidence, thus indicating that such documents are relevant, and neither cumulative nor unnecessary.⁴¹ The Trial Chamber finds no reason to reach any different conclusion with respect to the Maps now at issue and finds that they are relevant and probative, not cumulative of prior evidence, but rather constitute a useful tool for the Trial Chamber’s analysis of other evidence on the record.

17. The Trial Chamber retains discretion to admit the Maps where the delay is due to a minor clerical error, one that does not amount to a lack of due diligence on the part of the Prosecution, and there is minimal prejudice to the Accused. 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 were not tendered through a witness, can still be included in the trial record.⁴² In this respect, the Trial Chamber notes that that this type of oversight should be weighed against the purpose for which the evidence was tendered and the prejudice to the accused.⁴³

18. The Defence has been in possession of the full set of maps from the binder for over a year and has not challenged the accuracy of the previous maps, nor has it indicated any future intention of doing so. The Defence has not demonstrated any prejudice to the Accused resulting from the admission of the ethnic maps during the course of trial. It has also failed to do so in its Response.

³⁷ Guidelines, para. 7.

³⁸ See Exhibit P1570, admitted by Oral ruling, 1 Sep 2010, T. 14032.

³⁹ Response, para. 9 & fn. 18. See Bijeljina (AF 1418), Bileća (AF 1221), Bosanski Šamac (AF 595-596), Brčko (AF 1233), Donji Vakuf (AF 1149), Gacko (AF 1280), Kotor Varoš (AF 1195), Vlasenica (AF 1351); there are no adjudicated facts on ethnic composition for Višegrad.

⁴⁰ Response, para. 9. See, e.g., Ewa Tabeau, 6 Oct 2010, T. 15443-15448; Exhibit P1626; summarising results of 1991 Census for relevant municipalities and comparing to later reports; Exhibit 1D541, Expert report by witness Stevo Pašalić, dated March 2011, paras 13-73.

⁴¹ The Trial Chamber notes that eight of the nine maps already admitted are duplicative of adjudicated facts directly citing 1991 census data. See, e.g., Pale (AF 731, 1304); Banja Luka (AF 1050), Doboj (AF 1264); Ključ (AF 1160), Prijedor (AF 197), Sanski Most (AF 1116) and Zvornik (AF 1372).

⁴² Hearing, 26 Nov 2009, T. 3878.

⁴³ See, e.g., *Prosecutor v. Delić*, Case no. IT-04-83-AR73.1, Decision on Rasim Delić’s appeal against Trial Chamber’s oral decisions on admissions of exhibits 1316 and 1317, 15 Apr 2008, para. 23, citing factors to be weighed, including purpose of exhibit, and factual circumstances of prejudice to the Defence.

19. Absent any showing of prejudice, the usefulness of the Maps as analytical and visual tools clearly outweighs the “internal oversight” of the Prosecution and the Trial Chamber will therefore admit them into evidence.

V. DISPOSITION

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

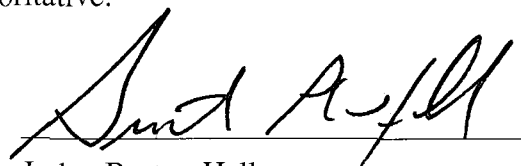
GRANTS the Prosecution leave to reply;

GRANTS the Motion;

ADMITS into evidence the following Maps – 65 *ter* 10236.02 (Bijeljina), 65 *ter* 10236.03 (Bileća), 65 *ter* 10236.04 (Bosanski Šamac), 65 *ter* 10236.05 (Brčko), 65 *ter* 10236.07 (Donji Vakuf), 65 *ter* 10236.08 (Gacko), 65 *ter* 10236.10 (Kotor Varoš), 65 *ter* 10236.14 (Višegrad) and 65 *ter* 10236.15 (Vlasenica); and

ORDERS the Registrar to assign exhibit numbers to the Maps admitted through this decision.

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



Judge Burton Hall
Presiding

Dated this fifteenth day of December 2011

At The Hague

The Netherlands

[Seal of the Tribunal]