



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: 27 January 2012

Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 27 January 2012

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**SECOND DECISION ADMITTING INTO EVIDENCE
DOCUMENTS SUPPLEMENTING THE CHS**

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 Prosecution’s motion to admit new death certificates and other documents into evidence and supplement the CHS”, filed publicly with confidential annexes on 8 December 2011 (“Motion”). On 19 December 2011, the Defence for Mićo Stanišić (“Defence”) responded opposing the Motion (“Response”).¹

II. SUBMISSIONS

2. The Prosecution seeks to admit into evidence 87 death certificates and 6 other proof of death documents (“Documents”) to supplement the Consolidated Hyperlinked Spreadsheet (“CHS”).² It argues that the Documents supplement the CHS which is already in evidence.³

3. The Prosecution states that on 30 September 2011 it informed the Trial Chamber that it had received new proofs of death which it was processing.⁴ Since then, it adds, it received further relevant documents.⁵

4. The Prosecution submits that the Trial Chamber is aware of the Prosecution’s continuous obligation to disclose new information concerning victims as it becomes available, regardless of the stage of the proceedings; and that the Prosecution would request to supplement the CHS if it does.⁶

5. The Defence argues that the Documents are fresh evidence and that they are not covered by the Trial Chamber’s Decision admitting into evidence documents supplementing the CHS of 25 November 2011 (“Decision of 25 November 2011”).⁷ It submits that the Prosecution was not diligent and that the continued attempts by the Prosecution to complement its case after the close of its case-in-chief on 1 February 2011, are prejudicial to the Accused.⁸ The Defence requests that the

¹ Stanisic [sic] opposition to Prosecution’s motion to admit new death certificates and other documents into evidence and supplement the CHS, 19 December 2011.

² Motion, para. 6. The documents are listed in confidential Annex A to the Motion, and are contained in Annex B to the Motion.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 3, referring to Prosecution’s notice of compliance with the Oral Order of 20 September 2011 regarding the Prosecution motion to reopen its case-in-chief (death certificates), 30 September 2011.

⁵ *Ibid.*, paras 3, 4, referring to the Hearing of 18 November 2011, T. 26077; In Annex A, the Prosecution specifies when exactly it requested and received the Documents.

⁶ *Ibid.*, para. 2.

⁷ Response, para. 2.

⁸ *Ibid.*, paras 2, 3.

Trial Chamber deny the admission of new evidence at this late stage of the proceedings and that it declare that the Prosecution may no longer tender evidence from its case-in-chief.⁹

III. DISCUSSION

6. At the outset, the Trial Chamber refers to its Decision of 25 November 2011 for the procedural history of this issue.¹⁰ Also in that Decision, the Trial Chamber set out that documents pertaining to individuals already listed in the CHS which were requested by the Prosecution prior to the close of its case-in-chief, were admissible into evidence as supplements to the CHS pursuant to Rule 89(C) of the Tribunal's Rules of Procedure and Evidence ("Rules").¹¹ Neither in the application at that time, nor in the present Motion, did the Prosecution seek to add any new names to the CHS.

7. In its previous Decisions on the matter, the Trial Chamber has already found that the CHS and its underlying material are relevant and probative in relation to the alleged death of a large number of victims of the crimes charged in the Indictment.¹² Upon review of the Documents, the Trial Chamber is duly satisfied that the Documents are relevant and probative for precisely the same reason.

8. The Trial Chamber notes that 83 of the 93 Documents that the Prosecution now seeks to have admitted into evidence were requested from the relevant authorities prior to the close of the Prosecution's case-in-chief.¹³ Therefore, as with the material admitted through the Decision of 25 November 2011, 83 of the 93 documents covered by the present Motion relate to a number of previously identified alleged victims, already listed in the CHS. At the time the CHS was admitted and the Prosecution moved to close its case, the Prosecution had outstanding requests with the relevant authorities for production of documents with respect to these alleged victims. Contrary to the Defence submission, the 83 documents therefore fall in the same category as the documents admitted through the Decision of 25 November 2011. They will therefore be admitted into evidence and added to the CHS as supplementing material.

9. With regard to the remaining 10 documents, the Trial Chamber notes that they were requested on 15 August 2011, more than six months after the close of the Prosecution's case-in-

⁹ *Ibid.*, para. 3.

¹⁰ Decision of 25 November 2011, paras 3-7.

¹¹ *Ibid.*, paras 26-29.

¹² Decision granting Prosecution's motion on proof of death database, 1 February 2011 ("Decision of 1 February 2011"); Decision of 25 November 2011, paras 23, 29; Second amended consolidated indictment, 23 November 2009 ("Indictment").

¹³ See Annex A to the Motion, under column "Date requested". The Prosecution closed its case-in-chief on 1 February 2011. The 83 documents were requested on 20 January 2011.

chief and the admission into evidence of the CHS.¹⁴ As stated above, the individuals to whom these 10 documents are related were all listed in the CHS which was originally admitted on 1 February 2011.¹⁵ Having been in possession of the names of the individuals to whom this material is related for at least more than six months, the Prosecution has failed to show why it had waited so long to request this material. This is not remedied by the fact that the on 14 January 2011 the Prosecution stated that it had not been able to complete the full range of searches in relation to victims listed in the CHS for which there was no supporting documentation.¹⁶ These 10 documents will therefore not be admitted into evidence.

¹⁴ See Annex A to the Motion, entries under nos 19, 43, 48, 85-87, and 90-93.

¹⁵ See Prosecution's notice of compliance with directions of 1 February 2011 regarding the proof of death database, 1 March 2011.

¹⁶ Prosecution's notice of compliance with the Trial Chamber's directives relating to the proof of death consolidated hyperlinked spreadsheet, with confidential annexes A & B, 14 January 2011, para. 10.

IV. DISPOSITION

10. For the reasons set out above and pursuant to Rule 89(C) of the Rules, the Trial Chamber

GRANTS the Motion in part;

ADMITS into evidence 83 documents listed in Annex A to the Motion which were requested on 20 January 2011;¹⁷


ORDERS the Prosecution to file, by 6 February 2012, the final and complete version of the CHS on a compact disc, incorporating the material admitted by this Decision;

ORDERS the Prosecution to file, by 6 February 2012, an updated public annex listing all known alleged victims of killings listed in Schedules A and B of the Indictment per municipality and per alleged incident, which shall thereafter replace the current confidential annex to the Indictment;

DIRECTS the Registry to assign an exhibit number to the CHS filed by the Prosecution pursuant to this Decision;

INVITES the Defence to file, by 20 February 2012, its objections in respect of each individual listed in the CHS.¹⁸

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


Judge Burton Hall
Presiding

Dated this 27th day of January 2012

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁷ See Annex A to the Motion, nos. 1-18, 20-42, 44-47, 49-84, 88, and 89.

¹⁸ See also Hearing, 15 December 2011, T. 26427, 26428.