



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: 18 April 2012
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 18 April 2012

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION DENYING JOINT DEFENCE MOTION TO
RECONSIDER THE DECISION GRANTING
PROSECUTION'S MOTION ON PROOF OF DEATH
DATABASE**

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

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”);

BEING SEISED OF the “Joint Defence final submissions on the CHS” filed confidentially on 12 April 2012 (“Motion”) in which the Defence request the Trial Chamber to reconsider its “Decision granting Prosecution’s Motion on Proof of death database” issued on 1 February 2011 (“1 February 2011 Decision”) and exclude from evidence or attach no weight to certain material contained in the Consolidated Hyperlinked Spreadsheet (“CHS”), a tool which structures and makes accessible all of the Prosecution’s evidence with regard to each alleged victim of the killings charged in the Indictment;¹

RECALLING that a Chamber has the discretionary power to reconsider its previous decision if a clear error of reasoning has been demonstrated or if particular circumstances justify reconsideration in order to prevent an injustice; and that “particular circumstances” can include new facts or new arguments;²

RECALLING that the first version of the CHS was admitted in the 1 February 2011 Decision and that this issue has a long history in these proceedings;³

RECALLING that on 8 December 2011 the Defence for Mićo Stanišić indicated that once the final version of the CHS was admitted into evidence, it intended to make a submission on each alleged victim contained in the CHS and the related underlying material, and that the appropriate place to do so was in its final trial brief, but that due to the high number of alleged victims in this case this submission would amount to 211.000 words, which is significantly more than 60.000 words envisaged for final trial briefs according to the relevant Practice Direction;⁴

RECALLING that the Trial Chamber therefore decided to allow the Defence to file its submission on the CHS separately from its final trial brief;⁵

¹ Second amended consolidated indictment, 23 November 2009 (“Indictment”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić’s Interlocutory Appeal against the Decision on Prlić Defence Motion for Reconsideration of the Decision and Admission of Documentary Evidence, 3 November 2009, para. 18.

³ 1 February 2011 Decision, para. 59; Decision admitting into evidence documents supplementing the CHS, 25 November 2011; Second Decision admitting into evidence documents supplementing the CHS, 27 January 2012; Decision granting in part Prosecution’s motion to reconsider the Trial Chamber’s Decision of 27 January 2012 and to add further material to the CHS, 29 March 2012.

⁴ Hearing 8 December 2011, T. 26408-26409; *See* Practice Direction on the Length of Briefs and Motions, IT/184/Rev. 2, 16 September 2005, para. 4.

⁵ Hearing 8 December 2011, T. 26409-26411.

NOTING that on 5 April 2012 the Prosecution filed its final and complete version of the CHS, and that the Defence filed its submission on the CHS on 12 April 2012;⁶

CONSIDERING that by requesting to exclude certain material contained in the CHS the Defence is surpassing the purpose and the reasons for which it was allowed to file its submission on the CHS;

CONSIDERING that the material in question was admitted together with the CHS on 1 February 2011, following a motion filed by the Prosecution on 23 July 2010;⁷

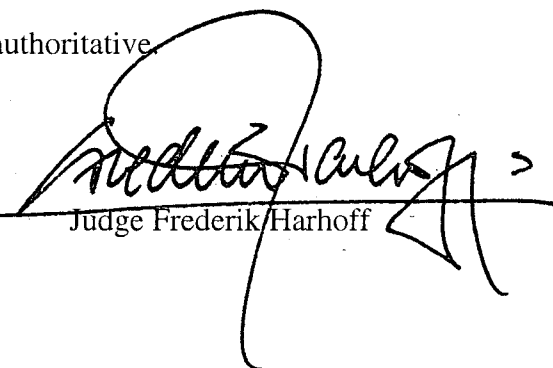
CONSIDERING that the Defence has had ample opportunity in prior litigation over this matter to challenge the admission of the material contained in the CHS⁸ and that the filing of the Motion at this stage of the proceedings is untimely;

NOTING that the Trial Chamber will take the Defence's submissions in the Motion into account during its assessment of all the evidence in the case;

CONSIDERING that the Defence has not demonstrated a clear error of reasoning nor are there particular circumstances which justify reconsideration of the 1 February 2011 Decision in order to prevent an injustice;

HEREBY DENIES the Motion;

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



Judge Frederik Harhoff

Dated this 18th day of April 2012

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ Prosecution's notice of compliance with the Trial Chamber's Decision of 29 March 2012, 5 April 2012; Prosecution's corrigendum to the Prosecution's notice of compliance with the Trial Chamber's Decision of 29 March 2012, 11 April 2012; *See also* Confidential Annexes A to G to the Motion.

⁷ Prosecution's motion to add proof of death database to its 65 *ter* exhibit list and to tender it into evidence with confidential annexes A and B, 23 July 2010.

⁸ Joint Defence response to Prosecution's motion to add proof of death database to its 65 *ter* exhibit list and to tender it into evidence with confidential annexes A and B, 4 August 2010; Hearing, 17 September 2010, T. 14823-14834; Hearing 2 December 2010, T. 18092-18097; Joint Defence response to 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, 25 January 2011.