

IT-03-69-T
D40906-D40903
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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-03-69-T
Date: 1 June 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 1 June 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**SIXTH DECISION ON STANIŠIĆ DEFENCE BAR TABLE
MOTION OF 17 FEBRUARY 2012**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 17 February 2012, the Stanišić Defence (“Defence”) filed the Stanišić Motion for Admission of Documents through the Bar Table, by which it requested the admission into evidence of 674 documents from the bar table (“Motion”).¹ On 23 March 2012, the Prosecution filed a response to the Motion (“Response”).² The Simatović Defence did not respond to the Motion.
2. On 23 May 2012, the Chamber issued the First Decision on the Defence Bar Table Motion of 17 February 2012 (“First Decision”). The Chamber recalls and refers to the procedural history and submissions of the parties as set out in the First Decision.³
3. On 31 May 2012, the Chamber sent an informal communication to the Parties seeking information regarding documents bearing Rule 65 *ter* nos 1D00380, 1D00379, 1D00372, 1D01893, 1D00373, 1D00370, 1D00374, 1D00375, 1D00376 (under seal), and 1D00381.

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law as set out in the First Decision.⁴

III. DISCUSSION

5. The present decision relates to the “General Work Reports of the DB”, which is the first category of documents listed in the First Bar Table Chart and contains documents bearing Rule 65 *ter* nos 1D00380, 1D00379, 1D00372, 1D01893, 1D00373, 1D00370, 1D00374, 1D00375, 1D00376 (under seal), 1D00381, 1D01115, 1D01138, 1D01122 (under seal), 1D01126, 1D0119 (D130 MFI), 1D01113, 1D01128, 1D01136, and 1D01132.⁵

¹ Stanišić Motion for Admission of Documents through the Bar Table, with Confidential Annexes A, B, and C, 17 February 2012.

² Prosecution Response to Stanišić Motion and Additional Motion for Admission of Documents into Evidence through the Bar Table, with Confidential Annexes A and B, 23 March 2012.

³ First Decision, paras 1-8.

⁴ First Decision, paras 9-10.

⁵ Motion, Annex A, pp. 1-26; Response, Annex A, pp. 2-30.

6. The Chamber notes that the Prosecution does not object to documents bearing Rule 65 *ter* nos 1D01115, 1D01138, 1D01122 (under seal), 1D01126, 1D0119 (D130 MFI), 1D01113, 1D01128, 1D01136, and 1D01132.⁶ The Chamber finds that the Defence has demonstrated, with sufficient clarity and specificity, where and how each of the above documents fits into its case. For each document the Defence has adequately identified its contents, why in their view it is relevant, and to which aspect of its case the document relates to.⁷ Furthermore, the Defence has explained how the documents as a whole are relevant to its case.⁸ The Chamber deems that these documents meet the standard for admission set out in Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence and therefore allows their admission into evidence from the bar table.

7. However, the Chamber notes that the Defence is introducing a number of these documents in order to show a *negative*, i.e. that something did not occur because the document makes no reference to it. When such documents are tendered from the bar table, if viewed in isolation and without context provided by a tendering witness, there is a risk that less weight will ultimately be ascribed to them by the Chamber. In order to properly determine the weight of documents for which a negative inference is sought, the Chamber encourages the Defence, by providing clear references to these documents in its final brief, to elaborate on the conclusions, if any, it invites the Chamber to draw from them (collectively and/or individually), including, if appropriate, an explanation of how they refute the Prosecution evidence regarding the same issues.

IV. DISPOSITION

8. For the foregoing reasons, the Chamber **GRANTS** the Motion in relation to these 19 "General Work Reports of the DB" discussed in this decision, in part, and

- (i) **ADMITS** into evidence documents bearing Rule 65 *ter* nos 1D01115, 1D01138, 1D01122 (under seal), 1D01126, 1D0119 (D130 MFI), 1D01113, 1D01128, 1D01136, and 1D01132;
- (ii) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the number so assigned;

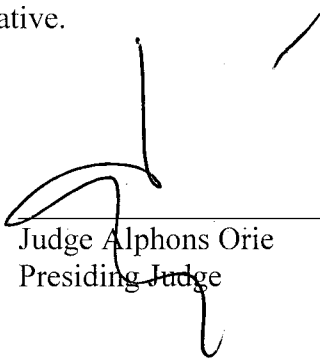
⁶ Motion, Annex A, pp. 17-26.

⁷ Motion, Annex A, pp. 1-26.

⁸ Motion, Annex A, p. 1.

- (iii) **DEFERS** its decision on the admission of documents bearing Rule 65 *ter* nos 1D00380, 1D00379, 1D00372, 1D01893, 1D00373, 1D00370, 1D00374, 1D00375, 1D00376 (under seal), and 1D00381; and
- (iv) **DECIDES** to issue further decisions on this Motion in due course.

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



Judge Alphons Orie
Presiding Judge

Dated this First day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]