



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: 6 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:** 6 June 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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

**Office of the Prosecutor**  
Mr Dermot Groome

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Mr Wayne Jordash  
Mr Scott Martin

**Counsel for Franko Simatović**  
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## PROCEDURAL HISTORY

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”).<sup>1</sup> On 23 March 2012, the Prosecution filed a response to the Motion (“Response”).<sup>2</sup> The Simatović Defence did not respond to the Motion.
2. On 23 May, the Chamber issued the First Decision on the Defence Bar Table Motion of 17 February 2012 (“First Decision”). The Chamber refers to the First Decision for the procedural history and submissions of the parties in respect of the Motion.
3. On 31 May 2012, the Chamber sent an informal communication to the Parties seeking information regarding the document bearing Rule 65 *ter* no. 1D02416. On 4 June 2012, the Chamber sent an informal communication to the Parties seeking information regarding the documents bearing Rule 65 *ter* nos 1D02499, 1D03493, 1D03510, 1D03516, 1D03517, and 1D03519.

## APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law as set out in its First Decision.<sup>3</sup>

## DISCUSSION

5. In the present Decision, the Chamber will deal with three out of the nine categories of documents included in the Third Bar Table Chart, namely (a) RSK (SAO Krajina and SAO SBWS); (b) Bosanski Šamac; and (c) Other.<sup>4</sup>

### *a. RSK (SAO Krajina and SAO SBWS)*

6. The Prosecution objects to admission of the documents bearing Rule 65 *ter* nos 1D02297, 1D02250, 1D02255, 1D02098, 1D02526, 1D02104, 1D02105, 1D02262, 1D01631, 1D03498, 1D01343, 1D03936, 1D02566, 1D02565, 1D02569, and 1D02416 on the basis of provenance.<sup>5</sup> The

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

<sup>2</sup> 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.

<sup>3</sup> First Decision, paras 9-10.

<sup>4</sup> See Motion, Confidential Annex C, pp. 69-116, 135-147.

<sup>5</sup> Response, Confidential Annex A, pp. 378-380, 388-389, 394-398, 399-400, 403-405, 407-409, 415.

Prosecution's submissions amount to objections on grounds of authenticity.<sup>6</sup> Whilst authenticity is one of the factors to be considered when assessing the reliability of evidence for admissibility purposes, Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules") does not require "absolute proof" of authenticity.<sup>7</sup> However, the Chamber is not satisfied that it has sufficient indicia of the authenticity of the document bearing Rule 65 *ter* no. 1D02262, which is an undated, unsigned, and unstamped page containing a few typewritten phrases. As such, the Chamber denies admission of this document. In relation to the document bearing Rule 65 *ter* no. 1D02416, the Chamber sought and received further clarification on the document through informal communications. The document's admission will be discussed at a later stage. The Chamber finds that on face value each of the other aforementioned documents in this category bears sufficient indicia of authenticity and reliability to meet the standard for admission from the bar table.

7. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 1D02499, 1D03493, 1D03510, 1D03516-1D03517, and 1D03519 on the basis of provenance pending receipt of an "official version" of the documents, for which the Defence has indicated that the origin is "Republic of Croatia and National Wars Book".<sup>8</sup> Through informal communications on 4 and 5 June 2012, the Chamber learned from the Defence that the document bearing Rule 65 *ter* no. 1D02499 was not in fact obtained from the "Republic of Croatia and National Wars Book", but rather that the document's origin is to be determined. The Chamber finds that on face value this document bears sufficient indicia of authenticity and reliability to meet the standard for admission from the bar table, but instructs the Defence to upload a corrected translation of the document, as the translation currently provided appears to be out of order. The Defence also provided original versions of the documents bearing Rule 65 *ter* nos 1D03510, 1D03516-1D03517, and 1D03519, which the Chamber will admit. Finally, the Defence was unable to provide the original version of the document bearing Rule 65 *ter* no. 1D03493, the admission of which the Chamber will deny.

8. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 1D02235, 1D02454, and 1D01231, again on the basis that it has received insufficient information as to provenance, because each comes from a "private collection".<sup>9</sup> The Chamber recalls that these

<sup>6</sup> See for comparison the Prosecution's objections "on grounds of authenticity" to documents bearing Rule 65 *ter* nos. 1D02251, 1D01998, 1D01999, 1D02221, 1D02224, 1D01986, and 1D02001 (Response, Confidential Annex A, pp. 189, 192-193, 195, 198, 202, 210, 212).

<sup>7</sup> Second Decision on Stanišić Defence Bar Table Motion of 17 February 2012, para. 7, referring to Decision on Admission into Evidence of P179 and P473, 23 June 2010, para. 4, and decisions cited therein.

<sup>8</sup> Motion, Confidential Annex C, pp. 70-71, 76, 78-79, 85-87; Response, Confidential Annex A, pp. 379-380, 384, 386, 393-394. With respect to the document bearing Rule 65 *ter* no. 1D03516, the Chamber presumes that in noting "*idem above under 1588*" as to relevance, the Defence in fact intended to note "*idem above under 1558*", and that the Prosecution has understood this indication as such (Motion, Confidential Annex C, p. 86; Response, Confidential Annex A, p. 393).

<sup>9</sup> Response, Confidential Annex A, pp. 380, 408-409.

documents were marked for identification as D698 on 13 February 2012, D757 on 28 February 2012, and D796 on 8 May 2012, respectively, pending information from the Defence on their origin.<sup>10</sup> The Chamber finds that on face value the documents bear sufficient indicia of authenticity and reliability to meet the standard for admission from the bar table. The Prosecution further objects to the admission of the document bearing Rule 65 *ter* no. 1D02235, which includes the minutes of the interrogation of Bora Ivanović in a military tribunal, on the basis that it is unreliable because of the circumstances in which the statements contained therein were made.<sup>11</sup> This objection also refers to the Defence's proposed argument that Ivanović spoke truthfully about some matters but not about others.<sup>12</sup> Although these factors may affect the weight the Chamber ultimately ascribes to the document, the Chamber deems that it is of probative value for the purpose of Rule 89 (C) of the Rules.

9. The Prosecution also objects to the admission of the document bearing Rule 65 *ter* no. 1D03500 on the basis of provenance.<sup>13</sup> The Chamber notes that there is no English translation of this document available in eCourt, and therefore considers that it is unable to decide on its admission. Accordingly, the Chamber denies admission of this document.

10. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 1573, 1577, 1578, 4757 (under seal), 1D02336, and 4758 (under seal), on the basis of relevance.<sup>14</sup> The Prosecution also disputes the Defence's characterisation of the relevance of or inferences that can be made from several previously mentioned documents, as well as several others in this category, without objecting to their admission on this basis.<sup>15</sup> The Chamber has reviewed all of these documents, and finds that the Defence has adequately shown their relevance for the purpose of admissibility under Rule 89 (C) of the Rules.

11. The Chamber includes the document bearing Rule 65 *ter* no. 1D03786 among those to be admitted in the paragraph above.<sup>16</sup> However, it notes that while this document is an entire book, the

<sup>10</sup> T. 17212, 17793, 19126.

<sup>11</sup> Response, Confidential Annex A, p. 408.

<sup>12</sup> Response, Confidential Annex A, p. 408; T. 17209-17212.

<sup>13</sup> Response, Confidential Annex A, p. 396.

<sup>14</sup> Response, Confidential Annex A, pp. 404, 406-407, 410, 412-413.

<sup>15</sup> Namely, documents bearing Rule 65 *ter* nos. 1D02297, 1D02250, 1D02255, 1D02098, 1D02526, 1D02104, 1D02105, 1D01231, 1D01631, 1D03498, 1D01343, 1D03936, 1D02566, 1D02565, 1D02569, 1D02454, 1D02499, 1D03510, 1D03516, 1D03517, 1D03519, 1D01971, 3830, 2859, 2860, 1539, 2270, 1D03502, 3819, 1D02115, 1D01979, 1D02023, 1D02512, 1D02543, 1D03938, 4664, 1D01368, 1D01369, 4668, 1558, 1553, 4374, 1554, 1D01320 (under seal), 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1D02103, 1471, 1572, 1574, 1575, 1576, 1D03819, 1D03820, 1D01618 (under seal), 1D03784, 4240, 1D03824, and 1D03786 (Motion, Confidential Annex C; Response, Confidential Annex A, pp. 378-381, 384, 386, 388-389, 393-400, 403-410, 412, 415). The Prosecution also disputes the relevance of the documents bearing Rule 65 *ter* nos. 1D02262, 1D03500, and 1D03493, for which the Chamber denies admission for other reasons (see paras 6-7 and 9, above).

<sup>16</sup> See para. 10, fn. 16, above.

translation thereof as provided in eCourt only comprises two pages which appear to translate a specific portion of the book.<sup>17</sup> As the substance of the Defence's submissions regarding this document pertains to that portion, the Chamber understands the Defence to seek admission only of this section of the book. As such, the Chamber requires the Defence to upload only the corresponding pages from the original book within a week of the date of this decision.

12. The Prosecution has noted that the documents bearing Rule 65 *ter* nos 4668 and 1D02078 are in fact one and the same document.<sup>18</sup> In comparing these documents, the Chamber has found that they are indeed identical. Therefore, the Chamber will not consider the admission of the document bearing Rule 65 *ter* no. 1D02078 in this decision, having already considered the document bearing Rule 65 *ter* no. 4668.<sup>19</sup>

13. The Prosecution has also disputed the purported relevance of the document bearing Rule 65 *ter* no. 1D02024, without objecting to its admission on this basis.<sup>20</sup> The Chamber notes that this document has already been admitted as D758 and therefore will not further consider admission of this document.<sup>21</sup>

14. Finally, the Prosecution objects to admission of the document bearing Rule 65 *ter* no. 1D03822, on the basis that the document, which is an interview with Borislav Pelević, should have been put to Pelević during his testimony.<sup>22</sup> The Chamber notes that the document would have been relevant in the context of Pelević's testimony, and that in seeking to admit the document through the bar table instead, the Defence has prevented the Prosecution from responding to its use of the document through cross-examination of Pelević. The Chamber will therefore deny admission of this document from the bar table.

15. For the foregoing reasons, the Chamber will deny the admission of the documents bearing Rule 65 *ter* nos 1D02262, 1D03493, 1D03500, and 1D03822, defer its decision on the document bearing Rule 65 *ter* no. 1D02416, and admit all other documents in this category considered in this decision, having found that the Defence has shown with sufficient specificity (i) their relevance and probative value, and (ii) how they fit into the Defence case.

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<sup>17</sup> Motion, Confidential Annex C, pp. 105-106; Response, Confidential Annex A, pp. 413-414.

<sup>18</sup> Response, Confidential Annex A, p. 390.

<sup>19</sup> See para. 10, fn. 16, above.

<sup>20</sup> Response, Confidential Annex A, p. 411.

b. Bosanski Šamac

16. The Prosecution objects to admission of the document bearing Rule 65 *ter* no. 1D01295 on the basis that it has received insufficient information as to provenance.<sup>23</sup> The Chamber notes that the document is dated 17 June 1992 and signed by Mitar Mitrović, Stevan Todorović and Milan Simić, and finds that on face value it bears sufficient indicia of authenticity and reliability to meet the standard for its admission from the bar table. However, the Chamber notes that not every issue regarding provenance, as disputed between the Prosecution and Defence, has been resolved, which could affect the weight the Chamber ultimately ascribes to the document.<sup>24</sup>

17. The Prosecution, while disputing their purported relevance as characterised by the Defence, does not object to the admission of the documents bearing Rule 65 *ter* nos 3589, 3758, 3765, 1804, 4519, 4686, 1816, 1815, 1D01299, 3805, 1D01301, 3808, 3759, and 3664.<sup>25</sup> Upon review of these documents, the Chamber finds that the Defence has adequately shown their relevance for the purpose of admissibility under Rule 89 (C) of the Rules. The Chamber notes that while it is generally strict about the tendering of large documents from the bar table, it nevertheless includes among those to be admitted the document bearing Rule 65 *ter* no. 3808, the original version of which is 20 pages long, as the Defence has provided clear guidance on the document's place in its case.<sup>26</sup>

18. The Prosecution also disputes the purported relevance of the document bearing Rule 65 *ter* no. 2849, without objecting to its admission.<sup>27</sup> The Chamber notes that while the original version of this document is 40 pages long, what is presented in eCourt as a translation is in fact a four-page summary of specific portions. The Chamber will deny the admission of this document given that the content of the original and translated text do not reflect one another precisely.

19. For the foregoing reasons, the Chamber will deny the admission of the document bearing Rule 65 *ter* no. 2849, and will admit all other documents in this category, having found that the Defence has shown with sufficient specificity (i) their relevance and probative value, and (ii) how they fit into the Defence case.

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<sup>21</sup> T. 17897.

<sup>22</sup> Response, Confidential Annex A, p. 413.

<sup>23</sup> Response, Confidential Annex A, pp. 419-420.

<sup>24</sup> Motion, Confidential Annex C, p. 111; Response, Confidential Annex A, p. 419.

<sup>25</sup> Response, Confidential Annex A, pp. 416-424.

<sup>26</sup> Motion, Confidential Annex C, p. 114.

<sup>27</sup> Response, Confidential Annex A, p. 425

*c. Other*

20. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 1D02539 and 1D03501 on the basis that it has received insufficient information as to provenance.<sup>28</sup> The Chamber is not satisfied that it has sufficient indicia of the authenticity of the document bearing Rule 65 *ter* no. 1D02539, which is an undated, unsigned, and unstamped page containing a few typewritten paragraphs without any indication of authorship. As such, the Chamber denies admission of this document. The Chamber finds that the document bearing Rule 65 *ter* no. 1D03501 bears sufficient indicia of authenticity and reliability to meet the standard for admission from the bar table.

21. The Chamber notes that the Prosecution, while disputing their purported relevance as characterised by the Defence, does not object to the admission of the documents bearing Rule 65 *ter* nos 2691-2692, 1D01372, 1D03813, 1D02067, 1556, 1559, 1D02010, 1D01332, 1D02037, 1D03746, 1D03779, 1453, 1D02853, 1D05309, 1D02323, and 1D02324.<sup>29</sup> Upon review of these documents and the Defence's submissions, the Chamber finds that the Defence has adequately shown their relevance for the purpose of admission under Rule 89 (C) of the Rules. It should be noted that the document bearing Rule 65 *ter* no. 1D05309 does not appear on the Defence Rule 65 *ter* list.<sup>30</sup> However, the Prosecution does not object to the admission of this document, which was obtained from the OTP disclosure of 30 May 2008, and has had ample opportunity to review and provide detailed comments on its proposed admission. Therefore, the Chamber decides, *proprio motu*, to add this exhibit to the Defence Rule 65 *ter* exhibit list.

22. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 1D03146 (under seal), 1D02850, and 1D02852 on the basis that they contain redactions, and requests that unredacted versions thereof be submitted.<sup>31</sup> The Chamber notes that it is unclear whether the blacked-out "redacted" portion towards the beginning of the document bearing Rule 65 *ter* no. 1D03146 in fact obscures any text, although the text at the end of the document ends mid-sentence, rendering it apparently incomplete. Moreover, the Defence has listed each of the documents bearing Rule 65 *ter* nos 1D02850 and 1D02852 not only as "Redacted" but also as an "Excerpt".<sup>32</sup> Finally, the Chamber notes that while the document bearing Rule 65 *ter* no. 1D02353 (under seal) includes two paragraphs that are partially illegible due to text being covered by an illegible photocopied

<sup>28</sup> Response, Confidential Annex A, pp. 453, 458.

<sup>29</sup> Response, Confidential Annex A, pp. 452-459, 462-463.

<sup>30</sup> Motion, Confidential Annex C, p. 146; Response, Confidential Annex A, p. 462.

<sup>31</sup> Response, Confidential Annex A, pp. 459-461.

<sup>32</sup> Motion, Confidential Annex C, pp. 144-145.

handwritten note, and is listed as “Redacted” in the Motion, the Prosecution has not objected to admission of this document on the basis of redactions.<sup>33</sup> The Chamber will consider this document along with the other “Redacted” documents in light of the comments below.

23. The Chamber has previously indicated that the nature and extent of any permanent redactions in a given document are relevant factors in determining admissibility.<sup>34</sup> In the past, the Chamber has admitted redacted documents where there have been no objections to the redactions.<sup>35</sup> Generally, it is preferable for a tendering party to provide the unredacted version of a document where it is available, as the very nature of redacted documents renders the determination of their relevance and probative value difficult. Where an unredacted version of a document exists but the tendering party elects to tender the redacted version, this will be a factor weighing heavily against the admissibility of that document. As such, it is the duty of the tendering party to explain in its tendering motion (i) why it is submitting the redacted version and (ii) the nature and extent of the redactions, if known. In the event that a document has been permanently redacted, the tendering party should make clear in its tendering motion that the document is permanently redacted. In circumstances where the Chamber is satisfied that the document is permanently redacted, the Chamber will consider the nature and extent of the redactions in order to determine admissibility.<sup>36</sup>

24. For the foregoing reasons, the Chamber will deny admission of the “Redacted” documents bearing Rule 65 *ter* nos 1D03146 (under seal), 1D02850, 1D02852, and 1D02353 (under seal), as well as the document bearing Rule 65 *ter* no. 1D02539. The Chamber will admit all other documents in this category, having found that the Defence has shown with sufficient specificity (i) the relevance and probative value of these documents, and (ii) how they fit into the Defence case.

#### Final Remarks

25. Lastly, the Chamber observes that a number of documents admitted have been introduced in order to show a *negative*, i.e. that something did *not* occur because the document made 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

<sup>33</sup> Motion, Confidential Annex C, p. 137; Response, Confidential Annex A, pp. 453-454.

<sup>34</sup> Decision on Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 24.

<sup>35</sup> See for example the admission of D647, T. 18754-18755.

<sup>36</sup> Fifth Decision on the Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 9; T.15133-15134, 18690-18691; Decision on Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 24.



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.

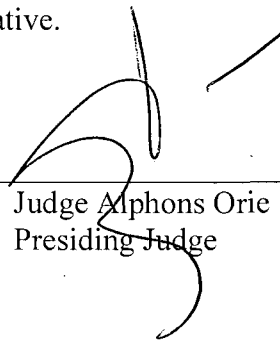
## DISPOSITION

26. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and

- (i) **ADMITS** into evidence the documents bearing Rule 65 *ter nos* 1D02297, 1D02250, 1D02255, 1D02098, 1D02526, 1D02104, 1D02105, 1D01631, 1D03498, 1D01343, 1D03936, 1D02566, 1D02565, 1D02569, 1D02499, 1D03510, 1D03516, 1D03517, 1D03519, 1D02235 (MFI D698), 1D02454 (MFI D757), 1D01231 (MFI D796), 1573, 1577, 1578, 4757 (under seal), 1D02336, 4758 (under seal), 1D01971, 3830, 2859, 2860, 1539, 2270, 1D03502, 3819, 1D02115, 1D01979, 1D02023, 1D02512, 1D02543, 1D03938, 4664, 1D01368, 1D01369, 4668, 1558, 1553, 4374, 1554, 1D01320 (under seal), 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1D02103, 1471, 1572, 1574, 1575, 1576, 1D03819, 1D03820, 1D01618 (under seal), 1D03784, 4240, 1D03824, 1D03786, 1D01295, 3589, 3758, 3765, 1804, 4519, 4686, 1816, 1815, 1D01299, 3805, 1D01301, 3808, 3759, 3664, 1D03501, 2691, 2692, 1D01372, 1D03813, 1D02067, 1556, 1559, 1D02010, 1D01332, 1D02037, 1D03746, 1D03779, 1453, 1D02853, 1D05309, 1D02323, and 1D02324;
- (ii) **INSTRUCTS** the Defence to upload into eCourt only those pages from the original document bearing Rule 65 *ter no.* 1D03786 that correspond with the translation provided within one week from the date of this decision;
- (iii) **INSTRUCTS** the Registry to attach this revised original version of the document bearing Rule 65 *ter no.* 1D03786 to the English translation once received;
- (iv) **INSTRUCTS** the Defence to upload into eCourt a corrected translation of the document bearing Rule 65 *ter no.* 1D02499, within one week from the date of this decision;
- (v) **INSTRUCTS** the Registry to attach this revised translation of the document bearing Rule 65 *ter no.* 1D02499 to the original version once received;
- (vi) **INSTRUCTS** the Defence to upload into eCourt the original versions of the documents bearing Rule 65 *ter nos* 1D03510, 1D03516, 1D03517, and 1D03519 within one week from the date of this decision;

- (vii) **INSTRUCTS** the Registry to attach the translations of the documents bearing Rule 65 *ter* nos 1D03510, 1D03516, 1D03517, and 1D03519 once received;
- (viii) **DEFERS** its decision on the admission of the document bearing Rule 65 *ter* no. 1D02416;
- (ix) **DENIES** the admission of the documents bearing Rule 65 *ter* nos 1D02262, 1D03493, 1D03500, 1D03822, 2849, 1D02539, 1D03146, 1D02850, 1D02852, and 1D02353;
- (x) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orié  
Presiding Judge

Dated this Sixth of June 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]