



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-95-5/18-T

Date: 9 May 2013

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 9 May 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTIONS FOR ADMISSION OF ITEMS
PREVIOUSLY MARKED FOR IDENTIFICATION**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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 (“Trial Chamber”) is seized of the Accused’s “Motion to Admit Documents Previously Marked for Identification,” filed on 25 March 2013 (“First Motion”), “Motion to Admit Documents Previously Marked for Identification,” filed on 2 April 2013 (“Second Motion”), and “Motion to Admit Documents Previously Marked for Identification,” filed on 11 April 2013 (“Third Motion”) (together, “Motions”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the First Motion, the Accused requests that the Chamber admit into evidence 18 documents previously marked for identification (“MFI”)—MFI D2449, D2635, D2677, D2800, D2896, D2897, D2898, D2943, D3035, D3060, D3061, D3075, D3079, D3080, D3082, D3086, D3102, and D3120—as their English translations have now been uploaded into e-court.¹

2. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 5 April 2013 (“First Response”), the Office of the Prosecutor (“Prosecution”) submits that it does not object to the admission of 15 of the documents tendered in the First Motion, namely MFI D2449, D2635, D2677, D2896, D2897, D2898, D3035, D3060, D3075, D3079, D3080, D3082, D3086, D3102, and D3120.² With regard to MFI D2943, the Prosecution submits that it does not object to its admission, subject to the understanding that the handwritten comments on the document were made by the witness, and invites the Accused to stipulate to this fact.³

3. However, the Prosecution objects to the admission of the two remaining documents tendered in the First Motion—MFI D2800 and D3061—on the basis that i) the translation of MFI D2800 consists of three pages that do not appear to correspond to one document; ii) the English translation of MFI D2800 uploaded into e-court does not match the BCS original and instead, appears to be a translation of D2801; and iii) MFI D3061 was marked for identification in full, however only a partial English translation for this document has been uploaded into e-court.⁴

¹ First Motion, para. 1.

² First Response, para. 3.

³ First Response, para. 4.

⁴ First Response, para. 5.

4. In the Second Motion, the Accused requests that the Chamber admit into evidence 16 documents previously marked for identification—MFI D2426, D2450, D2531, D2547, D2563, D2636, D2679, D2768, D2777, D2778, D3083, D3084, D3085, D3087, D3088, and D3101— as their English translations have now been uploaded into e-court.⁵

5. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification,” filed on 10 April 2013 (“Second Response”), the Prosecution submits that it does not object to the admission of 15 of the documents tendered in the Second Motion, namely MFI D2450, D2531, D2547, D2563, D2636, D2679, D2777, D2778, D3083, D3084, D3085, D3087, D3088, D3101, and D2768—subject to the condition that for MFI D2768, the Accused remove the additional pages of the original BCS document that were not admitted into evidence.⁶

6. However, the Prosecution objects to the admission of the one remaining document tendered in the Second Motion—MFI D2426—on the grounds that i) the witness was only asked to comment on a short passage in this lengthy document concerning “rumours” about the takeover of command in the 4th Battalion of the 101st Motorised Brigade and Enis Srna’s commentary on those rumours; ii) the witness could not confirm the contents of the document and did not know Enis Srna; and iii) the document is irrelevant to the charges against the Accused in this case.⁷

7. Moreover, in the Second Response, the Prosecution notes that the Accused has filed many similar motions in a short period of time and suggests that in order to save time and resources for the Chamber and the parties, such motions “be filed in a more consolidated manner, for example on a monthly basis”.⁸

8. Finally, in the Third Motion, the Accused requests the admission of 12 items previously marked for identification—MFI D2957, D2958, D2959, D2960, D2962, D3098, D3099, D3139, D3185, D3241, D3355, and D3356—as their English translations have now been uploaded into e-court.⁹

⁵ Second Motion, para. 1.

⁶ Second Response, paras. 3–4.

⁷ Second Response, para. 5.

⁸ Second Response, para. 2.

⁹ Third Motion, para. 1.

9. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 16 April 2013 (“Third Response”), the Prosecution submits that it does not object to the admission of any of the 12 items tendered in the Third Motion.¹⁰

II. Discussion

10. The Chamber recalls the “Order on the Procedure for the Conduct of the Trial,” issued on 8 October 2009 (“Order on Procedure”), in which it stated, *inter alia*, that any item marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.¹¹

11. The Chamber first notes that on 11 April 2013, it ordered the Accused to upload into e-court accurate and complete original documents and translations for MFI D2800 and D3061 by 17 April 2013.¹² On 23 April and 7 May 2013, the Accused’s case manager informed the Chamber *via* email that the relevant documents had been uploaded into e-court. The Chamber notes that the Accused did not upload the documents by 17 April 2013 as instructed by the Chamber. However, on an exceptional basis, the Chamber has reviewed the revised original documents and translations for MFI D2800 and D3061, as well as the relevant transcripts, and is satisfied that they shall now be admitted into evidence.

12. Second, with regard to MFI D2943, the Chamber notes the Prosecution’s submission in the First Response that it does not object to its admission, subject to the stipulation from the Accused that the handwritten notes on the original BCS version which have also been translated in the English version, were made by the witness through whom it was tendered, Tomislav Savkić.¹³ The Chamber has reviewed the document, its proposed translation, including the handwritten notes, and the relevant transcript, and is satisfied that it can now be admitted into evidence. The Chamber further considers that it would be assisted by receiving submissions from the Accused regarding the origin of the red handwritten notes on the BCS original of D2943 and thus instructs the Accused to make submissions in this regard.

13. Third, the Chamber notes the Prosecution’s objection to the admission of MFI D2426 based on the fact that the witness did not confirm its contents, nor was he questioned about the entire “lengthy” document, and finally that it is irrelevant to the Accused’s case.¹⁴ Having

¹⁰ Third Response, paras. 1–2.

¹¹ Order on Procedure, Appendix A, paras. O, Q.

¹² T. 37142–37143 (11 April 2013).

¹³ T. 33827–33832 (15 February 2013).

¹⁴ Second Response, para. 5.

reviewed the document, which is only four pages, its proposed translation, and the relevant transcript, the Chamber is satisfied that MFI D2426 was sufficiently discussed with, and the contents therein confirmed by, witness Božidar Tomić on 13 November 2012.¹⁵ Furthermore, the Chamber considers that any objection to the relevance of the document should have been made by the Prosecution at the time it was tendered. Accordingly, the Chamber shall admit MFI D2426 into evidence.

14. Finally, with regard to MFI D2768, the Chamber notes the Prosecution's submission in the Second Response that although it does not object to its admission, the BCS original of the document includes pages that were not admitted into evidence.¹⁶ The Chamber recalls that on 17 January 2013, it marked for identification pages 1 and 41 as MFI D2768 and instructed the Accused to exclude all of the remaining pages. Having reviewed the document, its proposed translation, and the relevant transcript, the Chamber notes that while the English translation of MFI D2768 uploaded into e-court only contains the pages that were admitted into evidence, the BCS original uploaded into e-court has not been redacted.¹⁷ The Chamber therefore instructs the Accused to remove the additional pages of the BCS original of MFI D2768 not admitted into evidence. The Chamber is otherwise satisfied that MFI D2768, as redacted, shall be admitted into evidence.

15. Otherwise, on the basis of the information provided by the Accused in the Motions, having reviewed the documents themselves along with the relevant transcripts and translations, the Chamber is satisfied that the following 42 items previously marked for identification should now be marked as admitted publicly:

MFI D2426, D2449, D2450, D2531, D2547, D2563, D2635, D2636, D2677, D2679, D2777, D2778, D2896, D2897, D2898, D2957, D2958, D2959, D2960, D2962, D3035, D3060, D3075, D3079, D3080, D3082, D3083, D3084, D3085, D3086, D3087, D3088, D3098, D3099, D3101, D3102, D3120,¹⁸ D3139, D3185, D3241, D3355, and D3356.

16. In relation to the Prosecution's suggestion that the Accused file motions to admit documents previously marked for identification in a "more consolidated manner, for example on

¹⁵ See T. 30230–30232 (13 November 2012).

¹⁶ See Second Response, para. 4.

¹⁷ See T. 32109 (17 January 2013), wherein the Chamber marked for identification pages 1 and 41 as MFI D2768 and instructed the Accused to exclude all of the remaining pages.

¹⁸ After having reviewed the English translation of MFI D3120, the Chamber notes that both the witness through whom it was admitted, Mane Đurić, and the Chamber erroneously referred to MFI D3120 as a statement given by Fikret Muminović. See T. 35017 (7 March 2013); Oral Ruling, T. 35310 (13 March 2013). However, the Chamber notes that D3120 is in fact a statement given by Behadil Hodžić and details events at which Fikret Muminović was present.

a monthly basis”, in order to save time and resources for the Chamber and parties,¹⁹ the Chamber does not find this necessary at this time, but encourages the Accused to file such motions on a reasonable basis when the number of MFI documents require it.

III. Disposition

17. Accordingly, for the reasons outlined above and pursuant to Rule 89 of the Tribunal’s Rules of Procedure and Evidence, the Chamber hereby **GRANTS** the Motions, and:

- a) **ADMITS** into evidence the items currently marked for identification as MFI D2426, D2449, D2450, D2531, D2547, D2563, D2635, D2636, D2677, D2679, D2777, D2778, D2800, D2896, D2897, D2898, D2957, D2958, D2959, D2960, D2962, D3035, D3060, D3061, D3075, D3079, D3080, D3082, D3083, D3084, D3085, D3086, D3087, D3088, D3098, D3099, D3101, D3102, D3120, D3139, D3185, D3241, D3355, and D3356;
- b) **INSTRUCTS** the Accused to redact the portions of MFI D2768 not admitted into evidence, as indicated in paragraph 14 above, by 16 May 2013 and **ADMITS** MFI D2768 so redacted into evidence; and
- c) **ADMITS** into evidence the document currently marked for identification as MFI D2943 and **INSTRUCTS** the Accused to make submissions, as indicated in paragraph 12 above, by 16 May 2013.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of May 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁹ See Second Response, para. 2.