



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: 7 August 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: 7 August 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 (“Tribunal”) is seised of the Accused’s “Motion to Admit Documents Previously Marked for Identification”, filed on 11 July 2013 (“Motion”), and the “Further Submission on Exhibit MFI D3235”, filed on 19 July 2013 (“Submission on MFI D3235”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the Chamber admit into evidence nine documents previously marked for identification (“MFI”)—MFI D1912, D3143, D3559, D3606, D3664, D3710, D3711, D3716, and D3746—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 19 July 2013 (“Response”), the Office of the Prosecutor (“Prosecution”) submits that it does not object to the admission of seven of the documents tendered in the Motion, namely MFI D1912, D3143, D3559, D3606, D3664, D3710, and D3711.²

3. However, the Prosecution objects to the admission of the two remaining documents tendered in the Motion—MFI D3716 and D3746.³ First with regard to MFI D3716, the Prosecution submits that the BCS original uploaded to e-court still consists of the entire document, while it should only include the pages shown to the witness, namely pages 4, 24, 25, 28, and 29.⁴ Moreover, the Prosecution notes that the English translation uploaded into e-court does not include page 4 of the BCS original.⁵ Second, the Prosecution submits that MFI D3746 is an intercepted conversation in which the witness through whom it was tendered did not participate and as such, pursuant to the Chamber’s practice, it should only be admitted if authenticated through a participant to the conversation, an intercept operator, or the use of Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).⁶

4. In relation to the Submission on MFI D3235, the Chamber notes that on 17 July 2013, it stayed its decision on the admission of MFI D3235 and instructed the Accused to provide the Chamber with a copy of the video and to make further submissions regarding its provenance by

¹ Motion, para. 1.

² Response, para. 2.

³ Response, paras. 3–4.

⁴ Response, para. 3.

⁵ Response, para. 3.

⁶ Response, para. 3.

24 July 2013.⁷ In the Submission on MFI D3235, the Accused informs the Chamber that he has provided it with a copy of the video excerpt from the documentary “Weight of Chains”—MFI D3235—and makes further submissions regarding its provenance.⁸ Specifically, the Accused submits that the Prosecution has failed to present information casting doubt upon the authenticity of the footage and argues that the “fact that the footage was later used in a controversial documentary is not a bar to admission of the original footage, which the witness testified was consistent with his own knowledge of the event”.⁹ The Accused submits that the Chamber need not give any weight to the commentary in the documentary and reiterates that given the authenticity of the original footage and the witness’s testimony about it, MFI D3235 should be admitted.¹⁰

5. In the “Prosecution Response to Karadžić’s Further Submissions on MFI D3235”, filed on 22 July 2013 (“Response to Submission on MFI D3235”), the Prosecution maintains its original objection to MFI D3235 and argues that the Submission on MFI D3235 is a “disguised motion for reconsideration”.¹¹ In the Prosecution’s view, the Accused has failed to provide the information requested by the Chamber or show any proper basis for reconsideration and therefore, the admission of MFI D3235 should be denied.¹²

II. Discussion

6. 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.¹³

7. The Chamber first notes that in addition to pending translation, MFI D1912 was marked for identification following a Prosecution objection that witness KDZ011 did not adopt the document nor confirm any material aspect of it.¹⁴ Having reviewed the document, along with its translation and the witness’s testimony thereon, and taking into account that the Prosecution is

⁷ Decision on Accused’s Motions for Admission of Items Previously Marked for Identification, 17 July 2013 (“First Decision”), paras. 14, 16(b).

⁸ Submission on MFI D3235, paras. 1, 3, 4.

⁹ Submission on MFI D3235, para. 4.

¹⁰ Submission on MFI D3235, paras. 4–5.

¹¹ Response to Submission on MFI D3235, para. 2.

¹² Response to Submission on MFI D3235, para. 3.

¹³ Order on Procedure, Appendix A, paras. O, Q.

¹⁴ KDZ011, T. 21219–21221, 21226–21228 (10 November 2011).

not objecting to its admission at this stage, the Chamber is satisfied that MFI D1912 can now be fully admitted.

8. With respect to MFI D3716, the Chamber first notes that on 25 July 2013, it instructed the Accused to upload into e-court the accurate excerpts of the BCS original as discussed with witness Bogdan Subotić on 19 and 20 June 2013, as well as the corresponding English translation, by 30 July 2013.¹⁵ On 30 July 2013, the Accused informed the Chamber *via* e-mail that revised versions of the BCS original and English translation of MFI D3716 had been uploaded into e-court. The Chamber has reviewed the revised documents, as well as the relevant transcript, and is satisfied that MFI D3716 may now be admitted into evidence.

9. The Chamber notes that MFI D3746 is an intercepted conversation and was marked for identification through witness Milan Ninković on 26 June 2013.¹⁶ The Chamber recalls its practice of treating intercepts as a “special category” of evidence because they bear no *prima facie* indicia of authenticity or reliability and, thus, may only be admitted into evidence after the Chamber has heard from the relevant intercept operators or the participants in the intercepted conversation, or in the alternative, after judicial notice of its authenticity has been taken pursuant to Rule 94(B).¹⁷ Given that Milan Ninković is not an intercept operator or one of the participants in the intercepted conversation, the Chamber will thus deny admission of MFI D3746.

10. In relation to the Submission on MFI D3235, the Chamber recalls that the video excerpt was marked for identification on 2 April 2013 through witness Milovan Bjelica pending the Accused providing further information about its foundational provenance.¹⁸ Having now received the video excerpt and having reviewed it, along with the parties’ submissions and the relevant transcript, the Chamber is still not satisfied that the Accused has provided sufficient additional information to establish its provenance as instructed by the Chamber. The Chamber notes that in the Submission on MFI D3235, the Accused provides information which was already before the Chamber at the time he tendered the video excerpt and with which the Chamber was not satisfied for the purposes of its admission at that time. Moreover, if the Accused were in fact requesting that the Chamber reconsider its decision to admit MFI D3235,

¹⁵ T. 42004 (25 July 2013).

¹⁶ Milan Ninković, T. 40513–40515 (26 June 2013).

¹⁷ Decision on Prosecution’s First Bar Table Motion, 13 April 2010, para. 13; Decision on the Accused’s Bar Table Motion (Sarajevo Intercepts), 9 October 2012, paras. 9–10. *See also* Decision on Accused’s Motion for Reconsideration of Denial of Defence Intercepts, 22 January 2013, para. 8; Decision on Accused’s Motions to Admit Documents Previously Marked for Identification and Public Redacted Version of D1938, 7 December 2012, para. 26.

¹⁸ Milovan Bjelica, T. 36403–36409 (2 April 2013). *See also* First Decision, para. 14.

the Chamber is not satisfied that the Accused has presented the existence of a clear error in reasoning or of particular circumstances justifying reconsideration of the Chamber's decision in order to prevent an injustice.¹⁹ In the absence of further specifics regarding its provenance, the Chamber will thus deny admission of MFI D3235.

11. 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 six items previously marked for identification should now be marked as admitted publicly: MFI D3143, D3559, D3606,²⁰ D3664, D3710, and D3711.

¹⁹ See *Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić's Motion for Reconsideration and Order for Issuance of a Subpoena Duces Tecum, 2 April 2009, p. 2; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber, 26 March 2009, pp. 2–3.

²⁰ The Chamber notes that MFI D3606 was originally assigned to the document under 65 *ter* number 05985 and was marked for identification on 23 May 2013 through Vladimir Lukić pending the Accused providing the accurate excerpts of the document discussed with the witness, as well as the revised English translation. The Chamber notes that the revised excerpt for MFI D3606 is now uploaded into e-court under 65 *ter* number 1D09120.

III. Disposition

12. Accordingly, for the reasons outlined above and pursuant to Rule 89 of the Tribunal's Rules of Procedure and Evidence, the Chamber hereby:

- a) **GRANTS** the Motion in part and:
 - i) **ADMITS** into evidence the items currently marked for identification as MFI D1912, D3143, D3559, D3606, D3664, D3710, D3711, and D3716;
 - ii) **DENIES** the admission of MFI D3746 and **INSTRUCTS** the Registry to mark it as not admitted; and

- b) **DENIES** the Submission on MFI D3235 and **INSTRUCTS** the Registry to mark MFI D3235 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this seventh day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]