



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-04-75-T

Date: 22 August 2013

Original: English

IN THE TRIAL CHAMBER

Before:

**Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua**

Registrar:

Mr. John Hocking

Decision:

22 August 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION RENEWED MOTION FOR ADMISSION OF
EXHIBITS CITED IN EXPERT REPORT OF REYNAUD THEUNENS**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **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 “Prosecution Renewed Motion for Admission of Exhibits Cited in the Amalgamated Expert Report of Reynaud Theunens”, filed publicly with a public Annex on 2 August 2013 (“Motion”).

A. Background

2. Reynaud Theunens testified in this case from 7 to 14 May 2013 as an expert witness on issues related to the military. Theunens’ amalgamated expert report was admitted into evidence on 16 May 2013 (“Expert Report” or “Report”).¹ The Chamber instructed the parties to make written submissions on the proposed exhibits tendered through the witness, and the Chamber issued its “Decision on Prosecution Motion for Admission of Exhibits Cited in Amalgamated Expert Report of Reynaud Theunens” on 29 July 2013 (“Decision”).

B. Submissions

3. In the Motion, the Prosecution renews the “Prosecution Motion for the Admission of Exhibits Cited in the Amalgamated Expert Report of Reynaud Theunens and Request for Variation of the Word Limit” of 24 May 2013 (“First Motion”) and seeks to clarify its position in relation to 26 documents related to the evidence of Theunens.² The Prosecution recognises that its initial motion was ambiguous with respect to whether it was tendering the 26 documents, but seeks to clarify that it does wish to tender the documents, which were used in court but not immediately tendered during the court hearing.³ The Prosecution further submits that these documents are of significant importance for an understanding of the concepts discussed in the Expert Report and Theunens’ conclusions therein.⁴

4. The Defence indicated that it takes no position in relation to the Motion.⁵

C. Discussion

5. The Trial Chamber notes that it did not previously consider the admissibility of these 26 documents due to the ambiguous nature of language included in the “Information” column of

¹ Exhibit P1753. *See also* Hearing, 16 May 2013, T. 4884.

² Motion, para. 1. The Prosecution seeks to tender the following Rule 65 *ter* documents: 00027, 00040, 00041, 00343, 00353, 00369, 00422, 00444, 00460, 00494, 00496, 00500, 00532, 00552, 00577, 00586, 00610, 00639, 00658, 00708, 00722, 00748, 00892, 01151, 01213, 02919.

³ Motion, para. 7.

⁴ Motion, para. 3.

⁵ Email from Defence to Trial Chamber and Prosecution, 19 August 2013.

Annex A to the First Motion, which listed the term “not tendered” for each of the documents.⁶ The Trial Chamber notes that, of the 26 documents tendered by the Prosecution, one document (Rule 65 *ter* 00658) has already been admitted into evidence.⁷ The remaining 25 documents contain information regarding (a) regulations; (b) military documents, reports, orders, proposals, and instructions; (c) government reports and memoranda; (d) bulletins; and (e) newspaper articles. The Trial Chamber finds that the 25 tendered documents are probative, have a sufficient degree of reliability, meet the requirements of Rules 89 (C) and (D) of the Rules of Procedure and Evidence (“Rules”), and will assist the Trial Chamber in assessing the basis on which Theunens reached his conclusions. The Trial Chamber will therefore admit these documents into evidence. The documents are listed in the disposition.

6. Rule 65 *ter* document 00027 is a 135-page document, with an 84-page English excerpt linked to it in eCourt. The Trial Chamber will order the Prosecution to upload to eCourt an excerpted, B/C/S version of the document that corresponds to the English excerpt.

D. Disposition

7. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, hereby:

(a) **ORDERS** that the documents cited in the Expert Report with the following Rule 65 *ter* numbers shall be admitted into evidence: 00027, 00040, 00041, 00343, 00353, 00369, 00422, 00444, 00460, 00494, 00496, 00500, 00532, 00552, 00577, 00586, 00610, 00639, 00708, 00722, 00748, 00892, 01151, 01213, 02919;

(b) **ORDERS** the Prosecution—by no later than 29 August 2013—to (i) upload to eCourt an excerpted, B/C/S version of Rule 65 *ter* document 00027 corresponding to the 84-page English translation; and (ii) notify, via a written filing, the Trial Chamber, Defence, and Registry that this has been completed, after which the relevant document shall be deemed admitted into evidence; and

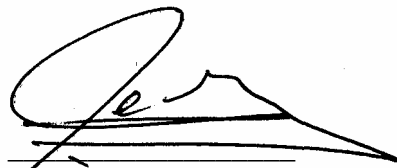
⁶ See Prosecution Motion for the Admission of Exhibits Cited in the Amalgamated Expert Report of Reynaud Theunens and Request for Variation of the Word Limit, 24 May 2013, Annex A, tab numbers: 23, 29, 30, 89, 92, 100, 117, 123, 128, 139, 140, 143, 148, 153, 163, 167, 175, 182, 188, 207, 211, 220, 246, 292, 304, 456.

⁷ See P01995.1981

(c) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

Done this twenty-second day of August 2013,
At The Hague,
The Netherlands.

A handwritten signature in black ink, appearing to be 'G. Delvoie', written over a horizontal line.

Judge Guy Delvoie
Presiding

[Seal of the Tribunal]