



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: 28 April 2014

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: 28 April 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON PROSECUTION MOTIONS ON EXHIBIT-RELATED MATTERS

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 “Prosecution Motion to Reclassify Exhibits P00646 and P01157 and Admit Redacted Versions of These Exhibits”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 7 March 2014 (“First Motion”), the “Prosecution Motion on Exhibit-Related Matters with Public Appendices A and B and Confidential Appendix C”, filed on 17 March 2014 (“Second Motion”), and the “Prosecution’s Response to Defence Submissions and Motion to Admit Croatian Intercepts”, filed on 31 March 2014 (“Motion on Croatian Intercepts”) (together, “Motions”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 20 February 2014, the Chamber instructed the parties to file submissions on any exhibit-related matter, including on documents that remain currently marked for identification, no later than 17 March 2014.¹

2. In the First Motion, the Prosecution notifies the Chamber of an oversight regarding the public admission of exhibits P646 and P1157, both reports by witness Nicolas Sebire related to exhumations in Prijedor municipality which contain confidential information.² The Prosecution requests that the Chamber reclassify P646 and P1157 as confidential and admit into evidence their redacted versions, namely 65 *ter* numbers 18891B and 04790A, respectively.³ The Chamber notes that the Accused did not respond to the First Motion.

3. In the Second Motion, the Prosecution first requests that the Chamber admit into evidence nine items previously marked for identification (“MFI”) or marked as not admitted (“MNA”): (i) four documents previously marked for identification—MFI P6501, P6568, P6669, and P6671—as their English translations have now been uploaded into e-court;⁴ (ii) two items previously marked for identification pending the Chamber being satisfied as to their authenticity—MFI P6576 and P6628—based on the submissions on their authenticity by Prosecution investigator, Barry Hogan, in a signed declaration attached as Appendix B to the Second Motion (“Declaration”);⁵ (iii) two transcripts of intercepted conversations previously marked for identification pending

¹ Order Regarding the Close of the Defence Case, 20 February 2014, p. 3.

² First Motion, paras. 2–4.

³ First Motion, paras. 1, 5.

⁴ Second Motion, para. 3; Appendix A, pp. 1–2, 3, 5–6.

⁵ Second Motion, para. 4; Appendix A, pp. 2–3, 6–8; Appendix B.

authentication—MFI P6499 and P6509—as their authenticity has now been established based on the “genuine agreement between the parties as to their authenticity” and the Chamber’s acceptance thereof;⁶ and finally (iv) MNA P4775, the confidential version of MFI P6499, which the Chamber marked as not admitted because it was not satisfied of its authenticity and for which the Prosecution renews its request for admission on the basis that the authenticity of MFI P6499 has now been established.⁷

4. In addition, in the Second Motion, the Prosecution informs the Chamber that two intercepted conversations marked for identification pending authentication—MFI P6436 and P6502—originate from the Republic of Croatia (“Croatia”) and were included in a chart submitted by the Accused to be authenticated by witness KDZ584 by 24 March 2014.⁸ Therefore, the Prosecution seeks an extension of time to comply with the “Order Regarding the Close of the Defence Case” of seven days following the receipt of a full and final response from the Croatian authorities regarding the authentication of MFI P6436 and P6502 (“Request for Extension” and “Croatian Intercepts”, respectively).⁹

5. Further, the Prosecution informs the Chamber regarding further communication with the International Commission on Missing Persons (“ICMP”) pursuant to the Chamber’s order with respect to the reclassification of confidential exhibits P4642, P4656, P4662, P4768, and P5005 (“ICMP Exhibits”) as public once the families of 118 individuals listed therein had been informed of the relevant DNA matches.¹⁰ The Prosecution submits that to date, all but four families out of 118 have been notified, however, the ICMP Exhibits all contain one or more of the names of individuals yet to be notified and thus, cannot be reclassified as public.¹¹ Therefore, the Prosecution requests that the Chamber order that the currently redacted versions of these five exhibits—P5913, P5914, P5915, P5917, and P5916, respectively—be replaced with revised redacted versions wherein only the names of the four individuals are redacted.¹²

6. The Prosecution also seeks the admission of a video clip, assigned 65 *ter* number 40640, originally tendered through and authenticated by Prosecution witness Almir Begić.¹³ The Prosecution submits that at the time, the Chamber denied its admission on the basis that it was a

⁶ Second Motion, paras. 5–8; Appendix A, pp. 3, 4–5.

⁷ Second Motion, para. 9; Appendix A, p. 5.

⁸ Second Motion, paras. 10–12.

⁹ Second Motion, para. 12. *See also* Order Regarding the Close of the Defence Case, 20 February 2014, p. 3.

¹⁰ Second Motion, para. 14.

¹¹ Second Motion, paras. 15–16; Confidential Appendix C.

¹² Second Motion, para. 16.

¹³ Second Motion, para. 17.

duplicate of a video clip which had previously been marked for identification through another witness as MFI D894; however, the Prosecution informs the Chamber that the video clip showed to Begić was not the same video clip as MFI D894, although it originates from the same compilation of videos.¹⁴ Therefore, the Prosecution now requests that the Chamber admit the video clip assigned 65 *ter* 40640 which was actually shown to and authenticated by Begić at this time.

7. Finally, the Prosecution withdraws its request for the admission of MFI P6123 and P6500.¹⁵

8. On 20 March 2014, the Accused filed the “Response to Prosecution Motion on Exhibit-Related Matters” (“Response”), in which he submits that he does not oppose the admission of the exhibits referred to in the Second Motion and moreover, he supports the Prosecution’s “proposal to lift redactions to the ICMP exhibits”.¹⁶

9. In the Motion on Croatian Intercepts, the Prosecution requests, *inter alia*, that the Chamber fully admit into evidence the Croatian Intercepts as the Croatian authorities have now confirmed that they are summaries prepared by their services and have authenticated them.¹⁷ The Chamber notes that the Accused did not respond to the Motion on Croatian Intercepts.

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.¹⁸

First Motion

11. With regard to P646 and P1157, the Chamber is satisfied that given that they contain confidential information, it is in the interests of justice to reclassify them as confidential and admit into evidence their public redacted versions, 65 *ter* 18891B and 04790A, respectively.

¹⁴ Second Motion, para. 17.

¹⁵ Second Motion, para. 13.

¹⁶ Response, paras. 1–2.

¹⁷ Motion on Croatian Intercepts, paras. 10, 11(c).

¹⁸ Order on Procedure, Appendix A, paras. O, Q.

Second Motion

12. In relation to the Second Motion, the Chamber first notes the Prosecution's submission to withdraw its request for the admission of MFI P6123 and P6500 and grants it.

13. With regard to MFI P6501, P6568, P6669, and P6671—the items marked for identification pending English translation—on the basis of the information provided by the Prosecution in the Second Motion and having reviewed the documents along with the relevant transcripts and translations, the Chamber is satisfied that they should now be admitted into evidence.

14. In relation to MFI P6576, a transcript of a Radio Banja Luka broadcast on 11 June 1992, the Chamber recalls that it was marked for identification on 16 December 2013 through witness Sveto Kovačević, pending the Chamber being satisfied of its provenance and authenticity, particularly in light of the handwritten portions on the original document.¹⁹ Moreover, the Chamber recalls that MFI P6628, a letter allegedly signed by Mićo Stanišić on 7 April 1993, was marked for identification on 4 February 2014 during Stanišić's testimony following an objection by the Accused's legal adviser on grounds of authenticity after Stanišić testified that he did not recognise the signature and was not familiar with the letter.²⁰ The Chamber notes the Prosecution's submissions in the Declaration regarding the chain of custody of these documents and is satisfied that the Prosecution obtained them in their current state. However, first, given the handwritten alterations and additions on MFI P6576 about which Kovačević was unable to testify, the Chamber is not sufficiently satisfied of its authenticity to be admitted through this witness. Regarding MFI P6628, the Chamber is also concerned about Stanišić's testimony that he did not recognise his own signature and even though the Prosecution intended to tender this document in part to impeach the witness, the Chamber is not satisfied that it meets the threshold of minimal probative value to be admitted into evidence. As such, the Chamber shall not admit MFI P6576 and P6628 into evidence.

15. The Chamber notes that MFI P6499²¹ and P6509²² were marked for identification following the Chamber's practice regarding intercepts—*i.e.* pending the Chamber being satisfied of their authenticity. The Chamber recalls that the Accused initially scheduled the testimony of two intercept operators from Bosnia and Herzegovina, namely KDZ126 and KDZ145, on 18 February 2014 for the authentication of certain intercepted conversations. During the hearing of

¹⁹ Sveto Kovačević, T. 45140–45142 (16 December 2013).

²⁰ Mićo Stanišić, T. 46438–46439 (4 February 2014).

²¹ Vujadin Popović, T. 43118–43120 (6 November 2013).

²² Vojislav Kuprešanin, T. 43528–43529 (14 November 2013).

18 February 2014, the Chamber found, based on the agreement between the parties as to the authenticity of the intercepts in question, the Chamber's prior admission of a number of intercepts through intercept operators and numerous interlocutors, and the Prosecution's possible authentication of those intercepts based upon its "evidence collection", that it had a basis to establish the authenticity of the transcripts of intercepted conversations which the Accused intended to tender through KDZ126 and KDZ145.²³ Therefore given that MFI P6499 was part of the batch of intercepts to be authenticated by KDZ126 and MFI P6509 by KDZ145, the Chamber is satisfied that they fall into this category and as such shall, admit them into evidence.

16. Furthermore, with regard to MNA P4775, the confidential version of MFI P6499, the Chamber notes that it was originally marked for identification on 27 March 2012 pending the Chamber's satisfaction of its authenticity,²⁴ and later marked as not admitted on 24 May 2012.²⁵ Given that it is the original confidential version of MFI P6499, the Chamber is satisfied that MNA P4775 should be admitted into evidence, under seal, for the same reasons as noted above for MFI P6499.²⁶ However, the Chamber notes that the document uploaded into e-court under MFI P6499 is considerably longer, in particular the English translation, than the documents uploaded under MNA P4775. Therefore, the Chamber instructs the Prosecution to upload revised BCS and English versions of MNA P4775 into e-court so that they correspond to MFI P6499.

17. In relation to the ICMP Exhibits, the Chamber recalls that it ordered the Prosecution to liaise with the ICMP with respect to the ICMP Exhibits and to inform the Chamber once the families of the 118 individuals listed therein had been informed of the DNA matches so that the Chamber could reclassify them as public.²⁷ The Chamber also instructed the Prosecution to upload redacted versions of these confidential exhibits,²⁸ which were then assigned exhibit numbers P5913, P5914, P5915, P5917, and P5916, respectively. The Chamber notes the Prosecution's submission in the Second Motion that four of the 118 families have not been notified of the DNA matches to date and is thus satisfied that the ICMP Exhibits cannot be fully reclassified as public, as they contain one or more of the names of these four individuals, but that they can be made public as far as the families of the other 114 individuals are concerned. Accordingly, the Chamber is

²³ T. 47255–47259 (18 February 2014). *See also* Decision on Accused's Motion to Admit Intercepts from Bosnia and Herzegovina Previously Marked for Identification or as Not Admitted, 26 February 2014, para. 1; Decision on Accused's Bar Table Motion for Admission of Intercepts, 7 April 2014 ("Intercepts Decision"), para. 16.

²⁴ Dušan Janc, T. 26998 (27 March 2012).

²⁵ Decision on Prosecution's Third Bar Table Motion for the Admission of Intercepts (Srebrenica), 24 May 2012, para. 12.

²⁶ *See* para. 15, *supra*.

²⁷ Decision on Prosecution's Motion for Partial Reconsideration or Clarification of the Chamber's Decision on the Accused's Motion to Unseal ICMP Exhibits, 5 September 2012, ("ICMP Decision"), para. 29(i).

²⁸ ICMP Decision, para. 29(d–g).

satisfied with the Prosecution's proposal and instructs it to replace P5913, P5914, P5915, P5917, and P5916 with the revised redacted versions. Moreover, once the Prosecution is aware that families of the remaining four individuals have been told about the DNA matches, it shall immediately inform the Chamber of this fact, following which the ICMP Exhibits shall be reclassified as public.

18. Finally, turning to the video clip assigned 65 *ter* 40640, the Chamber notes that it was tendered through and authenticated by witness Almir Begić on 15 December 2010;²⁹ however, the Chamber denied its admission on the basis that it was a duplicate of MFI D894 (65 *ter* 1D01031), which had been marked for identification on 9 December 2010 through witness Sead Bešić pending the Chamber being satisfied as to its authenticity and foundation.³⁰ The Chamber further recalls that MFI D894 was later marked as not admitted on 8 November 2013 on the basis that Bešić did not sufficiently comment on its authenticity and provenance.³¹ However, based on the Prosecution's submission in the Second Motion, the Chamber is satisfied that the video clip in fact shown to Begić is not the same clip as the one tendered through Bešić, now MNA D894. Having reviewed the video clip assigned 65 *ter* 40640, along with Begić's testimony thereon, the Chamber is satisfied of its authenticity and relevance to this case and shall admit it on this basis.

Motion on Croatian Intercepts

19. The Chamber notes that the Croatian Intercepts were marked for identification pending the Chamber being satisfied of their authenticity.³² By way of background to the Croatian Intercepts, the Chamber recalls that KDZ584 first testified as a Prosecution witness³³ and later the Accused intended to call him as a Defence witness so that he could verify and authenticate intercepted conversations that the Accused wished to offer into evidence.³⁴ For this purpose, the Accused requested the government of Croatia to make KDZ584 available to testify as a witness in his case.³⁵ On 3 March 2014, the Accused filed a motion requesting the Chamber to compel KDZ584 to testify in his case as he had made reasonable efforts to obtain KDZ584's voluntary co-operation but KDZ584 failed to appear for testimony on the dates requested.³⁶ During the hearing on the same

²⁹ Almir Begić, T. 9962–9963 (15 December 2010).

³⁰ Sead Bešić, T. 9455–9456 (9 December 2010).

³¹ Decision on Accused's Motions for Admission of Items Previously Marked for Identification and Submission on D681, 8 November 2013, para. 15.

³² MFI P6436 was marked for identification on 9 July 2013. See Radomir Pašić, T. 41043 (9 July 2013). MFI P6502 was marked for identification on 13 November 2013. See Slavko Puhalić, T. 43433 (13 November 2013).

³³ KDZ584, T. 27095–27134 (28 March 2012); T. 27135–27172 (29 March 2012).

³⁴ See Motion for Subpoena to Witness KDZ584, 3 March 2014 ("Subpoena Motion"), para. 5.

³⁵ See Subpoena Motion, paras. 5–14.

³⁶ Subpoena Motion, paras. 1, 15, 19.

day, the Prosecution indicated that it would not require KDZ584's attendance in court to authenticate the intercepted conversations should he provide authentication information in writing.³⁷ In light of this submission by the Prosecution, the Chamber instructed the Accused to obtain the information from KDZ584 through Croatia.³⁸ In addition, the Prosecution included the Croatian Intercepts in the chart submitted by the Accused to the Croatian authorities to be authenticated by KDZ584.³⁹

20. The Chamber notes that pursuant to the agreement between the parties as to intercepts which could have been authenticated by witness KDZ584⁴⁰ and the Chamber's invitation to the government of Croatia in relation thereto,⁴¹ KDZ584 has now authenticated the Croatian Intercepts in the comments attached in the reply from Croatia, which was filed on 26 March 2014 ("KDZ584 Reply").⁴² As such, and in light of the Chamber's previous findings in relation to the evidence admitted through KDZ584 as a Prosecution witness with regard to the process and methodology for transcribing intercepts,⁴³ the Chamber considers that the authenticity of the Croatian Intercepts is now sufficiently established for the purposes of their admission into evidence. In addition, in light of the Chamber's decision on the Motion on Croatian Intercepts, the Request for Extension shall be dismissed as moot.

III. Disposition

21. 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 in part, and:

- a) **ADMITS** into evidence the documents currently marked for identification as MFI P6436, P6499, P6501, P6502, P6509, P6568, P6669, and P6671;
- b) **ADMITS** into evidence, under seal, the document currently marked as MNA P4775 and **INSTRUCTS** the Prosecution to upload the revised BCS and English versions as set out in paragraph 16 above by no later than 12 May 2014;
- c) **ADMITS** into evidence Rule 65 *ter* 18891B, 04790A, and 40640 and **INSTRUCTS** the Registry to assign them exhibit numbers;

³⁷ T. 47553–47554 (3 March 2014).

³⁸ The Subpoena Motion was withdrawn orally; T. 47555 (3 March 2014).

³⁹ See Second Motion, para. 11.

⁴⁰ T. 47553–47554 (3 March 2014).

⁴¹ Invitation to Croatia, 11 March 2014, p. 3.

⁴² KDZ584 Reply, p. 10.

- d) **INSTRUCTS** the Prosecution to replace P5913, P5914, P5915, P5917, and P5916 with revised redacted versions as set out in paragraph 17 above by no later than 12 May 2014;
- e) **INSTRUCTS** the Prosecution to further liaise with the ICMP with respect to P4642, P4656, P4662, P4768, and P5005 and, once informed that the families of the four remaining individuals have been informed of the DNA matches, shall report to the Chamber accordingly so that it can reclassify these exhibits as public;
- f) **INSTRUCTS** the Registry to change the status of P646 and P1157 from public to confidential;
- g) **INSTRUCTS** the Registry to mark MFI P6123, P6500, P6576, and P6628 as not admitted; and
- h) **DISMISSES** the Request for Extension as moot.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-eighth of April 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴³ See T. 27101–27104 (28 March 2012) (closed session). See also Decision on Prosecution’s First Bar Table Motion for the Admission of Intercepts, 14 May 2012, para. 2; Intercepts Decision, para. 17.