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15 OCTOBER 2007

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International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of Former Yugoslavia since
1991

Case No. IT-04-84-T
Date: 15 October 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 15 October 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON ADMISSION INTO EVIDENCE OF DOCUMENTS TENDERED
DURING TESTIMONY OF BISLIM ZYRAPI

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1. This is a decision on the Prosecution's motion for admission into evidence of certain documents tendered by the Prosecution from the bar table during the testimony of Witness Bislim Zyrapli.¹ The Chamber decided one part of the motion on 22 May 2007.² Ninety-nine documents were admitted into evidence through that decision, on the basis that each of the documents bears a signature which Zyrapli was able to recognize; moreover, the Defence did not oppose their admission. The admission of 41 other documents is opposed by the Defence and remains to be decided. These documents have been marked for identification as P122, P130, P160, P165, P167, P184, P192, P193, P205 to P207, P210, P213, P222, P224, P225, P229, P233 to P235, P237 to P250, P253 to P258, and P260.

2. The Prosecution argues that the documents in question provide background evidence of the level of organization and structures of command within the KLA during the indictment period. Allegedly, they are all contemporaneous documents created by the KLA or the FARK.³ As to reliability, the Prosecution submits that several of the documents bear a logo or stamp identified by Zyrapli as that of the KLA; that some of the documents are directly related to or make reference to matters described in other documents already in evidence; and that many of the documents, while not bearing a logo or stamp, have "a letterhead of one form or another" which gives "an indication of origin and authenticity".⁴ In the Prosecution's view, even documents that "are devoid of any of these characteristics possess indicia of their origin and their authenticity simply from their form and content."⁵ This is especially so, the Prosecution says, where the "form" of some of the disputed documents corresponds closely to documents accepted by the Defence as sufficiently reliable to be admitted.⁶ The Prosecution did not lead evidence on the provenance of the documents in question, or about how they came into the hands of the Prosecution, but offered to do so if requested.⁷

3. The Defence responded, in relation to 38 of the 41 documents, that, while these purport to be military orders, instructions, requests, or minutes of military meetings, "in the absence of a recognisable signature are worthless as being military documents that were duly issued

¹ Prosecution Submissions in Relation to Admission into Evidence of KLA Documents, 10 May 2007 ("Motion").

² Oral decision, T. 4533-4534.

³ Motion, para. 5.

⁴ Ibid., para. 10.

⁵ Ibid., para. 11.

⁶ Ibid., para. 12.

⁷ Ibid., para. 14.

and authorised.”⁸ These documents, all of which are copies (the originals have not been made available to the Defence or the Chamber), either have no signature at all, or have a signature which was not recognized by Zyrapi (which is what the Defence means by “a recognisable signature”). Moreover, according to the Defence, some of the disputed documents do not bear any similarity to documents whose admission into evidence the Defence does not oppose.⁹ The Defence invited the Chamber to defer its decision on the admissibility of the 38 documents until such time as the Prosecution presents more evidence on them.¹⁰

4. The Defence raised special objections about three of the 41 documents, and it is convenient to proceed to deal with these three immediately, subject to the Chamber’s general observations about the admission of evidence made later in this decision.

5. **P160** consists of a letter signed by Mr Haradinaj, to which the Defence does not object, but to which the Prosecution has attached two documents which appear to be handwritten notes received at some point by Mr Haradinaj. The content of these notes is directly related to the content of Mr Haradinaj’s letter. The Chamber agrees with the Prosecution¹¹ – and not with the Defence¹² – that these documents are properly considered together, under one exhibit number, because the interplay of the formal characteristics and content of the several parts increases the reliability of the whole. P160 is therefore **admitted** into evidence, inclusive of the handwritten notes (which, however, do not appear in court – this should be corrected!).

6. **P184** consists of a document, signed by Mr Haradinaj, whose admission the Defence does not oppose. However, the Defence does object to two other pages,¹³ which the Prosecution submits depict the front and back covers of the notebook of which the document signed by Mr Haradinaj forms part.¹⁴ The Chamber agrees with the Defence that these pages have no relevance and should be removed. P184 is therefore **admitted** into evidence **except for** the two pages numbered U0023230 and U0023233.

⁸ Submission of the Defence for Ramush Haradinaj in Respect of the Prosecution’s Application to Admit into Evidence Certain Documents on the Basis of the Testimony of Bislim Zyrapi, 17 May 2007 (“Response”). This response was joined by the Defence for Lahi Brahimaj on 21 May 2007. A corrigendum to the original submission was filed by the Defence for Mr Haradinaj on 24 May 2007.

⁹ Response, para. 11.

¹⁰ Response, paras 6-7.

¹¹ Prosecution Submission Regarding Exhibits P160, P184 and P207, 25 May 2007 (“Supplementary motion”), paras 5-6.

¹² Response, para. 14; and Response on Behalf of Ramush Haradinaj to Prosecution Submission Regarding Exhibits P160, P184, P207, 7 June 2007 (“Supplementary response”), paras 2-3. The Supplementary response was joined by the other two Accused on 12 June 2007.

¹³ Response, para. 14; Supplementary response, para. 4.

¹⁴ Supplementary motion, para. 8.

7. Lastly, **P207** purports to be a request, unsigned, addressed to “Toger”, described in the request as “commander of the Rapid Units”, from one Faton Mehmetaj. Zyrapi had not seen the document before, but stated that he knew a Faton Mehmetaj who had held a position in the Dukagjin KLA staff.¹⁵ The Defence submitted that this is not a sufficient basis for admission.¹⁶ The Prosecution replied that certain formal characteristics of the document, considered together with Zyrapi’s recollection that the named person was a KLA officer at the relevant time, amounted to sufficient indicia of reliability.¹⁷ This document is **admitted** into evidence for the reasons given in paragraph 11, below.

8. Several Trial Chambers have approved a pronouncement in the *Čelebići* case that “The threshold standard for the admission of evidence ... should not be set excessively high, as often documents are sought to be admitted into evidence, not as ultimate proof of guilt or innocence, but to provide a context and complete the picture presented by the evidence in general.”¹⁸ To this the present Chamber would add that, as a general rule, the less that is known about a document – about the circumstances of its creation and usage – the less the weight that may be given to it. Obviously, an unsigned letter may come into existence in any number of circumstances: for example, it may be drafted by the secretary of the purported author, but not approved by the latter; or drafted by the purported author but then rejected by him or her as unsatisfactory; or drafted by the purported author but overlooked and not dispatched to the addressee; or dispatched to the addressee without the author considering that a signature is necessary. The letter, signed or unsigned, might have been delivered to, but not read by the addressee; or dispatched, but not delivered to the addressee; etc. A signed letter has the advantage over an unsigned one of suggesting that the purported author *was* the author, and did at some point hold the opinions expressed in the letter, but even this assumes that the author was not intending to deceive the addressee, not acting under duress, etc. The same is true, of course, of documents, signed or unsigned, purporting to be military orders, which is the example used by the Defence – they are not really a special category in this respect. The genre of documents announcing military victories (such as P234 in the present

¹⁵ Zyrapi’s comments on the documents shown to him are contained in his witness statement of April 2007, which is not in evidence, but which the parties make frequent reference to.

¹⁶ Response, para. 14; Supplementary response, paras 5-6.

¹⁷ Supplementary motion, para. 13.

¹⁸ *Prosecutor v. Zejnil Delalić et al.*, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19 January 1998, para. 20. Cited in, e.g., *Prosecutor v. Radoslav Brđanin and Momir Talić*, Order on the Standards Governing the Admission of Evidence, 15 February 2002, para. 18; *Prosecutor v. Naser Orić*, Order Concerning Guidelines on Evidence and the Conduct of Parties During Trial Proceedings, 21 October 2004, p. 5; and *Prosecutor v. Milan Martić*, Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 January 2006, annex A, para. 3.

bundle) is notoriously a servant of morale rather than truth. The Chamber knows, perhaps better than a jury, how carefully to assess the significance of a document in relation to which contextual information is lacking to a greater or lesser degree.

9. The Defence's observations are more decisively an argument against weight rather than admission. A document may go into evidence because it seems genuine and relevant to the case, and yet finally be given no weight because its significance in the context of all the evidence remains obscure. The document may, alternatively, come to be treated as corroborative of better evidence. That better evidence, alone, may be sufficient to prove the allegation in question, yet the corroborative evidence may be accepted for admission as a demonstration of the breadth of consistency within the body of the evidence placed before the Chamber. In relation to proof of a key indictment allegation, a document about which little or nothing is known has little or no potential to advance the Prosecution's case, and may be denied admission if the Chamber considers it prejudicial to the Defence. Conversely, a document that is relevant to an allegation of lesser importance, or to an allegation which, through the accumulation of evidence, is increasingly undisputed by the Defence, will not be denied admission merely because it lacks expected markings, such as a letterhead or a signature above a typed name, or because witnesses can say nothing about its history, or because its content does not link up with other evidence.

10. Nevertheless, the general rule which the Chamber observes is that a document that cannot be woven into the fabric of the case will not be relied upon.

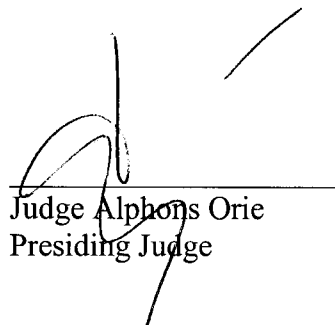
11. The following documents are **admitted** as being probative of issues in the case, seemingly reliable because consistent with other evidence, and yet not unacceptably repetitive of other evidence.¹⁹ Zyrapi's comments on these documents are of little assistance in contextualizing them; nevertheless it is relevant that he – an insider – expressed no doubts about their authenticity. While there is no suggestion of foul play – or even of a reason why any one of these documents might be forged – the Chamber nevertheless wishes to be informed by the Prosecution about what it knows about the chain of custody of these documents. This may be done, in the first instance, in writing; for example, in the form of a statement by an investigator. The documents hereby admitted are: P130, P165, P167, P192, P193, P205, P206, P210, P213, P222, P224, P225, P229, P233 to P235, P238 to P242, P244 to P246, P248, P250, P255, P257, and P258.

¹⁹ The Chamber will not admit evidence that is purely repetitive: see, Decision on Admission Into Evidence of Documents Tendered During Testimony of Achilleas Pappas, 17 September 2007, para. 6.

12. The following documents are **not admitted**, because the Chamber finds them to be repetitive of other evidence, or does not find them to be sufficiently relevant, probative, or meaningful in themselves: P122 (a list of names of alleged KLA members curiously prefaced by a paragraph in Serbo-Croatian typed in the Cyrillic script; Zyrapi was unable to throw any light on this document, and the Chamber is insufficiently equipped to interpret it); P237; P243 and P247 (both insufficiently informative or meaningful); P249; P253 and P254 (both repeat information in P251 and P252, already in evidence); P256; and P260. The non-admitted documents are to have their exhibits status changed from MFI to blank.

13. Lastly, the Chamber requests the Registrar to change the status of the document marked **P120** from MFI to an exhibit proper. This document – like P119, which is already in evidence – is a map marked by Zyrapi. By oversight, it has not yet been admitted into evidence.

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



Judge Alphons Orie
Presiding Judge

Dated this 15th day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]