



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: 22 July 2010

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: 22 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION BAR TABLE MOTION FOR THE ADMISSION OF
BOSNIAN SERB ASSEMBLY RECORDS**

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 Bar Table Motion for the Admission of Bosnian Serb Assembly Records”, filed on 12 July 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In court on 8 July 2010, the Trial Chamber referred to a table that had been provided to it and the Accused by the Office of the Prosecutor (“Prosecution”), listing the transcripts, shorthand records, and minutes of Bosnian Serb Assembly records (“Assembly Session Records”), which it said were referenced in the reports prepared by expert witness Robert Donia, many of which had not yet been admitted into evidence.¹ The Chamber indicated that it understood that, in the interests of efficiency, the Prosecution wished to have the Assembly Session Records admitted into evidence in their entirety now, that the Accused also wished to have them admitted, and that it was probable that in the course of the proceedings in this trial various portions of these records will be put to different witnesses.² The Chamber further stated that rather than limiting the Assembly Session Records that may be tendered for admission to those connected to Dr. Donia’s evidence, it would be in the interests of justice to deal with all the Assembly Session Records that the parties wish to have admitted into evidence.³ The Chamber, therefore, requested the Prosecution to file a written motion, noting that it would essentially be a bar table motion and should be treated as such by the Prosecution, listing all the Assembly Session Records not yet in evidence and which it wishes to tender into evidence. The Accused would then have an opportunity to state whether he objects to the admission of any of the records.⁴

2. The Prosecution filed the Motion following this direction by the Chamber. In the Motion, it submits that the Chamber has previously admitted into evidence several Assembly Session Records in their entirety, noting that it found them relevant and of probative value.⁵ The Prosecution also notes that the Chamber has admitted into evidence four extracts of Assembly Session Records, and submits that to remove these extracts from the case record would render the transcript of proceedings difficult to follow. Therefore, it recommends leaving those extracts in evidence but also admitting the entirety of the four Assembly Session Records from

¹ Hearing, T. 4975 (8 July 2010).

² Hearing, T. 4975 (8 July 2010).

³ Hearing, T. 4975 (8 July 2010).

⁴ Hearing, T. 4975 (8 July 2010).

which the extracts were taken.⁶ Appendix A to the Motion lists all of the Assembly Session Records that the Prosecution wishes to have admitted into evidence, that is, both those it is tendering by way of the Motion, and those which have already been admitted.

3. On 16 July 2010, the Accused filed the “Joinder in Prosecution Bar Table Motion – Assembly Sessions” (“Response”), in which he joins in the Motion and requests the admission into evidence of the documents listed in Appendix A to the Motion.

II. Applicable Law

4. In the Chamber’s “Decision on the Prosecution’s First Bar Table Motion” issued on 13 April 2010 (“First Bar Table Decision”), the Chamber recognised that the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁷ According to that case-law, evidence may be admitted from the bar table if the requirements of Rule 89(C) are met; that is, a Chamber may admit any relevant evidence which it deems to have probative value. As a general rule, the item proposed for admission must have sufficient reliability and relevance to the issues in the case to have probative value.⁸ Once the requirements of the Rule are satisfied, the Chamber maintains discretionary power over the admission of the evidence,⁹ including by way of Rule 89(D).

5. It is a further requirement for the admission of evidence from the bar table that “the offering party must demonstrate, with clarity, and specificity, where and how each document fits into its case.”¹⁰ This was also specified in the Chamber’s “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), which states in relation to bar table motions that:

the requesting party shall: (i) provide a short description of the document of which it seeks admission; (ii) clearly specify the relevance and probative value of each document; (iii) explain how it fits into the party’s case, and (iv) provide the indicators of the document’s authenticity.¹¹

⁵ Motion, para. 4.

⁶ Motion, para. 6.

⁷ First Bar Table Decision, para. 5, citations omitted.

⁸ *Prosecutor v. Dorđević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion to Re-Open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table, 7 December 2009 (“*Dorđević* Decision”), para. 4; *Prosecutor v. Milutinović et al.* Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006 (“*Milutinović* Decision”), para. 10, citing *Prosecutor v. Galić*, Case No. IT-98-29-AR.73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002, para. 35.

⁹ See *Milutinović* Decision, para. 11; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Admission of Evidence, 13 July 2006, p. 5; *Prosecutor v. Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, para. 14.

¹⁰ *Dorđević* Decision, para. 4; *Prosecutor v. Perišić*, Case No. IT-04-81, Confidential Decision on Prosecution’s First Bar Table Motion, 5 October 2009, para. 20; *Milutinović* Decision, para. 18.

¹¹ Order, Appendix A, Part VII, para. R.

The Order also clearly states: “The use by the parties of bar table motions shall be kept to a minimum.”¹²

III. Discussion

6. The Chamber recalls that in the First Bar Table Decision it stated:

While evidence does not need to be introduced through a witness in every circumstance, and there may be instances where it is appropriately admitted from the bar table, it is the Chamber’s view that the most appropriate method for the admission of a document or other item of evidence is through a witness who can speak to it and answer questions in relation to it. The bar table should not generally be the first port of call for the admission of evidence. It is, rather, a supplementary method of introducing evidence, which should be used sparingly to assist the requesting party to fill specific gaps in its case at a later stage in the proceedings.¹³

7. This remains the view of the Chamber, and this continues to be the general practice in this case. However, in requesting the Prosecution to file a written motion by which it would tender all the Assembly Session Records that it wished to have in evidence, the Chamber acknowledged that the most efficient method by which this type of contemporaneous, documentary evidence could be considered for admission was by way of the bar table. This was particularly in the context of the Accused’s consistent expressions of agreement that the Assembly Session Records should be admitted in their entirety, also demonstrated in the Response, as well as the fact that it is expected that various portions of these documents will be used multiple times throughout this trial and with different witnesses. Moreover, the early admission of the Assembly Session Records will ensure greater clarity and time-saving for both the parties and the Chamber. For these reasons, the Chamber considers that the admission of the Assembly Session Records is an appropriate use of the bar table as a supplementary, exceptional method for introducing evidence.

8. Notwithstanding the Prosecution was directed to file the Motion, and the Accused’s joinder in it, the Chamber must still make its own assessment of the admissibility of all of the Assembly Session Records being tendered, in accordance with Rule 89(C). It has, therefore, reviewed the documents listed in Appendix A to the Motion that have not previously been admitted to satisfy itself as to their relevance and probative value. The Chamber notes in this regard that both the Prosecution and the Accused have requested the admission of the Assembly Session Records in their entirety, and the Chamber has reviewed them as such. It will not, therefore, identify specific portions of each record as admissible or inadmissible. Rather, should

¹² Order, Appendix A, Part VII, para. R.

¹³ First Bar Table Decision, para. 9.

the Chamber determine that parts of a record are admissible, that record will be admitted as a whole.

9. On the basis of this review, the Chamber notes, first, that neither the Assembly Session Record assigned Rule 65 *ter* 13826 nor the English translations of the records with Rule 65 *ter* numbers 06319, 18024, 18025, and 18200 have been uploaded in e-court. It has not, therefore, been able to review these records and determine their admissibility. Once the Prosecution has uploaded them into e-court, it may make a further request for their admission.

10. The Chamber is satisfied that the Assembly Session Records listed in Appendix A to the Motion that date from 24 October 1991 to 21 February 1996 (Rule 65 *ter* numbers 00001 to 00099), and which are uploaded in e-court and have not already been admitted, are relevant and have probative value. It will, therefore, admit them pursuant to Rule 89(C) of the Rules.¹⁴ The Chamber notes that most of these Assembly Session Records fall within the indictment period of the Third Amended Indictment (“Indictment”), and that they record the discussions in the Bosnian Serb Assembly, including the responses and reactions of its members to events taking place in Bosnia and Herzegovina (“BiH”) at the time, such as the establishment of Republika Srpska (“RS”), the outbreak of conflict, actions by the Bosnian Muslims and Croats, international negotiations and proposals, and the presence of international forces in BiH. With regard to the Assembly Session Records that fall outside the Indictment period, the Chamber considers that the transcripts and minutes of the Bosnian Serb Assembly sessions that took place on 17 December 1995 and 21 February 1996 (Rule 65 *ter* numbers 00096 to 00099) are relevant and have probative value as they record the discussion of the recently-concluded Dayton Agreement, including its implementation and possible consequences for RS, the Tribunal and the positions taken by the RS leadership, including the Accused, on co-operation with the Tribunal, and reflections of Assembly members and the leadership on the conflict and the events that took place therein.

11. However, the Chamber is not convinced of that the Assembly Session Records dating from 2 April 1996 to 12 September 1996 (Rule 65 *ter* numbers 000100 to 00109) are admissible. These Assembly sessions were held well after the period of the Indictment, and, while some of the discussions concern issues related to the implementation of the Dayton Agreement, and other issues and circumstances stemming from the conflict, they primarily address the ongoing matters of governance of the RS. As such, it is not clear to the Chamber how these records are relevant to either the crimes alleged in the Indictment or the Accused’s alleged responsibility for

¹⁴ The Chamber notes in this regard that the Assembly Session Records with Rule 65 *ter* numbers 05587 and 04214 have been admitted since the filing of the Motion as Defence exhibits D422 and D456, respectively.

those crimes, or have probative value. Therefore, the Chamber will deny the admission of these records without prejudice to the Prosecution and/or the Accused specifying the relevance and probative value of each record, and explaining how each fits into its case.

IV. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, hereby **GRANTS** the Motion **IN PART**, and:

- a) **ORDERS** that the Assembly Session Records with the following Rule 65 *ter* numbers, as set out in Appendix A to the Motion, are admitted into evidence: 00001, 00003, 00004, 00008, 00010, 00011, 00012, 00013, 00014, 00015, 00016, 00019, 00022, 00024, 00027, 00029, 00030, 00031, 00032, 00033, 00034, 00036, 00037, 00040, 00042, 00043, 00044, 00045, 00046, 00047, 00048, 00049, 00050, 00051, 00052, 00053, 00054, 00055, 00056, 00057, 00058, 00059, 00060, 00061, 00062, 00063, 00064, 00065, 00066, 00067, 00068, 00069, 00070, 00071, 00072, 00073, 00074, 00075, 00076, 00077, 00078, 00079, 00080, 00081, 00082, 00083, 00084, 00086, 00087, 00088, 00089, 00090, 00092, 00093, 00094, 00095, 00096, 00097, 00098, 00099; 04252; 06320, 06321, and 06322;
- b) **REQUESTS** the Registry to assign exhibit numbers to the Assembly Session Records that have been admitted into evidence by this Decision; and

DENIES the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]