



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: 8 April 2011

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: 8 April 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S FIFTH MOTION TO ADMIT DOCUMENTS 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 seized of the “Motion to Admit Documents Previously Marked for Identification”, filed by the Accused on 8 March 2011 (“Motion”), and hereby issues its decision thereon.

1. On 8 October 2009, the Trial Chamber issued the “Order on the Procedure for the Conduct of the Trial” (“Order”) in which it *inter alia* stated 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 Trial Chamber.¹

2. In the Motion, the Accused requests that 53 items previously marked for identification be admitted into evidence now that “the issues which prevented these documents from being admitted as exhibits, such as providing English translation or transcriptions of videos have now been solved”.²

3. On 21 March 2011, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Response to ‘Motion to Admit Documents Previously Marked for Identification’” (“Response”), objecting to the admission of 28 of the items tendered for admission in the Motion,³ and noting outstanding issues in relation to a further five items.⁴

4. The Trial Chamber notes, firstly, that the item marked for identification as MFI D39 has already been admitted into evidence.⁵ Further, the photograph marked for identification as MFI D46 should not have been marked for identification, but rather marked as admitted on 22 April 2010.⁶ The Registry is thus instructed to change the status of this exhibit in e-court to reflect its admission on 22 April 2010.

5. On the basis of the information provided by the Accused in the Motion, and having reviewed the items themselves along with the hearing transcripts, as well as the issues raised by

¹ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O and Q.

² Motion, paras. 1-4 (MFI numbers D39, D46, D50-72, D180, D183, D248, D249, D251, D252, D253, D295, D355, D360, D506, D548, D692, D769, D856, D923, D955, D956, D974, D1067, D1070, D1077, D1079, D1081, D197, D202, D316, and D635).

³ Response, paras. 3-8, 10, (MFI numbers D51-D72, D180 and D548); and para. 2 (MFI numbers D197, D202, D316, D635).

⁴ Response, para. 1 (MFI numbers, D249, D251, D252, D1077, D1081).

⁵ Decision on Accused’s Motions to Admit Documents Previously Marked for Identification, 9 March 2011, para. 10(a).

⁶ Hearing, T. 1408 (22 April 2010).

the Prosecution in its Response, the Trial Chamber is satisfied that the following items previously marked for identification should now be marked as admitted:

MFI D248, D253, D295, D355, D360, D506, D692, D769, D856, D955, D956,
D974, D1067, D1070, D1077, D1079.

6. The Trial Chamber is satisfied that the following items may be admitted, subject to the noted outstanding issues being remedied by the Defence:

- (i) MFI D251 is a video which was marked for identification pending provision of an English transcript.⁷ The transcript has now been provided; however, the time-code of the admitted portion should be amended to end at 48:04. In addition, the Accused should provide the Trial Chamber with a copy of this video.
- (ii) MFI D252 is a video which was marked for identification pending provision of a transcript.⁸ The transcript has been uploaded to e-court; however, the time-code of the admitted portion should be amended to end at 14:27. In addition, the Accused should provide the Trial Chamber with a copy of this video.
- (iii) MFI D1081 is a document which was marked for identification pending English translation.⁹ The translation has now been completed; however, the original BCS document has been incorrectly uploaded and should be substituted with the document in e-court under number 1D03241.

7. For the following reasons, the Trial Chamber will not admit the remaining items at this time:

- (i) MFI D50–D68, D71 and D72 are photographs which were marked for identification as a group during the testimony of KDZ064, pending identification by another witness who could testify about them.¹⁰ No witness has yet given evidence concerning their content. The Trial Chamber therefore instructs the Registry to mark these items as not admitted at this time.
- (ii) MFI D69 is a map of uncertain origin and when put to witness KDZ064, the witness did not speak to it.¹¹ The map was marked for identification pending investigation of

⁷ Hearing, T. 3256 (2 June 2010).

⁸ Hearing, T. 3271 (2 June 2010).

⁹ Hearing, T. 12020 (16 February 2011).

¹⁰ Hearing, T. 1410 (22 April 2010).

¹¹ Hearing, T. 1429 (22 April 2010).

its origin by the Prosecution but the matter was not resolved. The Trial Chamber therefore instructs the Registry to mark this item as not admitted at this time.

- (iii) MFI D70 is a note shown to witness KDZ064, which the Accused stated was handwritten by Naser Orić. KDZ064 did not answer any of the Accused's related questions and rejected the idea that Orić wrote the note.¹² As such, the Trial Chamber has no information regarding the note's provenance and its relevance is unclear. The note was marked for identification for the purposes of obtaining a translation. However, while a translation has now been provided, the issues of the note's relevance and provenance have not been resolved. The Trial Chamber therefore instructs the Registry to mark this item as not admitted at this time.
- (iv) MFI D180 is a video which was marked for identification pending provision of an English transcript.¹³ A transcript has been provided by the Accused; however, no time-codes have been provided to the Trial Chamber and so it is not possible to identify which portion of the video is being tendered for admission. Further, the Trial Chamber has not been provided with a copy of this video by the Accused. The Trial Chamber therefore will not admit this video at this time. Should these issues be resolved and the Accused seek to tender the video anew, the Chamber will consider the matter again.
- (v) MFI D183 is a document which was marked for identification pending English translation.¹⁴ However, it is not clear that the English translation now uploaded into e-court contains all the parts of the document used with the witness in court. The Trial Chamber therefore will not admit this document at this time. Should these issues be resolved and the Accused seek to tender the document anew, the Chamber will consider the matter again.
- (vi) MFI D197 was marked for identification pending provision of the original BCS version of the document.¹⁵ MFI D202 was marked for identification pending provision of the original BCS version of the document, and it was noted that the English translation was an edited and cut-down version of a larger document.¹⁶ MFI D316 was marked for identification pending provision of the original document or

¹² Hearing, T. 1436 – 1438, 1449 - 1450 (22 April 2010).

¹³ Hearing, T. 2334 (11 May 2010).

¹⁴ Hearing, T. 2343 (11 May 2010).

¹⁵ Hearing, T. 2498 (20 May 2010).

¹⁶ Hearing, T. 2518 (20 May 2010).

testimony from another witness speaking to its foundation.¹⁷ MFI D635 was an English translation of only part of a larger original and was marked for identification pending translation of the entire original BCS document.¹⁸ The Accused has informed the Trial Chamber that he cannot locate the original versions of any of these documents but notes that the English translations were admitted in the *Galić* trial, while the originals were not.¹⁹ As the originals have not been provided, and not enough information provided regarding their admission in *Galić* to engage Rule 94(B), the Trial Chamber instructs the Registry to mark these documents as not admitted at this time.

- (vii) MFI D249 is a video which was marked for identification pending provision of an English transcript.²⁰ In addition, the Trial Chamber instructed the Accused to identify the time-codes of the clip that was played in court.²¹ While the English transcript has now been uploaded to e-court, it differs in material aspects from the interpretation of the video given in court when it was played, and no time-codes have been provided. The Trial Chamber therefore instructs the Registry to mark this video as not admitted at this time.
- (viii) MFI D548 is a diagram marked for identification during the cross-examination of Richard Higgs,²² pending future identification by other witnesses. It was subsequently put to witnesses Harry Konings,²³ and Rupert Smith,²⁴ who could not confirm the data set out in the diagram. The Trial Chamber therefore instructs the Registry to mark this item as not admitted at this time.
- (ix) MFI D923 is a video which was marked for identification pending transcription, provision of time-codes for the portions played in court, and provision of the date of the video.²⁵ While a transcript has now been provided, neither the date of the video nor the time-codes of the portion played in court have yet been provided to the Chamber. Further, the Chamber has not been provided with a copy of this video by the Accused. The Trial Chamber therefore will not admit this video at this time.

¹⁷ Hearing, T. 3823 (15 June 2010).

¹⁸ Hearing, T. 6916 (16 September 2010).

¹⁹ Motion, para. 4.

²⁰ Hearing, T. 3242 (2 June 2010).

²¹ Hearing, T. 3242 (2 June 2010).

²² Hearing, T. 5993 (19 August 2010).

²³ Hearing, T. 9397 (7 December 2010).

²⁴ Hearing, T. 11518 (10 February 2011).

²⁵ Hearing, T. 9863 (15 December 2010).

Should these issues be resolved and the Accused seek to tender the video anew, the Chamber will consider the matter again.

Disposition

11. Accordingly, for the reasons set out above, pursuant to Rule 89 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART**, and:

a) **ADMITS** into evidence the items currently marked for identification as:

MFI D248, D253, D295, D355, D360, D506, D692, D769,
D856, D955, D956, D974, D1067, D1070, D1077, D1079;

b) **ADMITS** into evidence the items currently marked for identification as MFI D251, D252, and D1081, subject to receipt of written notice from the Accused that the issues set out in paragraph 6 above have been resolved, and **INSTRUCTS** the Registry to mark those items as admitted only following receipt of such written notice;

c) **INSTRUCTS** the Registry to mark MFI D46 as admitted on 22 April 2010;

d) **DENIES** the admission of the items currently marked for identification as MFI D180, D183, and D923 and **INSTRUCTS** the Registry to retain these items as marked for identification until further order; and

e) **DENIES** the remainder of the Motion and **INSTRUCTS** the Registry to mark as not admitted the items currently marked for identification as:

MFI D50–D72, D197, D202, D249, D316, D548, D635.

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



Judge O-Gon Kwon
Presiding

Dated this eighth day of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]