



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: 29 March 2012

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: 29 March 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL APPENDIX

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF ITEMS
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 (“Trial Chamber”) is seised of the Accused’s “Motion to Admit Documents Previously Marked for Identification,” filed on 29 February 2012 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused requests that the Chamber admit into evidence 40 items previously marked for identification (“MFI”).¹ 39 of these documents—MFI D1475, D1601, D1670, D1671, D1672, D1673, D1675, D1677, D1683, D1684, D1685, D1686, D1690, D1695, D1723, D1745, D1746, D1750, D1753, D1759, D1761, D1769, D1771, D1802, D1811, D1812, D1822, D1829, D1832, D1837, D1841, D1843, D1845, D1853, D1869, D1892, D1910, D1939, and D2015—were marked for identification pending English translation.²

2. The Office of the Prosecutor (“Prosecution”) filed its “Response to Motion to Admit Documents Previously Marked for Identification” on 14 March 2012 (“Response”). The Prosecution does not object to the public admission of 28 items, namely—MFI D1601, D1671, D1672, D1675, D1677, D1683, D1684, D1685, D1686, D1690, D1695, D1723, D1745, D1746, D1750, D1811, D1812, D1822, D1829, D1832, D1841, D1843, D1845, D1853, D1869, D1892, D1939, and D2015—subject to the qualifications that: i) MFI D1677 only be admitted in part, pursuant to those pages of the book having actually been discussed with the witness at trial and now translated into English;³ ii) MFI D1723 only include the translation of the single news article discussed with the witness, which begins at the bottom of page 7 of the English translation;⁴ iii) MFI D1853 reflect the proper title for the minister whose signature appears on the document;⁵ and iv) MFI D1939 reflect the correct name of Nikola Kisin.⁶ The Prosecution also does not object to the admission under seal of six items—MFI D1475, D1670, D1673, D1761, D1769, and D1910—subject to the qualifications discussed in Confidential Appendix A to the Response.⁷ Further, the Prosecution notes that three documents originally marked for

¹ Motion, para. 1.

² Motion, para. 1. The Chamber notes that D1674 has already been admitted into evidence and thus considers that the Motion is therefore moot in relation to this exhibit. T. 18660 (13 September 2011).

³ The Prosecution contends that only pp. 1–5, 40–43 and 51–52 of the original BCS document were both discussed with the witness and translated into English. Response, para. 8.

⁴ Response, para. 6(a).

⁵ Response, para. 6(b).

⁶ Response, para. 6(c).

⁷ Response, paras. 5, 7.

identification pending translation and provisionally placed under seal should now be admitted as public exhibits—MFI D1759, D1771, and D1802.⁸

3. The Prosecution does object to the admission of the two remaining documents contained in the Motion—MFI D1753 and D1837—on the basis that i) the translation of D1753 contains an attachment not present in the original BCS document,⁹ and ii) D1837 contains two documents, one dated 15 April 1992, which had already been admitted as MFI D1829, and one dated 30 June 1992, which was not discussed with the witness.¹⁰

4. 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.¹¹

5. As preliminary matters, the Chamber notes that, contrary to the Prosecution’s submission, pp. 53–54 of MFI D1677 (pp. 12–14 of the English translation) were discussed with and given sufficient context by the witness on 13 September 2011,¹² and therefore considers these pages admissible along with the other pages identified by the Prosecution.¹³ Further, as noted in the Confidential Appendix to this Decision, the Chamber considers that MFI D1759 should be admitted under seal, while agreeing with the Prosecution that documents MFI D1771 and D1802 may now be admitted as public exhibits.¹⁴ Finally, the Chamber notes the Prosecution’s qualification to the translation of MFI D1939, for which the Prosecution contends that the name “Nikola KISINA” should instead read “Nikola KISIN.”¹⁵ The Chamber notes that the original document in BCS includes the name “kisina” and thus considers the English translation for MFI D1939 to be satisfactory in its current form.

6. Otherwise, on the basis of the information provided by the Accused in the Motion, having reviewed the documents themselves along with the relevant transcripts and translations, and subject to the remaining qualifications identified by the Prosecution and noted above in

⁸ Response, para. 5.

⁹ Response, Confidential Appendix A, para. 5.

¹⁰ Response, para. 9.

¹¹ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O, Q.

¹² T. 18723–18726 (13 September 2011).

¹³ Response, para. 8.

¹⁴ Decision on Status of Exhibits Admitted Through Witness KDZ492, 13 January 2012 (“KDZ492 Decision”), para. 22.

¹⁵ Response, para 6(c).

paragraph 2, the Chamber is satisfied that the following 30 items previously marked for identification should now be marked as admitted publicly:

MFI D1601, D1671, D1672, D1675, D1677 (pp. 1–5, 40–43, and 51–54 of the BCS and pp. 1–14 of the English translation), D1683, D1684, D1685, D1686, D1690, D1695, D1723, D1745, D1746, D1750, D1771, D1802, D1811, D1812, D1822, D1829, D1832, D1841, D1843, D1845, D1853, D1869, D1892, D1939, and D2015.

7. In addition, having reviewed the documents themselves along with the relevant transcripts and translations, and subject to the qualifications discussed in the Confidential Appendix to this Decision, the Chamber is satisfied that the following six items should be marked as admitted under seal:

MFI D1475, D1670, D1673, D1759, D1761, and D1910.

8. Additionally with regard to MFI D1769, the Chamber notes the Prosecution's submission that the fourth paragraph of the English translation is partially incorrect.¹⁶ The Prosecution contends that the Accused should submit a request to the Tribunal's Conference and Language Services Section ("CLSS") for a revised translation.¹⁷ The Chamber considers that, given the alleged discrepancy, a revised translation by CLSS would be of assistance to the Chamber and thus grants the request. Furthermore, for the reason stated in the Confidential Appendix to this Decision, the Chamber also considers that MFI D1769 should be admitted under seal.

9. The Prosecution objects to the admission of MFI D1753.¹⁸ The Chamber notes the Prosecution's argument that the original document tendered contains only a cover letter, while the English translation contains both a cover letter and an additional attachment.¹⁹ Given that the cover letter is already admitted as exhibit P1136 and that the witness never spoke to the attachment,²⁰ the Chamber considers that this document should not be admitted into evidence.

10. The Chamber also notes that one of the military orders contained in MFI D1837, dated 30 June 1992, was not discussed with the witness. While the witness did discuss the other order, dated 15 April 1992, this document had already been marked for identification, without objection, as MFI D1829. As the witness did not identify or give context to the order of 30 June

¹⁶ Response, Confidential Appendix A, para. 3(b).

¹⁷ Response, Confidential Appendix A, para. 3(b).

¹⁸ Response, para. 9(a).

¹⁹ Response, Confidential Appendix A, para. 5.

²⁰ T. 20074–20075 (18 October 2011).

1992, and the Chamber considers that duplication of exhibits should be avoided, the Chamber will deny the admission of MFI D1837.

Disposition

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 Motion in part, and:

- a) **ADMITS** into evidence the items currently marked for identification as MFI D1601, D1671, D1672, D1675, D1677 (pp. 1–5, 40–43, and 51–54 of the BCS and pp. 1–14 of the English translation), D1683, D1684, D1685, D1686, D1690, D1695, D1723, D1745, D1746, D1750, D1771, D1802, D1811, D1812, D1822, D1829, D1832, D1841, D1843, D1845, D1853, D1869, D1892, D1939, and D2015, subject to the qualifications discussed in paragraphs 2 and 5 above;
- b) **ADMITS** into evidence under seal the items currently marked for identification as MFI D1475, D1670, D1673, D1759, D1761, D1769, and D1910, subject to the qualifications discussed in paragraphs 11 to 14 of the Confidential Appendix to this Decision;
- c) **ORDERS** the Accused to submit a request to CLSS for a revised translation of MFI D1769, to replace the existing translation with the revised translation, and to inform the Chamber and the Prosecution thereof;
- d) **DISMISSES** the Motion as moot with respect to D1674;²¹ and
- e) **DENIES** the remainder of the Motion and instructs the Registry to mark documents MFI D1753 and D1837 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-ninth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

²¹ See para. 2.