



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: 6 November 2013

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: 6 November 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION 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 seised of the “Prosecution Motion to Admit Documents Previously Marked for Identification”, filed publicly with public and confidential appendices on 30 September 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests that the Chamber admit into evidence 13 documents previously marked for identification (“MFI”).¹ The Prosecution submits that eight of these documents were marked for identification pending English translation—MFI P6040, P6096, P6158, P6184, P6258, P6301, P6455, and P6469—and requests that they now be admitted into evidence given that their English translations have been uploaded into e-court.² The remaining five documents—MFI P4581, P6114, P6123, P6251 and P6262—were marked for identification pending further information about their provenance, foundation, and/or authenticity.³

2. In particular, with regard to MFI P4581, P6114 and P6262, the Prosecution *inter alia* submits that these documents were admitted into evidence in previous trials and accordingly, requests the Chamber to take judicial notice of their authenticity pursuant to Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and admit them into evidence in this case.⁴ With regard to MFI P6123 and P6251, the Prosecution provides the Chamber with further information about their provenance and submits that on this basis they should now be admitted into evidence.⁵

3. On 4 October 2013, the Accused filed the “Response to Prosecution Motion for Admission of Documents Previously Marked for Identification” (“Response”), in which he submits that he does not object to the admission of ten of the documents—MFI P6040, P6096, P6158, P6184, P6258, P6301, P6455, P6469, P4581 and P6114.⁶ However, the Accused objects to the admission of the remaining three documents—MFI P6123, P6251 and P6262—on the basis that there is insufficient foundation for their admission as the witnesses through whom they were tendered

¹ Motion, para. 1.

² Motion, para. 2.

³ Motion, paras. 3, 5, 6, 8, 10, 13.

⁴ Motion, paras. 5, 7, 13.

⁵ Motion, paras. 9, 11, Appendix A.

⁶ Response, para. 1.

“provided no confirmation of the contents nor do the contents contradict the testimony of the witness[es]”.⁷

II. Applicable Law

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.⁸

5. In addition, Rule 94(B) of the Rules allows a Chamber to take judicial notice of the authenticity of documentary evidence which has been admitted in prior proceedings. Accordingly, in order to take judicial notice, the Chamber should be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.⁹ Moreover, the Chamber recalls its practice of treating intercepts as a “special category” of evidence given that they bear no indicia of authenticity or reliability on their face and accordingly, may only be admitted into evidence after the Chamber has heard from the relevant intercept operators or the participants in the intercepted conversation.¹⁰ The Chamber also recalls that it has considered that it is in the interests of judicial economy to apply Rule 94(B) to intercepts.¹¹

III. Discussion

6. The Chamber will first analyse the documents marked for identification pending English translation—namely, MFI P6040, P6096, P6158, P6184, P6258, P6301, P6455, and P6469. On the basis of the information provided by the Prosecution in the Motion, and having reviewed the documents, their proposed translations, and the relevant transcripts, the Chamber is satisfied that MFI P6040, P6096, P6158, P6184, P6258, P6301, and P6469 should now be admitted. With regard to MFI P6455, the Chamber notes that it was marked for identification pending translation on 22 July 2013; however, only a portion of the first page of the document has been translated and

⁷ Response, paras 1, 2.

⁸ Order on Procedure, Appendix A, paras. O, Q.

⁹ Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010 (“First Decision”), para. 11; Decision on the Prosecution’s Motion for Judicial Notice of Intercepts Related to the Sarajevo Component and Request for Leave to Add One Document to the Rule 65 *ter* Exhibit List, 4 February 2011 (“Second Decision”), paras. 12–17; Decision on the Accused’s Bar Table Motion (Sarajevo Intercepts), 9 October 2012, para. 6.

¹⁰ *See, e.g.*, First Decision, para. 9; Decision on Prosecution’s First Bar Table Motion, 13 April 2010, para. 13.

¹¹ First Decision, para. 9. The Chamber has found that the recording of an intercepted conversation is covered by the term “documentary evidence”. *See* Second Decision, para. 17.

was uploaded into e-court twice, while the remainder of the document is not translated. Accordingly, the Chamber instructs the Prosecution to upload into e-court a complete English translation for MFI P6455. Otherwise, the Chamber has reviewed the original document, along with the relevant transcripts, and is satisfied that it can now be admitted pending the complete translation being uploaded into e-court.

7. The Chamber will now analyse the documents marked for identification pending further information regarding their provenance, authenticity, and/or foundation. First, with regard to MFI P4581, the Chamber notes that this excerpt from a tactical intercept notebook was discussed with witness Milenko Karišik on 27 June 2013 and was marked for identification following the Chamber's practice regarding intercepts—i.e. pending the Chamber being satisfied of its authenticity.¹² Having reviewed the document and the information provided by the Prosecution in the Motion in relation to its admission in previous cases,¹³ the Chamber considers that the authenticity of MFI P4581 has been sufficiently established and will therefore take judicial notice of its authenticity. Furthermore, based on Karišik's testimony about the content of this document,¹⁴ the Chamber finds it is relevant to the current proceedings and shall therefore admit MFI P4581 into evidence.

8. In relation to MFI P6114, the Chamber recalls that it was marked for identification on 15 February 2013 through witness Tomislav Savkić, pending further information being provided by the Prosecution as to its provenance and authenticity.¹⁵ Having reviewed the information provided by the Prosecution in the Motion regarding the document's prior admission in the *Krajišnik* case,¹⁶ the Chamber is satisfied that the authenticity of MFI P6114 has been sufficiently established and shall thus take judicial notice of its authenticity. Further, the Chamber finds that the document is relevant to the current proceedings and shall therefore admit MFI P6114 into evidence.

9. With regard to MFI P6123, the Chamber notes that it was marked for identification through Tomislav Savkić on 15 February 2013 following an objection by the Accused's legal adviser based on lack of foundation.¹⁷ The Chamber recalls that when Savkić was shown the document—an extract from a telephone directory of the Ministry of Defence of the Zvornik District—he could not confirm its contents and moreover, stated that “none of the numbers mean a thing to me”.¹⁸ The

¹² Milenko Karišik, T. 40613–40617 (27 June 2013).

¹³ See Motion, para. 5, footnote 18.

¹⁴ Milenko Karišik, T. 40613–40617 (27 June 2013).

¹⁵ Tomislav Savkić, T. 33761–33763 (15 February 2013).

¹⁶ See Motion, para. 7, footnote 25.

¹⁷ Tomislav Savkić, T. 33791–33793 (15 February 2013).

¹⁸ Tomislav Savkić, T. 33792–33793 (15 February 2013).

Chamber is therefore not satisfied that MFI P6123 should be admitted through this witness as he was not able to confirm any of its contents and will thus deny its admission.

10. In relation to MFI P6251, the Chamber notes that it was marked for identification on 3 April 2013 through witness Milovan Bjelica, following an objection by the Accused's legal adviser requesting further information from the Prosecution regarding its provenance and authenticity because the witness did not confirm the contents of the document.¹⁹ Based on the information provided by the Prosecution in the Motion regarding the provenance of MFI P6251,²⁰ the Chamber is now satisfied that it bears sufficient indicia of authenticity for purposes of admission. The Chamber also notes the Accused's objection in the Response to the admission of this document now based on insufficient foundation for its admission through this witness.²¹ However, given that it was tendered by the Prosecution to impeach Bjelica and that, specifically considering his position at the relevant time and the subject matter of the document, it is relevant to his credibility, the Chamber will admit it into evidence.

11. Finally, the Chamber notes that MFI P6262 was marked for identification on 3 April 2013 through witness Gojko Čekić pending further information as to its provenance and foundation following an objection by the Accused's legal adviser.²² Having reviewed the information provided by the Prosecution in the Motion regarding the document's prior admission in the *Tolimir* case,²³ the Chamber considers that the authenticity of MFI P6262 has been sufficiently established and will therefore take judicial notice of its authenticity. Furthermore, despite the fact that the contents of the document were not fully confirmed by Čekić in this case,²⁴ the Chamber considers that the witness sufficiently commented it and shall therefore fully admit MFI P6262 into evidence.

¹⁹ Milovan Bjelica, T. 36422–36424 (3 April 2013).

²⁰ See Motion, para. 11, Appendix A.

²¹ See Response, paras. 1, 2.

²² Gojko Čekić, T. 36505–36507 (3 April 2013).

²³ See Motion, para. 13, footnote 36.

²⁴ Gojko Čekić, T. 36506–36507 (3 April 2013).

IV. Disposition

12. Accordingly, for the reasons outlined above and pursuant to Rules 89 and 94(B) of the Rules, the Chamber hereby **GRANTS** the Motion in part, and:

- a) **ADMITS** into evidence the documents currently marked for identification as MFI P4581, P6040, P6096, P6114, P6158, P6184, P6251, P6258, P6262, P6301, P6469;
- b) **ADMITS** into evidence the document currently marked for identification as MFI P6455 and **INSTRUCTS** the Prosecution to upload the revised English translation as set out in paragraph 6 above by 13 November 2013; and
- c) **DENIES** the remainder of the Motion and **INSTRUCTS** the Registry to mark MFI P6123 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this sixth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]