



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 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: 8 November 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTIONS FOR ADMISSION OF ITEMS
PREVIOUSLY MARKED FOR IDENTIFICATION AND SUBMISSION ON D681**

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 Accused’s “Motion to Admit Documents Previously Marked for Identification”, filed on 1 August 2013 (“First Motion”), “Motion to Admit Documents Previously Marked for Identification”, filed on 5 September 2013 (“Second Motion”), and the “Defence Submission on Exhibit D681”, filed on 12 September 2013 (“Submission on D681”) (together, “Motions”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the First Motion, the Accused requests that the Chamber admit into evidence 12 documents previously marked for identification (“MFI”)—MFI D3712, D3713, D3714, D3731, D3745, D3810, D3818, D3860, D3865, D3866, D3876, and D3897—as their English translations have now been uploaded into e-court.¹

2. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 5 August 2013 (“First Response”), the Office of the Prosecutor (“Prosecution”) submits that it does not object to the admission of ten of the documents tendered in the First Motion, namely MFI D3712, D3713, D3714, D3745, D3810, D3818, D3865, D3866, D3876, and D3897.²

3. However, the Prosecution objects to the admission of the two remaining documents tendered in the First Motion—MFI D3731 and D3860. First, with regard to MFI D3731, the Prosecution submits that as it indicated at the time the document was marked for identification, there is insufficient foundation for its admission as the witness through whom it was tendered did not provide evidence on the document’s creation or authorship, and it was unclear if the witness was providing evidence or simply confirming the contents of one page of the ten-page document. Second, the Prosecution submits that for MFI D3860, page 42 of the BCS original was used with the witness in court; however, it is not included in the BCS original or English translation uploaded into e-court.³

4. In the Second Motion, the Accused requests that the Chamber admit into evidence 23 items previously marked for identification—MFI D894, D923, D973, D1143, D1721, D1742, D1834, D2518, D3130, D3456, D3812, D3815, D3835, D3855, D3862, D3868, D3873, D3878,

¹ First Motion, para. 1.

² First Response, para. 2.

³ First Response, para. 3.

D3883, D3885, D3905, D3906, and D3913—as their English translations have now been uploaded into e-court or, alternatively, further information about their provenance, authenticity, or foundation has been provided.⁴

5. Moreover, in the Second Motion, the Accused withdraws his request for the admission of MFI D877, D1376, D1592, and D3320.

6. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification,” filed on 13 September 2013 (“Second Response”), the Prosecution submits that it does not object to the admission of 19 of the documents tendered in the Second Motion, namely MFI D923, D973, D1143, D1721,⁵ D1742, D1834, D3456, D3812, D3815, D3835, D3855, D3862,⁶ D3873, D3878, D3883, D3885, D3905, D3906, and D3913.⁷ The Prosecution also notes that MFI D3868 has already been admitted into evidence and therefore does not address its admission.⁸

7. However, the Prosecution objects to the admission of three of the items tendered in the Second Motion—MFI D894, D2518, and D3130.⁹ First, the Prosecution maintains its original objection with regard to MFI D894, namely that there is nothing to indicate that the specific audio clip the Accused played with the witness is a genuine broadcast.¹⁰ The Prosecution argues that the Accused incorrectly claims that parts of the same broadcast were later authenticated by Prosecution witnesses Almir Begić and Berko Zečević; rather the video clips admitted through them “appear to be completely independent from the recording of the purported radio broadcast” the Accused seeks to admit and thus have no bearing on its authenticity.¹¹ Second, the Prosecution objects to the admission of MFI D2518 based on concerns regarding its authenticity given that the BCS original is not available.¹² The Prosecution argues that the fact that the same document was admitted in the *Galić* case—and in particular considering the circumstances surrounding its admission over the objections of the Prosecution in that case—does not alleviate the fundamental reliability concerns regarding this document.¹³ Finally, the Prosecution objects to the admission of MFI D3130 because the last page of the BCS original uploaded into e-court

⁴ Second Motion, paras. 1–6.

⁵ The Prosecution does not object to the admission of MFI D1721 provided that duplicate uploads are removed from e-court. Second Response, para. 4.

⁶ The Prosecution does not object to the admission of all 12 pages of MFI D3862. Second Response, para. 3, footnote 4.

⁷ Second Response, paras. 3–4.

⁸ Second Response, para. 2, footnote 3.

⁹ Second Response, para. 5.

¹⁰ Second Response, para. 5.

¹¹ Second Response, para. 5.

¹² Second Response, para. 5.

is from a different document and requests that it be removed along with the corresponding pages of the English translation.¹⁴

8. In the Submission on D681, the Accused submits that on 6 October 2010, exhibit D681 was admitted into evidence pending the attachment of a map to the document.¹⁵ The Accused now informs the Chamber that it has checked the relevant documents, as has the Prosecution, and has determined that there is no map attached to this document. The Accused thus requests that the Chamber now consider D681 as complete.¹⁶ On 12 September 2013, the Prosecution informed the Chamber *via* email that it would not respond to the Submission on D681.

II. Discussion

9. 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.¹⁷

10. Preliminarily, the Chamber notes that D3868 has already been admitted into evidence.¹⁸ Moreover, the Chamber notes the Accused’s request to withdraw MFI D877, D1376, D1592, and D3320.

First Motion

11. The Chamber first notes that MFI D3731 was marked for identification pending translation through witness Branko Grujić on 26 June 2013. However, at that time, the Prosecution also preserved an objection based on the document’s foundation, pending its own review of the document after translation.¹⁹ The Chamber recalls that when it asked the witness whether he was reading from the document or giving evidence, the Accused and the witness confirmed that he had read a few sentences of the ten-page document, and notes that beyond reading the document, the witness only partially confirmed one detail regarding the inclusion of Zvornik in the Serbian Republic of Bosnia and Herzegovina.²⁰ Moreover, the Chamber notes

¹³ Second Response, para. 5.

¹⁴ Second Response, para. 5.

¹⁵ Submission on D681, para. 1.

¹⁶ Submission on D681, paras. 2–4.

¹⁷ Order on Procedure, Appendix A, paras. O, Q.

¹⁸ T. 41594–41595 (19 July 2013).

¹⁹ T. 40447 (26 June 2013).

²⁰ T. 40446–40447 (26 June 2013).

that the Accused has not tendered any further evidence to demonstrate the foundation of this document. The Chamber is thus not satisfied that there is sufficient foundation and information regarding the document's provenance to admit it into evidence through this witness; therefore, the Chamber will deny admission of MFI D3731.

12. With regard to MFI D3860, the Chamber notes that it was marked for identification pending translation; however, page 42 of the document, which was used with the witness,²¹ is not included in the documents uploaded into e-court. Accordingly, the Chamber instructs the Accused to upload page 42 of the BCS original and the corresponding English translation into e-court.

13. The Chamber further notes that with regard to MFI D1143, although the Accused has submitted that the documents uploaded into e-court have been limited to the pages used with witness Anthony Banbury in court,²² the Chamber notes that both the BCS original and English translation uploaded into e-court still contain the entire document. Therefore, the Chamber instructs the Accused to upload into e-court only the relevant pages shown to the witness.

14. Otherwise, the Chamber has reviewed the original documents for MFI D3860 and D1143, along with the relevant transcripts and translations, and is satisfied that they can now be admitted pending the ordered redactions.

Second Motion

15. The Chamber notes the Prosecution's objections to the admission of MFI D894, D2518, and D3130.²³ First, in relation to MFI D894, the Chamber recalls that the audio broadcast was marked for identification on 9 December 2010 through witness Sead Bešić pending the Chamber being "satisfied as to its authenticity and foundation".²⁴ The Chamber first notes that during his testimony, Bešić did not confirm that the recording was in fact a Radio Hayat broadcast.²⁵ The Chamber further notes that in the Second Motion, the Accused submits that parts of the same audio broadcast were verified as accurate by Prosecution witnesses Berko Zečević and Almir Begić and admitted as D1094 and submits this is the basis for now fully admitting MFI D894.²⁶ Having reviewed them closely, the Chamber notes that although they were assigned the same 65 *ter* number, the audio broadcast marked for identification as MFI D894 does not seem to be part

²¹ T. 41267–41268 (16 July 2013).

²² See Second Motion, para. 4.

²³ See Second Response, para. 5.

²⁴ T. 9455–9456 (9 December 2010).

²⁵ T. 9450–9454 (9 December 2010).

²⁶ See Second Motion, para. 2.

of the same compilation of video clips authenticated by Zečević²⁷ and Begić²⁸ and admitted as D1094. The Chamber thus considers that the authentications provided by these witnesses do not shed further light on the provenance of MFI D894. Therefore, without any further information to establish it, the Chamber is still not satisfied as to the authenticity and foundation of MFI D894 and denies its admission into evidence.

16. Second, with respect to MFI D2518, the Chamber notes that following a Prosecution objection regarding authenticity, it was marked for identification on 3 December 2012 through witness Vladimir Lučić pending the provision of the BCS original.²⁹ The Chamber further notes that in the Second Motion, the Accused submits that he has been unable to find the BCS original, as has the Prosecution, but that this document was admitted in the *Galić* case without the original and thus it should be sufficiently authenticated to be admitted in this case.³⁰ Furthermore, on 29 October 2013, the Chamber instructed the Prosecution to provide further submissions on its reasons for being concerned about the authenticity of the document.³¹ In the “Prosecution’s Further Submissions on MFI D2518”, filed on 4 November 2013 (“Submission on MFI D2518”), the Prosecution maintains its objection to the admission of MFI D2518 based on “fundamental authenticity and reliability concerns”.³² The Prosecution submits that it does not have any information about the document’s source, nor can it verify the existence of a BCS original of the document, and therefore it cannot examine the original document for signs of authenticity nor assess the accuracy of the purported translation.³³ The Prosecution further submits that in the *Galić* case, there was no authenticating information or explanation for the lack of an original document provided and finally, Vladimir Lučić did not provide any authenticating information about the document during his testimony in this case.³⁴ Having reviewed the document and the relevant transcript, as well as the parties’ submissions, the Chamber is not convinced that the fact that the same document was admitted in the *Galić* case, also without the BCS original and notwithstanding the objection by the Prosecution in that case,

²⁷ T. 12293–12296 (23 February 2011).

²⁸ T. 9962–9963 (15 December 2010).

²⁹ T. 30822–30824 (3 December 2012).

³⁰ See Second Motion, para. 5.

³¹ T. 42431 (29 October 2013).

³² Submission on MFI D2518, para. 5.

³³ Submission on MFI D2518, para. 3. The Prosecution further notes that the document does not appear to have been translated by either the Registry or the Prosecution and there is no indication as to the individual or entity that produced the translation. Submission on MFI D2518, para. 3.

³⁴ Submission on MFI D2518, para. 4. The Prosecution submits that in the *Galić* case, this document was shown to an expert witness as part of a bundle of documents and the witness noted only that he had seen and studied the bundle of documents and that they all related to the conduct of the SRK towards UNPROFOR. Submission on MFI D2518, para. 4.

is sufficient to establish its provenance and authenticity for the purposes of admission in this case. The Chamber thus denies admission of MFI D2518.

17. With regard to MFI D3130, the Chamber notes that the pages the Prosecution objected to have now been removed from the BCS original and English translation in e-court. Further, the Chamber notes that duplicate documents are uploaded into e-court for MFI D1721 and instructs the Accused to remove them. Otherwise, having reviewed the revised documents, along with the translations and relevant transcripts, the Chamber is satisfied that MFI D3130 and D1721 can be admitted fully at this time, pending the ordered instructions for MFI D1721.

18. Finally, on the basis of the information provided by the Accused in the Motions, having reviewed the documents themselves along with the relevant transcripts and translations, the Chamber is satisfied that the following 27 items previously marked for identification should now be marked as admitted:

MFI D923, D973, D1742, D1834, D3456, D3712, D3713, D3714, D3745, D3810, D3812, D3815, D3818, D3835, D3855, D3862, D3865, D3866, D3873, D3876, D3878, D3883, D3885, D3897, D3905, D3906, and D3913.

Submission on D681

19. Finally, with respect to the Submission on D681, the Chamber notes the Accused's submissions and the fact that neither the Prosecution nor the Defence was able to find the map referred to in the document and finds that D681 shall now be considered complete in e-court.

III. Disposition

20. 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 Motions in part and:

- a) **ADMITS** into evidence the items currently marked for identification as MFI D923, D1742, D1834, D3130, D3456, D3712, D3713, D3714, D3745, D3810, D3812, D3815, D3818, D3835, D3855, D3862, D3865, D3866, D3873, D3876, D3878, D3883, D3885, D3897, D3905, D3906, and D3913;
- b) **ADMITS** into evidence, under seal, the documents currently marked for identification as MFI D973 and D1721 and **INSTRUCTS** the Accused to remove the duplicate documents for D1721 from e-court as set out in paragraph 17 by 15 November 2013;
- c) **ADMITS** into evidence the documents currently marked for identification as MFI D1143 and D3860 and **INSTRUCTS** the Accused to upload the accurate portions of the BCS originals and English translations as set out in paragraphs 12 and 13 above by 15 November 2013;
- d) **INSTRUCTS** the Registry to mark MFI D3868 as admitted in e-court;
- e) **DENIES** the admission of MFI D894, D2518, and D3731 and **INSTRUCTS** the Registry to mark them as not admitted;
- f) **INSTRUCTS** the Registry to mark MFI D877, D1376, D1592, and D3320 as not admitted; and
- g) **INSTRUCTS** the Registry to record D681 as complete in e-court.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]