

IT-09-92-T  
D 26353 - D 26369  
31 January 2014

26353 KB



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-09-92-T  
Date: 31 January 2014  
Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Bakone Justice Moloto  
Judge Christoph Flügge

**Registrar:** Mr John Hocking

**Decision of:** 31 January 2014

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON DEFENCE MOTION FOR  
RECONSIDERATION OR CERTIFICATION TO APPEAL  
DECISION ON FOČA MUNICIPALITY BAR TABLE MOTION**

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**Office of the Prosecutor**  
Mr Dermot Groome  
Mr Peter McCloskey

**Counsel for Ratko Mladić**  
Mr Branko Lukić  
Mr Miodrag Stojanović

## I. PROCEDURAL HISTORY

1. On 14 November 2013, the Trial Chamber issued a Decision admitting into evidence 44 documents (“Impugned Decision”).<sup>1</sup> On 21 November 2013, the Defence filed a motion seeking to exceed the word limit and requesting reconsideration of or certification to appeal the Impugned Decision (“Motion”).<sup>2</sup> The Prosecution filed a response on 5 December 2013, opposing the Motion (“Response”).<sup>3</sup>

## II. SUBMISSIONS OF THE PARTIES

2. The Defence requests the Chamber to reconsider, or in alternative issue a certification to appeal, the Impugned Decision, arguing that the Chamber failed to undertake an adequate analysis of the authenticity of the documents it admitted.<sup>4</sup> The Defence further objects to the admission of exhibits originating from “open sources”.<sup>5</sup> In addition, the Defence requests the Chamber to issue guidance setting an exact limit for the number of documents that can be tendered from the bar table.<sup>6</sup> The Prosecution submits that the Defence fails to demonstrate the existence of a clear error of reasoning or particular circumstances justifying reconsideration since the admission of documents is not contingent upon considerations of authenticity.<sup>7</sup> Further, regarding certification, the Prosecution submits that the Defence fails to provide an argument to satisfy the requirements of Rule 73 (B).<sup>8</sup>

## III. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing reconsideration of decisions.<sup>9</sup> The Chamber further recalls and refers to the applicable law governing requests for certification to appeal as set out in a previous decision.<sup>10</sup>

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<sup>1</sup> Decision on Prosecution Motion to Admit Evidence from the Bar Table: Foča Municipality, 14 November 2013.

<sup>2</sup> Defence Motion to Exceed Word Limit and Motion for Reconsideration or Certification to Appeal Chamber Decision to Admit Evidence from the Bar Table: Foča Municipality, 21 November 2013.

<sup>3</sup> Prosecution Response to Defence Motion for Reconsideration or Certification to Appeal: Foča Bar Table Motion, 5 December 2013.

<sup>4</sup> Motion, paras 10-15.

<sup>5</sup> Motion, paras 16-18.

<sup>6</sup> Motion, paras 19-23.

<sup>7</sup> Response, paras 6-8.

<sup>8</sup> Response, para. 9.

<sup>9</sup> Reasons for Decision on Defence Motion for Reconsideration, 29 June 2012, para. 10.

<sup>10</sup> Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 7.

## IV. DISCUSSION

### A. Preliminary Matters

4. The Chamber grants the Defence's request for an extension of the word limit as the Motion only insignificantly exceeds the word limit.<sup>11</sup>

5. As a preliminary matter, the Chamber notes that the Defence misconstrues the law on the admissibility of documents from the bar table. The Chamber reminds the Defence that authenticity is a factor to be taken into consideration in determining whether the tendered material has relevance and probative value pursuant to Rule 89 (C) of the Rules of Procedure and Evidence ("Rules"), and authenticity, as such, is not an additional or separate requirement for the admission of evidence.<sup>12</sup> In relation to the stage at which a determination on authenticity is appropriately made, the Appeals Chamber has held that "definitive proof of authenticity is an issue relevant to the evidentiary weight to be assigned to a document *after* admission."<sup>13</sup> In this respect, the Appeals Chamber further clarified that "[w]hile a trier of fact may legitimately decide not to admit evidence where it is so patently unreliable that it can have no probative value, such an assessment is appropriately done after the conclusion of the case".<sup>14</sup> Additionally, the Chamber reminds the Defence that Rule 89 (E) states that the Chamber *may* request verification of the authenticity of evidence; it is, however, not required to do so.

### B. Reconsideration of the Impugned Decision

6. With regard to the Defence request for reconsideration of the documents bearing 65 ter numbers 3656, 27978i, 14184, 22847a, 14192, 28779, and 8444,<sup>15</sup> the Chamber notes that the Defence disputes their authenticity, and argues that the Chamber did not undertake an adequate analysis of the authenticity of the documents.<sup>16</sup> The Chamber recalls that authenticity is not a separate requirement pursuant to Rule 89 (C).<sup>17</sup> As such, the Chamber has not failed to undertake an adequate analysis of the authenticity of the documents. The Chamber therefore finds that the

<sup>11</sup> The Chamber notes that the Defence exceeded the word limit (3,000 words) by approximately 225 words, of which 150 words were dedicated to its request for an extension of the word limit. *See also* Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, paras 5 and 7.

<sup>12</sup> *Prosecutor v. Prlić*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009 ("*Prlić* Appeal Decision"), paras 32-36; *Prosecutor v. Radoslav Brđanin*, IT-99-36-A, Appeal Judgement, 3 April 2007, para. 40.

<sup>13</sup> *Prlić* Appeal Decision, para. 34.

<sup>14</sup> *Ibid* (emphasis added).

<sup>15</sup> Motion, para. 3.

<sup>16</sup> Motion, paras 10-15.

<sup>17</sup> *See* para. 5.

Defence has failed to show that the Chamber has committed an error of reasoning in admitting the documents. The Chamber further considers that the Defence has not shown particular circumstances justifying a reconsideration of the Impugned Decision in order to avoid injustice. Additionally, the Chamber reminds the Defence that a motion for reconsideration is not the appropriate forum for the Defence to simply repeat its previous submissions. With regard to the Defence's objection to the admission of exhibits originating from "open sources" pursuant to the Decision of the Trial Chamber in *Milutinović*,<sup>18</sup> the Chamber reminds the Defence that Trial Chamber decisions are not binding upon the Chamber.<sup>19</sup> Furthermore, the Chamber notes that documents originating from "open sources" are not as such inadmissible.

### C. Certification to Appeal the Impugned Decision

7. The Defence did not make any submissions regarding either prong of Rule 73 (B) in its Motion.<sup>20</sup> Instead, it submitted arguments why, in its view, the Impugned decision was incorrectly reasoned. The Chamber therefore finds that the Defence has failed to demonstrate that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and that an immediate resolution by the Appeals Chamber may materially advance the proceedings.

### D. Other Matters

8. With regard to the Defence request for the Chamber to set a limit for bar table documents,<sup>21</sup> the Chamber recalls that its guidance to the parties has always been to limit the tendering of evidence to the most relevant documents. The parties should strive to avoid flooding the Chamber with documents. At the same time, the Chamber considers that setting an exact limit for the number of documents that can be tendered in one motion would be arbitrary and unhelpful and, therefore, denies this request.

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<sup>18</sup> Motion, para. 18; *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 41.

<sup>19</sup> *Prosecutor v. Zlatko Aleksovski*, IT-95-14/1-A, Judgement, 24 March 2000, paras 114-115.

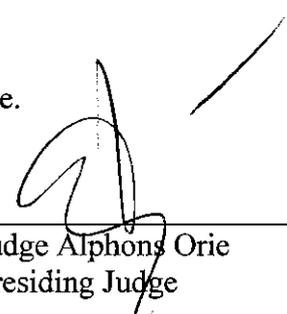
<sup>20</sup> Motion, paras 10-15.

<sup>21</sup> Motion paras 19-23.

## V. DISPOSITION

9. For the foregoing reasons, the Chamber **GRANTS** the Defence request to exceed the word limit and **DENIES** the remainder of the Motion.

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



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Judge Alphons Orie  
Presiding Judge

Dated this Thirty-First day of January 2014  
At The Hague  
The Netherlands

[Seal of the Tribunal]