



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-03-69-T
Date: 23 June 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 23 June 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON ADMISSION INTO EVIDENCE
OF P179 AND P473**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

1. On 3 February 2010, the Prosecution tendered a series of documents with Rule 65ter number 4866 into evidence, during the testimony of Sulejman Tihic.¹ It consists of a personnel file from the Serbian State Security Service (“DB”) which was allegedly issued on Jovica Stanišić’s request during his employment in the DB and bearing his short signature. Also on 3 February 2010, the Stanišić Defence and the Simatović Defence objected to the admission of the document, on the ground of lack of authenticity, arguing that it was not signed by Jovica Stanišić, and relevance to the testimony of Witness Tihic.² The Chamber marked the document for identification under seal as P179.³ On 19 February 2010, the Chamber denied the objection as to relevance and invited the Stanišić Defence to elaborate on the challenge to the authenticity.⁴ On 5 March 2010, the Stanišić Defence filed its submission on the authenticity of P179⁵, to which the Prosecution responded on 19 March 2010.⁶ On 22 March 2010, the Stanišić Defence applied for leave to reply to the Response.⁷ On 23 March 2010, the Prosecution opposed this application.⁸ On 29 March 2010, the Chamber granted the Stanišić Defence leave to reply and informed the parties accordingly through an informal communication. On 1 April 2010, the Stanišić Defence filed its reply to the Response.⁹

2. On 18 May 2010, the Prosecution sought to tender twenty-five additional files from the personnel records of the DB from the bar table, including the documents with Rule 65ter numbers 4332 and 4401, and requested their admission under seal.¹⁰ The Chamber marked both documents for identification under seal as P473 and stated that it would decide on the admission of P179 and P473 at the same time.¹¹ Document P473 contains a request for background checks on a number of named persons as well as the report on the background check with regard to one of the individuals. The document was allegedly issued by Jovica Stanišić bearing his short signature. On 18 May 2010,

¹ T. 3143.

² T. 3140-3149.

³ T. 3149-3150.

⁴ T. 3149, 3719-3723.

⁵ Confidential Stanišić Defence Submissions on the Authenticity of P179, 5 March 2010.

⁶ Confidential Prosecution Response to Stanišić Submission on the Authenticity of Exhibit P179, 19 March 2010. The Chamber notes that on 19 February 2010, it set the deadline for a Prosecution Response to the expected Stanišić Defence submission for 12 March 2010 (T. 3723). The Prosecution missed this deadline by a week but the Chamber will exceptionally consider the Response.

⁷ Confidential Stanišić Defence Application for Leave to Reply to Prosecution Response to Submissions on the Authenticity of P179, 22 March 2010.

⁸ Confidential Prosecution Response to Stanišić Defence Application for Leave to Reply to Prosecution Response to Submissions on the Authenticity of P179, 23 March 2010.

⁹ Confidential Stanišić Defence Reply to Prosecution Response to Defence Submissions on the Authenticity of P179, 1 April 2010.

¹⁰ T. 5112-5115.

¹¹ See T. 5113, 5115, 5119.

the Stanišić Defence objected to the admission of P473, challenging its authenticity on the same grounds as for P179.¹²

3. According to Rule 89 (C) and (D) of the Rules of Procedure and Evidence (“Rules”), the Chamber may admit any relevant evidence it deems to have probative value and may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. Since P179 and P473 are dated 28 February 1992 and pertain to Jovica Stanišić and his role in the DB, and are allegedly signed by him, the Chamber finds them relevant.

4. The Stanišić Defence challenges the authenticity of P179 and P473. The Chamber notes that authenticity is one of the factors that it considers when assessing the reliability of evidence to be admitted, and that reliability is a component part of the probative value of a piece of evidence. The Chamber further notes that, “[t]o require absolute proof of a document’s authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89 (C).”¹³ In this respect, the Chamber considers that the documents have been provided through the same Request for Assistance and that this procedure for obtaining them gives certain indicia of authenticity. The Chamber further takes into account the testimony of Dejan Slišković who testified that he saw the short signature of Jovica Stanišić three to four times and that the short signatures contained in P179 and P473 appeared to be those of Jovica Stanišić.¹⁴ Considering the above, and that the Stanišić Defence does not raise any other specific arguments with regard to authenticity of the documents, the Chamber finds that P179 and P473 have probative value. When determining the weight to be attached to these documents, the Chamber will assess them in light of the totality of the evidence.

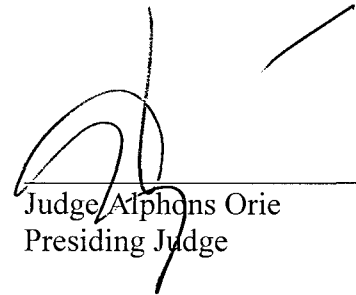
¹² T. 5114, 5118-5119; *See also* Prosecution First Motion for Admission of Exhibits from the Bar Table, 23 November 2009, paras 27-30; Stanišić Defence Response to Prosecution First Motion for Admission of Exhibits from the Bar Table, 7 December 2009.

¹³ *See Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-AR73.2, Decision on Application of Defendant Zejnil Delalić for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence, 4 March 1998, para. 20; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One formal Statement, 18 September 2000, para. 24; *Georges Anderson Nderubumwe Rutaganda v. Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, paras 33, 266; *Prosecutor v. Popović et al.*, Decision on Joint Defence Interlocutory Appeal concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22.

¹⁴ T. 5116-5118.

5. For the foregoing reasons and pursuant to Rule 89 (C) and (D) of the Rules, the Chamber:
ADMITS P179 and P473 into evidence, under seal.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-third day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]