

**UNITED
NATIONS**



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-04-75-T
Date: 26 August 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 26 August 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS
CITED IN EXPERT REPORT OF JAKUB BIJAK**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **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 seized of the “Prosecution Motion for the Admission of Associated Exhibits of the Jakub Bijak Expert Report”, filed on 24 July 2013 (“Motion”). The Defence filed its “Response to Prosecution Motion for the Admission of Associated Exhibits of the Jakub Bijak Expert Report” on 7 August 2013 (“Response”). The Prosecution filed its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for the Admission of Associated Exhibits of the Jakub Bijak Expert Report” on 16 August 2013 (“Reply”).

A. Background

2. Jakub Bijak testified in this case on 3 June 2013 as an expert witness on displaced persons and refugees from Croatia. His status as an expert witness was not challenged by the Defence.¹ Bijak’s expert report was admitted into evidence on 3 June 2013 (“Expert Report”).² The Chamber instructed the parties to make written submissions on the proposed exhibits referenced in the Expert Report tendered through the witness.³

B. Submissions

3. In the Motion, the Prosecution seeks the admission of nine documents listed in Annex A to the Motion. The Prosecution submits that the documents are relevant to and probative of issues presented in this case and are integral to a complete understanding of the analysis and conclusions contained in the Expert Report.⁴ The Prosecution explains that the documents are comprised of literature on displaced persons and refugees from Croatia that were prepared by governmental entities, international organisations, and academics.⁵ It states that the documents are used in the Expert Report to confirm the accuracy of the statistical information derived from documents provided by the Office for Displaced Persons, Returnees, and Refugees (“ODPRR”) in order to determine the upper limits of the number of displaced persons during the Indictment period and to provide figures on the number of refugees from Croatia that could not be derived from the ODPRR documents (which only contain data on internally displaced persons).⁶

¹ See Notice on Expert Witnesses Pursuant to Rule 94 *bis* (B), 8 August 2012.

² Exhibit P2016. See also Hearing, 3 June 2013, T. 5309.

³ Hearing, 3 June 2013, T. 5307-5309.

⁴ Motion, paras 1, 3-4.

⁵ Motion, para. 3.

⁶ Motion, para. 4.

4. In the Response, the Defence objects to the admission of five of the tendered documents. It argues that these documents fail to meet the minimum threshold of reliability or relevance or are duplicative of other documents admitted as evidence.⁷ In particular, the Defence opposes documents that it argues (a) do not include information on authorship,⁸ (b) go beyond the scope of demographic analysis,⁹ (c) are not contemporaneous with the events described,¹⁰ or (d) do not provide specific citations.¹¹

5. In the Reply, the Prosecution argues that the Defence arguments against the admission of the five documents are erroneous and should be rejected.¹² In particular, it argues that (a) the authorship of the documents is indicated,¹³ (b) the documents are not duplicative of other evidence,¹⁴ (c) in relation to Rule 65 *ter* number 01403, it is cited in the Expert Report and includes specific citations as endnotes,¹⁵ (d) in relation to Rule 65 *ter* number 02285, Human Rights Watch reports have been tendered by the Defence and admitted in this case,¹⁶ and (e) the documents are relevant to the case.¹⁷

C. Discussion

6. The four proposed documents to which there is no objection are two reports prepared by the United Nations High Commissioner for Refugees and excerpts from two books. The Trial Chamber finds that these documents are probative, have a sufficient degree of reliability, meet the requirements of Rules 89 (C) and (D) of the Rules of Procedure and Evidence (“Rules”), and will assist the Trial Chamber in assessing the basis on which Bijak reached his conclusions. The Trial Chamber will therefore admit into evidence the documents with Rule 65 *ter* numbers 01942.1, 01946, 02305, and 02784.1.

7. Rule 65 *ter* 00862 is a list of “Serb-held” settlements as of January 1992 compiled by the Zagreb-based *Ivo Pilar* Institute for Social Science in April 2003.¹⁸ The Chamber finds that it is probative, has a sufficient degree of reliability, and meets the requirements of Rules 89 (C) and (D). The list is referenced in the Expert Report in comparison to a map prepared by the Prosecution’s mapping unit. The map outlines, *inter alia*, settlements controlled by the Republic of Serbian

⁷ Response, paras 1, 5.

⁸ Response, para. 2.

⁹ Response, para. 3.

¹⁰ Response, paras 3, 4.

¹¹ Response, paras 3, 4.

¹² Reply, para. 7.

¹³ Reply, paras 2, 5.

¹⁴ Reply, paras 2, 6.

¹⁵ Reply, para. 3.

¹⁶ Reply, para. 4.

¹⁷ Reply, para. 6.

Krajina at the beginning of 1992.¹⁹ The Chamber notes that the individual settlements are not distinguishable on the map in the Expert Report and considers that Rule 65 *ter* 00862, which individually lists relevant settlements, will assist the Chamber in understanding and assessing the Expert Report. Moreover, while other exhibits in this case make reference to specific settlements that were under the control of Serb forces at specific times, none of the exhibits cited by the Defence in the Response provide a comprehensive list of areas controlled by Serb forces. The Trial Chamber will therefore admit Rule 65 *ter* 00862.

8. Rule 65 *ter* number 01403 is a journal article prepared by the University of Zagreb School of Medicine in 1993.²⁰ It “describes the experience of medical doctors from the School of Medicine and Ministry of Health of the Republic of Croatia in documenting human rights abuses and war crimes during the war and occupation on the territory of Croatia 1991/93”.²¹ As stated in the Expert Report, the article does not provide a reference period for the estimates of refugees and displaced persons nor does it indicate the source for all of the estimates.²² The Chamber is not satisfied that Rule 65 *ter* number 01403 is sufficiently reliable or relevant so as to meet the threshold for admissibility into evidence set out in Rules 89 (C) and (D).

9. Rule 65 *ter* number 01947 is an article written by the head of the Croatian government’s Office for Displaced Persons and Refugees in November 1994.²³ The article provides statistics for the number of “war-sufferers cared for by Croatia” and provides an estimate of displaced persons as of November 1994. It does not give a source for this information.²⁴ The Chamber is not satisfied that the document is sufficiently reliable so as to meet the threshold for admissibility into evidence set out in Rules 89 (C) and (D).

10. Rule 65 *ter* numbers 02543 and 02285 are reports on displaced persons and refugees from Croatia that were prepared by the Croatian Ministry for Public Works, Reconstruction, and Construction and Human Rights Watch, respectively. They were prepared in 2003 and 1997, respectively, and focus on the return of displaced persons from Croatia after the Indictment period. Rule 65 *ter* 02543 is a 41-page report of which one table is cited in the Expert Report.²⁵ Rule 65 *ter* 02285 is also a large report of which only a small portion is referenced in the Expert Report.²⁶ The Chamber considers that Rules 65 *ter* numbers 02543 and 02285 generally possess low relevance to

¹⁸ Rule 65 *ter* 00862, p. 1. *See also* Expert Report, p. 5.

¹⁹ Expert Report, pp. 5-6, figure 1.

²⁰ Rule 65 *ter* 01403, p. 285.

²¹ Rule 65 *ter* 01403, p. 292.

²² Rule 65 *ter* 01403, pp. 287-288, 289. *See also* Expert Report, p. 10, Table 2, note. a.

²³ Rule 65 *ter* 01947, pp. 183, 187. *See also* Expert Report, p. 27.

²⁴ Rule 65 *ter* 01947, p. 184.

²⁵ Expert Report, pp. 25-26.

²⁶ Expert Report, p. 27, fn. 21.

the subject matter of the case and that the distinct portions that relate to the case are adequately described in the Expert Report. The documents will not assist the Chamber in its understanding of the Expert Report and will not be admitted.

D. Disposition

11. Accordingly, the Trial Chamber, pursuant to Rules 54, 89, and 126 *bis* of the Rules, hereby
- (a) **GRANTS** the Prosecution leave to file the Reply;
 - (b) **ORDERS** that the documents cited in the Expert Report with the following Rule 65 *ter* numbers shall be admitted into evidence: 00862, 01942.1, 01946, 02305, and 02784.1;
 - (c) **DENIES** the admission into evidence of documents with the following Rule 65 *ter* numbers: 01403, 01947, 02285, and 02543; and
 - (d) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

Done this twenty-sixth day of August 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Présiding

[Seal of the Tribunal]