



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: 4 November 2011

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: 4 November 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC WITH CONFIDENTIAL ANNEX A

**DECISION ON ACCUSED'S 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 “Motion to Admit Documents Previously Marked for Identification”, filed by the Accused on 5 October 2011 (“Motion”), and hereby issues its decision thereon.

1. On 8 October 2009, the Chamber issued the Order on the Procedure for the Conduct of the Trial in which it stated 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.¹

2. In the Motion, the Accused requests that 52 documents previously marked for identification be admitted into evidence as their English translations have now been obtained and uploaded into e-court.²

3. On 18 October 2011, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification” (“Response”), with Confidential Appendix A and Confidential and *Ex Parte* Appendix B, not objecting to the admission of 45 items tendered for admission in the Motion.³ The Prosecution objects to six of the items tendered for admission in the Motion, as discussed below.⁴ It further notes that it has no position regarding the admission of D1456 because an English translation has not been made available at this time.⁵

4. The Chamber notes, firstly, that exhibit D1369 was admitted into evidence on 21 June 2011 and was never marked for identification.⁶ Therefore, the Chamber does not need to address in the present decision whether this document should be admitted. The Chamber also notes that, despite the Prosecution’s assertion in the Response, an English translation for MFI D1456 has now been uploaded into e-court. The Chamber will therefore admit this document into evidence.

¹ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O and Q.

² Motion, paras. 1–2.

³ Response, para. 3 (MFI numbers D1359, D1369, D1371, D1374, D1377, D1378, D1387, D1390, D1392, D1393, D1395, D1396, D1401, D1404, D1415, D1417, D1418, D1420, D1424, D1428, D1430, D1433, D1434, D1435, D1436, D1446, D1449, D1453, D1455, D1466, D1467, D1484, D1489, D1490, D1524, D1542, D1563, D1581, D1608, D1615, D1619, D1650, D1657, D1659, and D1688).

⁴ Response, paras. 5–17 (MFI numbers D1376, D1394, D1405, D1513, D1609, and D1656).

⁵ Response, para. 4.

⁶ T. 15053 (21 June 2011).

5. With respect to the remainder of the items subject to the Motion, having regard to the information provided by the Accused and the fact that there was no objection on behalf of the Prosecution, and having reviewed the documents themselves along with the related courtroom discussions of the same, the Chamber is satisfied that the following 44 documents previously marked for identification should now be marked as admitted:

MFI D1359, D1371, D1374, D1377, D1378, D1387, D1390, D1392, D1393, D1395, D1396, D1401, D1404, D1415, D1417, D1418, D1420, D1424, D1428, D1430, D1433, D1434, D1435, D1436, D1446, D1449, D1453, D1455, D1466, D1467, D1484, D1489, D1490, D1524, D1542, D1563, D1581, D1608, D1615, D1619, D1650, D1657, D1659, and D1688.

6. The Chamber will now discuss the items being objected by the Prosecution:

(i) MFI D1376

7. MFI D1376 is a map of Sarajevo created by the Defence which allegedly depicts the zones of responsibility of the 105th Brigade of the Army of the Republic of Bosnia and Herzegovina (“ABiH”). It was used by the Accused on 22 June 2011 during his cross-examination of witness Asim Džambasović. In court, the Accused asked the witness if the map roughly corresponded to what he knew as the areas of responsibility for certain ABiH brigades, and the witness generally agreed.⁷ The Prosecution nevertheless objected to the map because it had not been translated and because its content and the material used to create it could not be verified.⁸ The Chamber marked the map for identification pending English translation *and* until satisfied about its accuracy and consistency with the source material.⁹ In the Response, the Prosecution again objects to the admission of the map based on the fact that the Accused has not complied with the Chamber’s ruling in relation to its admission.¹⁰

8. The Chamber notes that Asim Džambasović did not significantly verify the information in the map when it was put to him in court. Furthermore, the Accused has failed to provide the Chamber and the Prosecution with the relevant source information of this map. Thus, until such information is provided, the Chamber is of the view that the map cannot be admitted and will remain as marked for identification.

⁷ Asim Džambasović stated: “This map roughly does correspond to that. Since I know the areas very well, I can tell you about the broader area of responsibility where the brigade was in terms of the actual geographic locations involved. Here I don’t have particular geographic locations that I can relate to.” T.15200 (21 June 2011).

⁸ T. 15197–15199 (22 June 2011).

⁹ T. 15199 (22 June 2011).

¹⁰ Response, para. 7.

(ii) MFI D1394

9. MFI D1394 is a request for an analysis of sabotage operations sent by the Operations Command Centre of the ABiH Supreme Command Staff to the 1st Corps Command on 19 December 1992, authored by Asim Džambasović, which was used by the Accused during his cross-examination of the witness on 23 June 2011. The Prosecution objected in court to the admission of this document on the grounds of relevance.¹¹ This objection has been maintained by the Prosecution in its Response.¹²

10. Having reviewed the document now that an English translation has been made available, the Chamber is of the view that it is relevant, as it supports the Accused's claim of the existence of a military conflict and that both sides to the conflict were engaging in military and tactical warfare.¹³ Furthermore, it is an official document which was signed and authenticated by Asim Džambasović himself, and the witness commented on its content in court. The Chamber is therefore of the view that the document should be admitted.

(iii) MFI D1405

11. MFI D1405 is an appellate judgement issued by the District Court in Bijelina on 1 March 2004, which relates to a case against "Dijo", a company whose legal representative was at the time Milorad Davidović, and which was sued for failing to pay debts. It was used by the Accused on 28 June 2011 during his cross-examination of Milorad Davidović to impeach the witness's credibility. The Chamber marked the exhibit for identification pending English translation.¹⁴ In the Response, the Prosecution objects to the admission of the judgement on the grounds of relevance and lack of probative value.¹⁵ The Chamber notes that the Prosecution did not object to the admission of the document when it was tendered by the Accused in court.¹⁶

12. This document is relevant and probative for addressing the witness's credibility and character as well as the general reliability of his testimony. The Chamber further notes that the document is an official document which was authenticated by Milorad Davidović, and discussed extensively during his cross-examination. The issue of probative value raised by the Prosecution bears on the weight that should be attributed to this exhibit in light of Milorad

¹¹ T. 15277 (23 June 2011).

¹² Response, para. 10.

¹³ See T. 15277–15278 (23 June 2011).

¹⁴ T. 15567 (28 June 2011).

¹⁵ Response, para. 12.

¹⁶ T. 15567 (28 June 2011).

Davidović's entire testimony and specifically what the witness said about the document. The Chamber is therefore of the position that MFI D1405 should be admitted.

(iv) MFI D1656

13. MFI D1656 is a partly handwritten and partly typed-written document dated 13 April 1992 which was used by the Accused on 23 August 2011, during the cross-examination of witness Izet Redžić. Izet Redžić testified that the document relates to the steps he took to organise a celebration of Bajram, which took place on 4 April 1992.¹⁷ The witness confirmed that his hand-writing can be seen in the hand-written portion of the document, but said that the date and others parts of the document were forged.¹⁸ He further explained that this document was a sheet from an agenda or diary and that the type-written content in Cyrillic had been added at a later stage "to create a false picture".¹⁹ In court, the Accused tendered the document and it was marked for identification by the Chamber pending its English translation.²⁰ Following the Chamber's decision to mark it for identification, the Prosecution asked the Accused how he obtained this document.²¹ The Accused replied that his Defence team would research the origins of the document.²² In the Response, the Prosecution objects to the admission of this document based on doubts about the source of the document and its authenticity, and submits that the Accused has failed to provide in the Motion "any outcome of the Defence team's research" relating to the origin of the document.²³

14. Although the Accused has failed to provide an answer as to the outcome of the research regarding the document's origin, the Chamber considers that this should not bar its admission. Izet Redžić confirmed that the document contained his handwriting and although he contested other portions of the document's authenticity, those contentions go to the determination of the weight to be attributed to the document, and not to its admission. The Chamber is therefore of the view that this document should be admitted.

(v) MFI D1513 and MFI D1609

15. The Chamber discusses the issues raised by the Prosecution in relation to these two documents in the Confidential Annex A to this Decision.

¹⁷ T. 17741 (23 August 2011)

¹⁸ T. 17741, 17743 (23 August 2011).

¹⁹ T. 17741–17743 (23 August 2011).

²⁰ T. 17745 (23 August 2011).

²¹ T. 17745–17746 (23 August 2011).

²² T. 17746 (23 August 2011).

²³ Response, para. 17.

Disposition

16. Accordingly, for the reasons set out above, pursuant to Rule 89 of the Rules, the Chamber hereby **GRANTS** the Motion in part, and:

a) **ADMITS** into evidence the items currently marked for identification as:

MFI D1359, D1371, D1374, D1377, D1378, D1387, D1390, D1392, D1393, D1394, D1395, D1396, D1401, D1404, D1405, D1415, D1417, D1418, D1420, D1424, D1428, D1430, D1433, D1434, D1435, D1436, D1446, D1449, D1453, D1455, D1456, D1466, D1467, D1484, D1489, D1490, D1524, D1542, D1563, D1581, D1608, D1609, D1615, D1619, D1650, D1656, D1657, D1659, and D1688;

b) **INSTRUCTS** the Registry to place D1609 under seal; and

c) **DENIES** the remainder of the Motion and **INSTRUCTS** the Registry to:

- retain MFI D1376 as marked for identification; and
- mark as not admitted MFI D1513

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



Judge O-Gon Kwon
Presiding

Dated this fourth day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]