



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: 30 June 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 30 June 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

THIRD DEFENCE CASE OMNIBUS DECISION

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

1. The Chamber is seized of several administrative and evidentiary matters. With a view to disposing of these matters before the close of the Defence case, the Chamber considers it appropriate to issue the following omnibus decision.

The Chamber's Decision on the Defence Motion to Vary the Timing of the Presentation of the Testimony of Andrei Demurenko

2. On 24 May 2016, the Defence filed a motion in relation to Andrei Demurenko, seeking a variation of the Chamber's deadline to hear the remaining Defence witnesses by the week of 30 May 2016.¹ The Defence requested that Demurenko be allowed to testify during the week of 13 June.² On 25 May, the Prosecution filed its response, not opposing the motion.³ Considering *inter alia* that the requested variation would not result in an excessive delay of the trial proceedings and was unopposed, the Chamber granted the motion and communicated this to the parties by email on 25 May. This decision is now placed on the record.

Ewa Tabeau's Tomašica Proof of Death Report and 'Matching Keys'

3. On 3 May 2016, the Defence stated on the record that it had not yet received the 'matching keys' used by Prosecution expert witness Ewa Tabeau in drafting exhibit P7449, her report on victims exhumed from the Tomašica mine.⁴ The Defence also stated that it has repeatedly asked the Prosecution to make these keys available to it.⁵ The Chamber recalls its decision of 17 December 2015 on the admission of exhibit P7449 in which it issued an invitation to the Prosecution to make the 'matching keys' available to the Defence at its earliest possible convenience.⁶

4. For the sake of clarity, the Chamber now issues brief guidance on this matter. The Chamber considers that Tabeau did not, at any point during her testimony, agree to make the 'matching keys' available to the Defence. She merely indicated, in response to a question from the Defence about the possibility of preparing and providing a list of the 'matching keys', that she was willing and able to reconstruct the matching process and list the criteria.⁷ To the extent that the Defence's statements attempt to revive the Defence's earlier submission, with respect to the admissibility of exhibit P7449, that the absence of the 'matching keys' makes the methodology of the report

¹ Motion to Vary the Timing of the Presentation of the Testimony of Witness Demurenko, 24 May 2016 (Confidential); T. 43703.

² Motion to Vary the Timing of the Presentation of the Testimony of Witness Demurenko, 24 May 2016 (Confidential), paras 4-12.

³ Prosecution Response to Defence Motion to Vary the Timing of the Presentation of the Testimony of Witness Demurenko, 25 May 2016 (Confidential).

⁴ T. 43971.

⁵ *Ibid.*

⁶ T. 42902-42903.

⁷ T. 36792.

unclear, the Chamber refers the parties to its decision of 17 December 2015, in which it found that Defence submission in this respect unsubstantiated because the report's methodology is clearly set out in the report.⁸ The Chamber is satisfied that the Prosecution, which is not in possession of the 'matching keys', has no disclosure obligation in relation to the keys vis-à-vis the Defence. Neither in its 17 December 2005 decision, nor at this stage, does the Chamber consider it necessary to issue orders to produce the 'matching keys'. If the Defence considers that no weight should be placed on exhibit P7449 due to the absence of the matching keys, the Defence can make such arguments at a later stage.

Defence Request to Compel John Clark to Provide Photographs from the Tomašica Autopsies

5. On 21 April 2016, the Defence requested the Chamber to compel Prosecution expert witness John Clark to provide all photographs in his possession concerning the Tomašica autopsies in order for it to perform a more detailed evidentiary review.⁹ The Chamber considers that the Defence has not demonstrated all requirements for a Chamber order as, specifically, it has failed to demonstrate that it has exhausted all avenues to receive voluntary cooperation in relation to obtaining the photographs. Accordingly, the Chamber **DENIES** the request.

Remaining Issues from the Testimony of Dušan Pavlović

6. On 17 December 2015, exhibit D1396, a book authored by Carl Bildt, was admitted into evidence.¹⁰ On 2 June 2016, the Defence informed the Chamber and the Prosecution by email that it withdrew the exhibit from evidence. The Chamber interprets the Defence email as a request for leave to withdraw exhibit D1396 from the evidence. The Chamber **GRANTS** the Defence leave to withdraw exhibit D1396 from the evidence and **INSTRUCTS** the Registry to mark D1396 as not admitted in eCourt.

7. On 14 December 2015, exhibit D1379, a document from the Ministry of Defence of Bosnia-Herzegovina, was admitted into evidence.¹¹ On 6 June 2016, the Defence emailed the Chamber and the Prosecution stating that an excerpt of the exhibit had been uploaded into eCourt. The Chamber **INSTRUCTS** the Registry to replace exhibit D1379 with the document uploaded under Rule 65 *ter* number 1D06255a. The Prosecution has one week to revisit the matter if necessary.

⁸ T. 42902-42903.

⁹ T. 43479-43483, T. 43530-43532.

¹⁰ T. 42822.

¹¹ T. 42604.

Remaining Issue from the Testimony of Jan Segers

8. On 28 April 2016, a record of an interview with Jan Segers, was marked for identification as D1465, pending the provision of a BCS translation.¹² On 31 May, the Defence informed the Chamber and the Prosecution by email that the translation had been uploaded into eCourt under Doc ID 1D13-1413. On 1 June, the Prosecution responded stating that it did not object to the translation. The Chamber **INSTRUCTS** the Registry to attach the translation to D1465 and **ADMITS** D1465 into evidence.

Individual Documents

9. *D1549*. On 18 May 2016, exhibit D1549, an order signed Vladimir Lukić, was admitted into evidence.¹³ On 3 June, the Chamber informed the Defence *via* email that there was a discrepancy between the original document and the English translation and requested them to ensure the original document and the translation corresponded. On 14 June, the Defence informed the Chamber and the Prosecution that it had uploaded a revised translation under Doc-ID 1D31-1026. The Prosecution does not object to the admission of the translation. The Chamber hereby **REQUESTS** the Registry to replace the existing translation of D1549 with the document uploaded under Doc-ID 1D31-1026.

10. *P7449*. On 17 December 2015, Ewa Tabeau's Tomašica report was admitted into evidence as exhibit P7449.¹⁴ During Svetlana Radovanović's testimony, two errors were found in the BCS translation of the report.¹⁵ On 19 May 2016, the Prosecution emailed the Chamber and the Defence stating that a revised BCS translation had been uploaded into eCourt under DocID 0561-4519-1-BCST. The Chamber **INSTRUCTS** the Registry to replace the BCS translation of the exhibit with the corrected version. The Defence has one week to revisit the matter if necessary.

11. *P1900*. On 26 July 2013, exhibit P1900, an expert report authored by Helge Brunborg, was admitted into evidence.¹⁶ However, during Svetlana Radovanović's testimony, it transpired that there were two errors in the BCS translation of the report.¹⁷ On 20 May 2016, the Prosecution emailed the Chamber and the Defence stating that a revised BCS translation had been uploaded into eCourt under DocID R066-0528-1-BCST. The Chamber **INSTRUCTS** the Registry to replace the BCS translation with the corrected version. The Defence has one week to revisit the matter if necessary.

¹² T. 43743-43744.

¹³ Decision on Defence's First Motion for Admission of Documents from the Bar Table, 18 May 2016, para. 17.

¹⁴ T. 42901-42904.

¹⁵ T. 43626-43627, 43894-43895.

¹⁶ T. 15214-15215.

¹⁷ T. 43837-43838.

12. *P3746*. On 11 February 2014, exhibits P3746 and P3771 were admitted into evidence.¹⁸ On 19 May 2016, the Chamber emailed the Prosecution, seeking clarification as to whether these two exhibits are duplicates. The Prosecution responded that day, confirming that exhibit P3771 is a more legible version of exhibit P3746. The Chamber **INSTRUCTS** the Registry to mark exhibit P3746 as not admitted.

13. *P6682*. On 17 December 2014, exhibit P6682 was admitted into evidence.¹⁹ On 5 May 2016, the Prosecution emailed the Chamber and the Defence, stating that a corrected version had been uploaded into eCourt under Rule 65 *ter* number 13426b. The Chamber **INSTRUCTS** the Registry to replace the exhibit with the corrected version. The Defence has one week to revisit the matter if necessary.

14. *P640*. On 13 December 2012, exhibit P640 was admitted into evidence and placed under seal.²⁰ On 9 May 2016, the Prosecution emailed the Chamber and the Defence stating that there was an error on page 16 in the English translation and that a revised translation had been uploaded into eCourt under DocID 0101-8102-ET. The Chamber **INSTRUCTS** the Registry to replace the English translation of exhibit P640 with the corrected version. The Defence has one week to revisit the matter if necessary.

15. *P4523*. On 17 December 2013, exhibit P4523 was admitted into evidence.²¹ On 20 May 2016, the Chamber emailed the Prosecution, noting that the original version of the exhibit does not correspond with the English translation. On the same day, the Prosecution stated that a corrected version of the exhibit had been uploaded into eCourt under Rule 65 *ter* number 19808a. The Chamber **INSTRUCTS** the Registry to replace exhibit P4523 with the corrected version. The Defence has one week to revisit the matter if necessary.

16. *D1474*. On 28 April 2016, exhibit D1474 was admitted into evidence.²² On 4 May, the Prosecution emailed the Chamber and the Defence stating that a more legible version of the exhibit had been uploaded into eCourt under DocID 0171-3823. The Chamber **INSTRUCTS** the Registry to replace the exhibit with the new version. The Defence has one week to revisit the matter if necessary.

¹⁸ Decision on Prosecution Motion for Admission of Documents from the Bar Table (Municipalities Component), 11 February 2014.

¹⁹ T. 30029-30032.

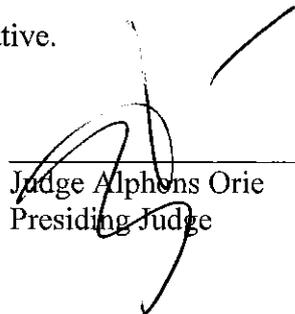
²⁰ T. 6295-6296.

²¹ Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents), 17 December 2013.

²² T. 43824-43827.

17. P3353. On 20 December 2013, exhibit P3353 was admitted into evidence and placed under seal.²³ On 3 June 2016, the Prosecution emailed the Chamber and the Defence stating that there were errors in the English translation. The Prosecution also stated that a revised translation had been uploaded into eCourt under DocID 0214-6503-ET. The Chamber **INSTRUCTS** the Registry to replace the English translation with the corrected version. The Defence has one week to revisit the matter if necessary.

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



Judge Alphons Orie
Presiding Judge

Dated this thirtieth day of June 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

²³ Decision on Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 20 December 2013.