



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: 3 February 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 3 February 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THE PROSECUTION'S REVISED FIRST
MOTION FOR ADMISSION OF EXHIBITS
FROM THE BAR TABLE**

Office of the Prosecutor

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I. PROCEDURAL HISTORY

1. On 23 November 2009, the “Prosecution First Motion for Admission of Exhibits from the Bar Table” (“First Motion”) was filed publicly with confidential annexes. On 4 December 2009, the Simatović Defence filed its response.¹ On 7 December 2009, the Stanišić Defence response was filed.²

2. On 19 February 2010, the Chamber urged the parties to tender documents through witnesses wherever possible, and stated that it would not decide on the First Motion at the early stage of the proceedings in the expectation that documents could be more appropriately tendered through witnesses during the Prosecution case.³

3. On 6 October 2010, the “Prosecution Revised First Motion for Admission of Exhibits from the Bar Table” was filed publicly with confidential annexes A-C (“Revised Motion”), wherein the Prosecution requested admission into evidence of 222 documents (“Proffered Documents”). The Prosecution requested admission into evidence of 222 documents (“Proffered Documents”). The Revised Motion contained comments from both Defence teams on the admissibility of the Proffered Documents. The Stanišić Defence nevertheless responded to the Revised Motion on 20 October 2010.⁴ On 28 October 2010, the Prosecution requested leave to file a reply.⁵ On 1 November 2010, the Chamber granted leave⁶ and on 10 November 2010, the Prosecution filed its reply.⁷

II. SUBMISSIONS

A. Revised Motion

4. The Prosecution submits that all of the Proffered Documents originate from the State Security Service (“DB”) archives of the Republic of Serbia as well as different organs of the former Federal Republic of Yugoslavia and the Government of the Republic of Serbia.⁸ All of the

¹ Defence Response to Prosecution First Motion for Admission of Exhibits from the Bar Table, 4 December 2009.

² Defence Response to Prosecution First Motion for Admission of Exhibits from the Bar Table, 7 December 2009.

³ T. 3685 *et seq.*

⁴ Stanišić Response to Prosecution’s First Revised Motion for Admission of Exhibits from the Bar Table, 20 October 2010 (“Response”).

⁵ Prosecution Motion for Leave to Reply to Stanišić Defence Response to Prosecution’s First Revised Motion for the Admission of Exhibits from the Bar Table, 28 October 2010.

⁶ T. 8475-8576.

⁷ Prosecution Reply to Stanišić Defence Response to Prosecution’s First Revised Motion for Admission of Exhibits from the Bar Table, 10 November 2010 (“Reply”).

⁸ Revised Motion, para. 2.

Proffered Documents were received pursuant to official Requests for Assistance (“RFA”) sent by the Office of the Prosecutor.⁹ The Prosecution thus submits that they are of sufficient reliability.¹⁰

5. The Prosecution argues that the Proffered Documents are relevant to the existence of a common plan, design or purpose of the JCE charged in the indictment and provide useful contextual and background information about the Accused.¹¹ The Prosecution presents detailed submissions concerning the relevance and the source of each of the Proffered Documents in the Annex to the Revised Motion.¹²

6. Finally, the Prosecution submits that protective measures for many of the Proffered Documents are subject to pending submissions before the Chamber.¹³ The Prosecution therefore requests that the Proffered Documents be admitted under seal pending resolution of any requests in relation to their protective measures.¹⁴ The Prosecution intends to subsequently request public admission of all the exhibits, either in whole or in part, depending upon the resolution of protective measures issues.¹⁵

B. Stanišić Defence Response

7. The Stanišić Defence opposes the admission of 99 of the Proffered Documents.¹⁶ Its detailed submissions as to each of the objected Proffered Documents are contained in the Annex to the Revised Motion.¹⁷ In particular, the Stanišić Defence challenges the relevance of Proffered Documents concerning events falling outside the Indictment time periods.¹⁸ Finally, it argues some of the Proffered Documents lack sufficient indicia of reliability.¹⁹

C. Simatović Defence Submissions

8. The Simatović Defence’s objections to the relevance and probative value of some of the Proffered Documents are contained in the Annex to the Revised Motion.²⁰

⁹ Ibid.

¹⁰ Revised Motion, para. 3.

¹¹ Revised Motion, paras 13-19.

¹² Revised Motion, para. 20; Annex A.

¹³ Revised Motion, para. 24.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Response, paras 1, 11.

¹⁷ Revised Motion, Annex A.

¹⁸ Response, paras 4-8.

¹⁹ Response, paras 9-10.

²⁰ Revised Motion, Annex A.

D. Reply

9. In its Reply, the Prosecution withdraws 29 of the Proffered Documents either on the basis that they have already been admitted or in response to objections raised by the Defence, thus leaving 193 Proffered Documents sought to be admitted.²¹ The Prosecution addresses the general Stanišić Defence objections concerning the lack of relevance of documents falling outside the scope of the Indictment²² as well as their reliability.²³ Finally, it responds to individual Defence objections.²⁴

III. APPLICABLE LAW

10. Rule 89 of the Rules of Procedure and Evidence (“Rules”) provides, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

11. The Trial Chamber requires that “the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case”.²⁵

IV. DISCUSSION

12. The Chamber notes that 29 Proffered Documents were withdrawn by the Prosecution and will therefore address the remaining 193 Proffered Documents.²⁶

13. In addition, the Chamber notes that, of those 193 Proffered Documents, the following Proffered Documents have already been admitted into evidence and will therefore not be further considered: 65 *ter* numbers 1456 (P1647), 2377 (D115), 4747 (as P1649), 4801 (P1646), 4816 (D205) and 4833 (D162) and will therefore not be further considered.

²¹ Reply, paras 4, 21. The withdrawn documents are 65 *ter* numbers 719, 725, 1396, 1408, 1452, 1455, 1457, 3892, 3905, 3907, 3909, 3921, 3930, 3931, 3937, 3938, 3943, 3944, 3948, 3958, 4003, 4008, 4017, 4036, 4044, 4046, 4159, 4169 and 4863. The Chamber notes that contrary to the Prosecution’s submissions, 65 *ter* numbers 3958 (P1058), 4044 (P1059) and 4046 (P1060) have not been admitted into evidence. Their potential admission into evidence will be therefore considered together with other “Theunens documents”.

²² Reply, paras 11-14.

²³ Reply, paras 15-16.

²⁴ Reply, Annex A.

²⁵ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 18; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution Submission on the Admission of Documentary Evidence, 16 January 2008, para. 9.

²⁶ See *supra*, ft. 21.

14. The Chamber notes that 65 *ter* number 4333 is practically identical to a part of P179. The only difference is found in the handwritten annotations on these documents.²⁷ The importance of these annotations, however, appears to be very limited. The Chamber therefore does not consider it meaningful to admit this document again.

15. The Defence does not oppose admission of the following Proffered Documents and the Chamber is satisfied that they are relevant and of probative value: 65 *ter* numbers 1379, 1383, 1389, 2373, 2374, 2376, 2378-2385, 2389, 4034, 4248, 4249, 4252, 4254, 4257, 4261, 4264, 4266, 4273-4276, 4279, 4290, 4307, 4314, 4321, 4322, 4336, 4370, 4383, 4386, 4387, 4391, 4393, 4395, 4408, 4413, 4417, 4425, 4431, 4442, 4443, 4447, 4449, 4452, 4458-4467, 4472-4474, 4804, 4805, 4808, 4810, 4811, 4817, 4821, 4825, 4828, 4832, 4856, 5022, 5023, 5025 and 5026 and 5071. With regard to documents with 65 *ter* numbers 1389, 2373, 2374, 2376, 2380, 4252, 4257 and 4275, the Chamber notes that the Prosecution uploaded the full original B/C/S versions but only parts of the English translations. The Chamber considers only those parts of the B/C/S originals for which English translations have been provided to have been tendered into evidence, and therefore requests the Prosecution to upload into E-court only such parts of the B/C/S originals that correspond to the English versions. With regard to 65 *ter* number 4257, the Stanišić Defence submits that the whole file should be tendered to ensure that a complete picture is presented. The Chamber finds the parts tendered by the Prosecution to be sufficiently autonomous as to be admitted without the remainder of the collection of documents from which they have been drawn. At the same time, the Defence may consider tendering the rest of the file into evidence.

16. With regard to Proffered Documents with 65 *ter* numbers 1386-1388, 1390, 1391, 1913, 2386-2388, 2390, 2607, 4247, 4262, 4285 and 4407, the Chamber notes that the Simatović Defence does not oppose admission and that the Stanišić Defence objects to admission only if the relevance of these documents to the Prosecution's case were not limited to general issues such as "position and authority of the accused" or "authority and structure of the DB" as mentioned in the Prosecution's submissions. The Stanišić Defence would seek further contextualisation through witnesses if the documents were sought to be shown to be relevant to a more specific, incriminating purpose.

17. The Chamber recalls that a party tendering documents from the bar table is required to establish their relevance and probative value. The Prosecution's submissions in the Revised Motion

²⁷ The Chamber notes that the original version of 65 *ter* number 4333 contains the hand-written note "C-21", whereas P179 in the relevant part contains a note appearing to be "B-5". At the same time, the Chamber notes that the English translation of P179, as uploaded into E-Court, indicates this latter note as being "C-21".

concerning the relevance of the Proffered Documents are solely aimed at assisting the Chamber in establishing whether the documents are *sufficiently* relevant to the case in question. However, the further use of the documents is not necessarily limited to the areas of relevance mentioned in the submissions.²⁸ It follows that, if the Proffered Documents are deemed sufficiently relevant to the parts of the Prosecution's case mentioned in the submissions, their potential use in proving some other elements cannot, in principle, weigh against their admission at this stage. Having said that, the Chamber is satisfied that these Proffered Documents are relevant and of probative value. With regard to 65 *ter* numbers 4247 and 4262, the Prosecution uploaded the full original B/C/S versions and the English translations of only the selected parts tendered for admission. The Prosecution is therefore requested to upload into E-court only those parts of the B/C/S originals that it seeks to tender for admission.

18. The Chamber notes that some of the Proffered Documents do not contain visible indicia of authenticity such as stamps or signatures. The Chamber has scrutinised these documents in light of their content and the Defence objections to their admission. The Chamber considers that the fact that the Proffered Documents, originating *inter alia* from the DB and MUP archives, were provided to the Prosecution by the Republic of Serbia in response to the various RFAs bears *certain* indicia of authenticity of the documents.²⁹

19. For this reason, the Chamber considers that, although 65 *ter* number 1448 does not bear any date, stamp or signature and although, if not corroborated, it bears limited weight, it is nevertheless sufficiently relevant and of probative value to fulfil the requirements of Rule 89 of the Rules. The Chamber also finds that, notwithstanding a lack of visible indicia of authenticity such as stamps or signatures and appearing as being only a part of some larger documents, 65 *ter* numbers 1450, 1462 (MFI P1652), 1463 (MFI P1651), 1464 (MFI P1192), 1468 (MFI P1080)³⁰, 1469 and 4343 are admissible pursuant to Rule 89 as documents received from the Republic of Serbia in response to the various RFAs. Finally, the Chamber finds that 65 *ter* number 4477, objected to by the Simatović Defence on the grounds of authenticity, is admissible in light of its form and the fact that it was received as a response to an RFA.

²⁸ The Chamber notes that in case of very lengthy documents the tendering party's submissions as to their relevance should be detailed enough to justify the admission of the whole document as opposed to the admission of only such part as deemed relevant in the submission.

²⁹ See also Decision on Eighteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 17 December 2010, para. 11.

³⁰ The Chamber notes that 65 *ter* numbers 1464 (MFI P1192), 1468 (MFI P1080) were also specifically objected by the Stanišić Defence in paras 2, 29-31 of its "Objection to Documents Tendered in Association with the Report of Reynaud Theunens", filed confidentially on 24 November 2010.

20. At the same time, the Chamber notes that 65 *ter* number 4263 appears to be wrongly translated as its English version does not contain the period of time – 1990-1992 – when the persons listed allegedly held their posts. The Chamber will therefore defer its decision on the admissibility of this document until the correct translation is submitted.

21. The Chamber shares the Stanišić Defence's concerns, and to an extent also the Simatović Defence's concerns, finding that the Prosecution at this time has not sufficiently shown the relevance of the following Proffered Documents: 65 *ter* numbers 1385, 1392, 1447, 4402, 4414, 4415, 4428, 4432, 4439, 4717, 4756-4758, 4806, 4823, 4829, 4842-4849, 4851-4854, 4858 and 4859. Furthermore, in relation to 65 *ter* number 4841, which was not explicitly objected to by the Defence, the Chamber finds that the Prosecution has not established the relevance of this document. At the same time, the Chamber finds that the following Proffered Documents, which were objected to on grounds of relevance, fulfil the requirements of Rule 89: 65 *ter* numbers 1393, 1394, 1411, 1449, 4394, 4471, 4807, 4820, 4850, 4855, 4860 and 5065³¹.

22. The Chamber considers that 65 *ter* number 4287, comprising a series of appointment letters, is partly irrelevant as it falls outside the temporal scope of the indictment. As a consequence, the Chamber will admit only its relevant part (pp. 5-18 of the English version). Similarly, the Chamber will only admit the portions of the following Proffered Documents relevant to (but not necessarily strictly within) the period covered by the Indictment: 65 *ter* numbers 4259 (pp. 2-11 of the English version), 4286 (pp. 7-8 and pp. 11-18 of the English version) and 4301 (pp. 4-7 of the English version). The Prosecution is therefore requested to upload into E-court only such parts of the B/C/S originals and their English translation that correspond to the admitted parts.

23. The Stanišić Defence does not oppose the admission of the following Proffered Documents: 65 *ter* numbers 1451, 4344, 4367, 4411, 4419, 4659, 4705, 4750, 4751, 4803, 4814 (MFI D201), 4818, 4827, 4830, 4831, 5009, 5066 and 5069. Although the Simatović Defence commented upon their relevance, the Chamber considers those comments more as remarks relevant to future weight to be given to the documents than objections as such. However, with regard to 65 *ter* numbers 4470, 4655, 4674, 4812 (MFI D200), 4815, 4819, 4864, 4867 and 4868, the Chamber understands the Simatović Defence's comments to be objections to the relevance of these documents. Notwithstanding these comments and objections, the Chamber finds that these documents are of sufficient relevance and probative value to be admitted into evidence pursuant to Rule 89. In relation to 65 *ter* number 4857, the Chamber notes that on its face it appears as a collection of

newspaper articles and not the report of the Serbian DB on a series of articles as submitted by the Prosecution.³² Moreover, the document is only partly translated. The Chamber therefore finds that in its present form 65 *ter* number 4857 falls short of the Rule 89 requirements.

24. Finally, the Chamber notes that the following Proffered Documents were tendered with redactions that appear to be of a substantive character and therefore preclude their admission: 65 *ter* numbers 4628, 4637 and 4677.³³ However, 65 *ter* number 4678 has only the name of its author redacted while all remaining details are available, including the institution for which the author worked and the full text of the decision. As a consequence, the Chamber will admit this document into evidence.

V. DISPOSITION

25. For the reasons set out above and pursuant to Rule 89 of the Rules, the Chamber:

GRANTS the Revised Motion in part;

ADMITS into evidence the following Proffered Documents: 65 *ter* numbers 1379, 1383, 1386-1391, 1393, 1394, 1411, 1448-1451, 1462 (MFI P1652), 1463 (MFI P1651), 1464 (MFI P1192), 1468 (MFI P1080), 1469, 1913, 2373, 2374, 2376, 2378-2390, 2607, 4034, 4247-4249, 4252, 4254, 4257, 4261, 4262, 4264, 4266, 4273-4276, 4279, 4285, 4290, 4307, 4314, 4321, 4322, 4336, 4343, 4344, 4367, 4370, 4383, 4386, 4387, 4391, 4393-4395, 4407, 4408, 4411, 4413, 4417, 4419, 4425, 4431, 4442, 4443, 4447, 4449, 4452, 4458-4467, 4470-4474, 4477, 4655, 4659, 4674, 4678, 4705, 4750, 4751, 4803-4805, 4807, 4808, 4810, 4811, 4812 (MFI D200), 4814 (MFI D201), 4815, 4817-4821, 4825, 4827, 4828, 4830-4832, 4850, 4855-4856, 4860, 4864, 4867, 4868, 5009, 5022, 5023, 5025, 5026, 5065, 5066, 5069 and 5071;

PARTLY ADMITS into evidence the following Proffered Documents: 65 *ter* numbers 4259 (pp. 2-11 of the English version), 4286 (pp. 7-8 and 11-18 of the English version), 4287 (pp. 5-18 of the English version) and 4301 (pp. 4-7 of the English version) and **REQUESTS** the Prosecution to upload into E-court only the relevant parts of these documents;

DEFERS its decision on the admissibility of 65 *ter* number 4263;

³¹ The Chamber notes that from 65 *ter* number 5065 alone it is unable to determine if the handwritten note reads "Jovica's folder" as submitted by the Prosecution, see Revised Motion, Annex A, p. 40.

³² See Revised Motion, Annex A, p. 39.

³³ The Prosecution submits that 65 *ter* numbers 4628, 4637, 4677 and 4678 were provided by the Republic of Serbia with redactions and that the Republic of Serbia no longer possesses their unredacted copies in the archives.

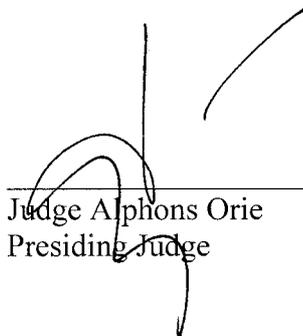
DISMISSES the remainder of the Revised Motion;

INSTRUCTS the Prosecution to upload into E-court only the relevant B/C/S parts of 65 *ter* numbers 1389, 2373, 2374, 2376, 2380, 4247, 4252, 4257, 4262, 4275;

REQUESTS the Registry to place all of the Proffered Documents admitted in the present decision under seal pending the resolution of the protective measures requests currently before the Chamber;

REQUESTS the Registry to assign exhibit numbers to the documents admitted and to inform the Chamber and the parties of the numbers so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this third day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]