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23 May 2012

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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 May 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 May 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ DEFENCE MOTION FOR
ADMISSION OF FULL TRANSCRIPTS OF EXAMINATION OF
TOMISLAV KOVAČ IN THE SCORPIONS TRIAL**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 10 December 2010, the Simatović Defence tendered an excerpt from the testimony of Slobodan Medić, one of the accused in a trial of members of the so-called Scorpions Unit held before the War Crimes Chamber in Belgrade (“Scorpions Trial”).¹ The Prosecution generally objected to the admission of prior testimony of persons not appearing as witnesses in this case or before this Tribunal.² The Stanišić Defence supported the Simatović Defence’s position and the Chamber marked for identification the excerpt of Medić’s testimony from the Scorpions Trial as document D213.³

2. On 25 February 2011, the Prosecution filed a confidential submission relating to D213, citing various concerns regarding the reliability of the document and requesting that, should the Chamber find that the Prosecution’s concerns go more to the weight than the admissibility of the document, to also admit excerpts of Tomislav Kovač’s testimony in the Scorpions Trial to give critical context.⁴

3. On 5 April 2011, the Chamber admitted D213 as well as the excerpts of the testimony of Kovač as identified by the Prosecution.⁵ It did so in order to “ensure that it is given the full context in which the statement in D213 was made”.⁶

4. On 29 March 2012, the Stanišić Defence filed a motion requesting the Chamber to admit from the bar table the complete transcript of Kovač’s examination in the Scorpions Trial (“Motion”).⁷ On 5 April 2012, the Prosecution responded, opposing the Motion (“Response”).⁸ The Simatović Defence did not respond to the Motion.

II. SUBMISSIONS OF THE PARTIES

5. The Stanišić Defence asserts that exhibit P2966 (the excerpts admitted into evidence from the examination of Kovač) provides an incomplete and inaccurate picture of the evidence given by

¹ T. 10211-10212.

² Ibid.

³ T. 10212.

⁴ Prosecution Submission in Relation to D213 MFI (Transcript from Scorpions trial), 25 February 2011 (Confidential with Confidential Annex), paras 2, 8-9.

⁵ Omnibus Decision Dealing with Outstanding Matters, 5 April 2011 (“Omnibus Decision”), para. 19. These excerpts received exhibit number P2966.

⁶ Ibid.

⁷ Stanišić Defence Motion for Admission of Full Transcripts of Examination of Tomislav Kovač in the Scorpions Trial, 29 March 2012, paras 1, 3, 17.

⁸ Prosecution Response to Stanišić Defence Motion for Admission of Full Transcripts of Examination of Tomislav Kovač in the Scorpions Trial, 5 April 2012.

Kovač regarding Vaso Mijović’s position in relation to the Scorpions.⁹ It submits that only the entire transcript of Kovač’s testimony reveals contradictions in his evidence.¹⁰ The Stanišić Defence further states that other parts of Kovač’s evidence on these issues appear to be based on his direct knowledge and might safely be relied upon in the current proceedings.¹¹

6. The Prosecution submits that the admission of the full transcript of Kovač’s examination would not be in the interests of justice.¹² Further, the Prosecution submits that the Chamber will not be in a better position to evaluate Kovač’s evidence by admitting the full transcript of his examination as he does not move away from the basic claim that Mijović had overall command.¹³ It argues that even if the Chamber decides to admit the full transcript of Kovač’s examination, it would not have before it the totality of Kovač’s evidence, given that he recently testified in the case of *Prosecutor v. Stanišić and Župljanin*, and has participated in four recorded interviews with the Office of the Prosecutor, which contain evidence regarding Mijović and the Scorpions. In relation to the Stanišić Defence’s proposal that other parts of Kovač’s examination are highly relevant and address a number of critical matters in the case, the Prosecution opposes “Stanišić’s attempt to put Kovač’s evidence before the Chamber”, stating that in order to place such weight on Kovač’s evidence, the Stanišić Defence should have called Kovač as a witness.¹⁴

III. APPLICABLE LAW

7. Rule 89 of the Tribunal’s 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.

8. 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”.¹⁵

⁹ Motion, para. 8.

¹⁰ Motion, paras 10, 12, 15.

¹¹ Motion, para. 16. These matters are set out in paragraph 16 of the Motion.

¹² Response, para. 4.

¹³ Response, para. 6.

¹⁴ Response, para. 9.

¹⁵ Decision on the Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 11; *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.

9. The jurisprudence of this Tribunal clarifies that statements given to non-parties for purposes other than proceedings before the Tribunal may be admitted into evidence under Rule 89 (C).¹⁶

IV. DISCUSSION

10. Given that the tendered document is a transcript of court proceedings, the Chamber is satisfied as to its authenticity. Further, the tendered document contains evidence which is relevant to the issues in the Indictment. The Chamber considers that the Stanišić Defence, being the tendering party, has established with sufficient clarity and specificity how the document fits into its case and the Chamber deems the document to have probative value. The Chamber notes that the tendered document, which is 119 pages in its English translation, is the full transcript of the examination of Kovač in the Scorpions Trial.¹⁷ Whilst the Chamber accepts that the tendered document may provide further contextualisation to exhibits D213 and P2966, the Parties are reminded that they are expected to selectively tender documents, or parts of documents, for the purpose of contextualisation, and not flood the Chamber with whole documents which may contain large amounts of information which is irrelevant in terms of the contextualisation sought. In this context, however, the Chamber recalls its previous decision whereby excerpts of Kovač's testimony were admitted into evidence in order for the Chamber to ensure that it was given the full context in which Medić's statement was made.¹⁸ The Chamber will, therefore, exceptionally grant the admission of the entire transcript of Kovač's examination in the Scorpions Trial.

V. DISPOSITION

11. For the foregoing reasons, pursuant to Rule 89 (C) of the Rules, the Chamber:

GRANTS the Motion;

ADMITS into evidence, provisionally under seal, the proffered document, being the full transcript of the testimony of Tomislav Kovač's examination in the Scorpions Trial, currently uploaded in eCourt under 65 *ter* number 1D05438;

¹⁶ *Prosecutor v. Milan Milutinovic et al.*, Case No. IT-05-87-T, Decision on Evidence Tendered through Sandra Mitchell and Frederick Abrahams, 1 September 2006, paras 15, 19; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.3, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002, para. 18; and *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

¹⁷ This document has been uploaded into eCourt as 1D05438.

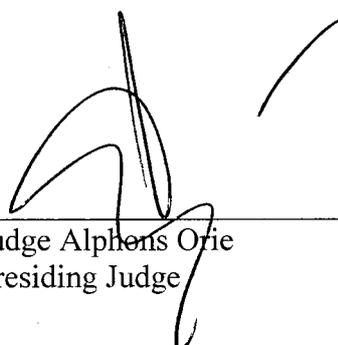
¹⁸ Omnibus Decision, 5 April 2011, para. 19.

wa52

INSTRUCTS the Registry to lift the provisional confidentiality of the proffered document after ten days of the filing of this decision, unless a request for protective measures for this document is made within that time frame; and

REQUESTS the Registry to assign an exhibit number to the document hereby admitted into evidence and to inform the Chamber and the parties of the number so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-third day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]