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24 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: 24 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: 24 May 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**FIFTH DECISION ON STANIŠIĆ DEFENCE BAR TABLE
MOTION OF 17 FEBRUARY 2012**

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 AND SUBMISSIONS OF THE PARTIES

1. On 17 February 2012, the Stanišić Defence (“Defence”) filed the Stanišić Motion for Admission of Documents through the Bar Table, in which it requested the admission into evidence of 674 documents from the bar table (“Motion”).¹ On 23 March 2012, the Prosecution filed a response to the Motion (“Response”).² The Simatović Defence did not respond to the Motion.

2. On 23 May 2012, the Chamber issued its “First Decision on the Defence Bar Table Motion of 17 February 2012” (“First Decision”). The Chamber recalls and refers to the procedural history and submissions of the parties as set out in the First Decision.³

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law as set out in its First Decision.⁴

III. DISCUSSION

4. The present decision relates to the Defence’s request for the admission of 60 personnel files included in the Third Bar Table Chart, namely documents bearing Rule 65 *ter* nos in the range between 1D05310 to 1D05369.⁵ The Chamber notes that 1D05312 has already been admitted as D449, and thus does not form part of this decision.⁶

5. For Rule 65 *ter* no. 1D05310 the Defence provided the following description:

This and below selected files are a sample of the files that support the Defence case that the RDB considered forming a special militarised unit in late 1991 to act as security for important installations owned or used by the Serbian state and to assist with protecting the territory of Serbia from infiltration by Croatian terrorists seeking to kill or injure the citizens resident within Serbia. The unit was never fully formed nor engaged in any activities alleged in the indictment. The RDB abandoned the idea of the unit until the creation of the JATD, as further evidenced by the files which demonstrate that the unit that was formed and remained in the RSK in 1992 and was created and subordinated to the RSK government structures with no link to the RDB and the first Accused. However, the Defence also asserts that the RSK MUP, on occasion, used forms that derived from Serbia, giving rise to a misleading impression. Finally, the selection of the files contain forms that originate from the RDB and those that were created and used by other entities with no official connection to the RDB. The best examples of these are dated after the indictment period. Contrasting the format of the documents contained within the various files further demonstrates the aforementioned aspects of the Defence case.⁷

¹ Stanišić Motion for Admission of Documents through the Bar Table, with Confidential Annexes A, B, and C, 17 February 2012.

² Prosecution Response to Stanišić Motion and Additional Motion for Admission of Documents into Evidence through the Bar Table, with Confidential Annexes A and B, 23 March 2012.

³ First Decision, paras 1-8.

⁴ First Decision, paras 9-10.

⁵ Motion Annex C, pp. 122-134.

⁶ T. 18725-18726.

⁷ Motion Annex C, p. 122.

The descriptions of the remaining 59 personnel files reference the above paragraph by the phrase “Relevance and probative value: idem above”.⁸

6. The Defence identifies several broad subject areas in their given description⁹, without specifying what subject area each individual document relates to. While each document may be relevant for a reason contained in the description, without adequate referencing or explanation, the Chamber is unable to sufficiently assess the relevance and probative value of each document. As such, the Defence has not demonstrated with clarity and specificity where and how each individual document fits into its case, thus failing to fulfil the requirements for admission.

7. There are other specific problems with regard to certain documents, which also impact upon their admissibility. Documents bearing rule 65 *ter* nos 1D05352 and 1D05368 have translations which are substantially shorter than their original, and document bearing Rule 65 *ter* no. 1D05327 contains an inaccurate date translation.

8. Documents bearing Rule 65 *ter* nos 1D05313, 1D05318, 1D05327, 1D05332, 1D05333, 1D05335, 1D05338, 1D05341, 1D05342, 1D05345, 1D05351, 1D05352, 1D05353, 1D05357, 1D05358, 1D05362, and 1D05368 contain redactions. The Motion does not indicate that these redactions are permanent. In the Response, the Prosecution “proposes that the document[s] be marked for identification [pending] receipt of an unredacted version from Serbia”¹⁰, a submission that is understood by the Chamber as an objection to admission of the redacted documents.

9. The Chamber has previously indicated that the nature and extent of any permanent redactions in a given document are relevant factors in determining admissibility.¹¹ In the past, the Chamber has admitted redacted documents where there have been no objections to the redactions.¹² As a general rule, it is preferable for a tendering party to provide the unredacted version of a document where it is available. Determinations of the relevance and probative value of redacted documents are, by the very nature of the documents themselves, difficult to make. It is therefore incumbent upon the parties to make all reasonably practicable efforts to obtain unredacted versions. Where an unredacted version of a document does exist but the tendering party elects to tender the redacted version, this will be a factor weighing heavily against the admission of that document. As

⁸ Motion, Annex C, pp. 123-134.

⁹ Such as (i) “[...] the RDB considered forming a special militarised unit in late 1991 [...]”; (ii) “The RDB abandoned the idea of the unit until the creation of the JATD, [...]”; and (iii) “[...] forms that originate from the RDB and those that were created and used by other entities with no official connection to the RDB”.

¹⁰ Response Annex A, pp. 432-434, 436-441, 443-445, 447, 450.

¹¹ Decision on Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 24.

¹² For example the admission of D647, T. 18754-18755.

such it is the duty of the tendering party to explain in its tendering motion (i) why it is submitting the redacted version and (ii) the nature and extent of the redactions, if known. In the event that a document has been permanently redacted, i.e. the original unredacted version of the document no longer exists, the tendering party should make clear in its tendering motion that the document is permanently redacted. In circumstances where the Chamber is satisfied that the document is permanently redacted, the Chamber will consider the nature and extent of the redactions in order to determine admissibility.¹³

10. Additionally, some of the translations do not identify all of the redactions that are visible in their respective original versions. Examples are document bearing Rule 65 *ter* no. 1D05313, page two of the translation, and document bearing Rule 65 *ter* no. 1D05318, pages two and three of the translation.

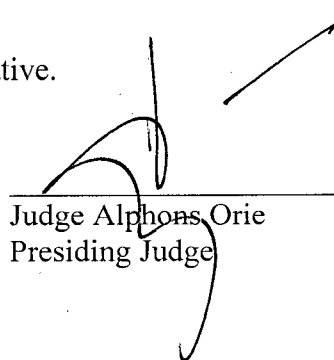
11. Accordingly, the Chamber denies admission into evidence of the tendered 59 personnel files, without prejudice.

IV. DISPOSITION

12. For the foregoing reasons, the Chamber

- (i) **DENIES** admission into evidence of documents bearing Rule 65 *ter* nos 1D05310, 1D05311, and 1D05313 through 1D05369, without prejudice.
- (ii) **DECIDES** to issue further decisions on the Motion in due course.

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]

¹³ T.15133-15134, 18690-18691; Decision on Prosecution's Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 24.