



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: 6 June 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 6 June 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**EIGHTH 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

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

2. On 23 May 2012, the Chamber issued its first decision on the Motion (“First Decision”). The Chamber refers to the First Decision for a detailed synopsis of the procedural history and submissions in respect of the Motion.³

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in the First Decision.⁴

III. DISCUSSION

4. In the present decision, the Chamber will address 3 categories of documents from the First Bar Table Chart, namely (a) DB monitoring of specific extremist groups: Arkan’s Men, White Eagles, Scorpions and Yellow Wasps (b) Operative processing of members of extremist groups and (c) Other information gathered on extremist groups and activities.

a. DB monitoring of specific extremist groups: Arkan’s Men, White Eagles, Scorpions and Yellow Wasps

5. In relation to documents bearing Rule 65 *ter* nos 1D03255, 1D03143, 1D03430, 1D01102, 1D01104, 1D01021, 1D01026, 1D01027, 1D01028, 1D01029, 1D01032, 1D01033, 1D01060, 1D01062, 1D01065, 1D01077, 1D01078, 1D01079, 1D01080, 1D01081, 1D01082, 1D01142, and 1D01182, while the Prosecution does not agree with the stated relevance of the documents, it does

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.

not object to their admission.⁵ The Chamber considers that the Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they fit in the Defence case. The documents are therefore admitted into evidence.

6. With regard to the document bearing Rule 65 *ter* no. 1D03549, the Prosecution does not object to the admission of the original version and its corresponding full translation which are now uploaded in eCourt as 1D03549.1.⁶ The Defence has shown that the document is relevant and probative and has demonstrated with sufficient specificity where the document fits into its case. It is therefore admitted into evidence.

7. The document bearing Rule 65 *ter* no. 1D03526 is a report as reproduced in a book and its corresponding translation. The original B/C/S version of the report is now uploaded into eCourt as the document bearing Rule 65 *ter* no. 1D03526.1. The Prosecution does not object to the admission of 1D03526.1 as long as a complete translation of it is provided.⁷ Having compared the translation of the book reproduction of the report against the original B/C/S version, the Chamber is already in a position to determine the admissibility of the original. The Defence has also shown that the document is relevant and probative and has demonstrated with sufficient specificity where the document fits into its case. The Chamber therefore admits 1D03526.1 into evidence. Further, the Chamber instructs the Defence to upload a complete translation of 1D03526.1 into eCourt within three weeks of the date of issue of this decision.

8. The document bearing Rule 65 *ter* no. 1D03544 is an official note as reproduced in a book. Also uploaded into eCourt under the same number, is the translation of the original B/C/S version of the official note. The original B/C/S version of the official note is uploaded as document bearing Rule 65 *ter* no. 1D03544.1. The Defence has shown that the document is relevant and probative and has demonstrated with sufficient specificity where the document fits into its case. 1D03544.1 is therefore admitted into evidence. The Chamber further instructs the Defence to detach the translation currently attached to document bearing Rule 65 *ter* no. 1D03544 and to re-upload it into eCourt under a new 65 *ter* number within three weeks of the date of issue of this decision.

9. A number of the documents to be addressed in this decision are redacted. The Chamber has previously provided general guidance regarding the tendering of redacted documents.⁸ The majority of the redacted documents addressed in this decision have, since they were first uploaded into

⁴ First Decision, paras 9-10.

⁵ Response, Confidential Annex A, pp. 30-45, 47-55.

⁶ Response, Confidential Annex A, p. 47.

⁷ Response, Confidential Annex A, p. 32.

⁸ Fifth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 9.

eCourt, been uploaded in their original unredacted form. However, the translations of the documents remain redacted. As an exception to the general guidance, the Chamber will analyse the nature and extent of the redactions by comparing the now unredacted B/C/S original with the translation - still attached - of the previous, redacted version. The nature and extent of the redactions thus established, only if limited, may allow the Chamber to already determine the admissibility of unredacted originals. Full translations will have to be uploaded and attached subsequently.

10. The Prosecution does not oppose admission of the document bearing Rule 65 *ter* no. 1D01103, provided a full translation of the original unredacted version is made available.⁹ The Chamber notes that the full original version of this document is uploaded in eCourt as document bearing Rule 65 *ter* no. 1D01103.1. Having analysed the nature and extent of the redactions in accordance with paragraph 9 of this decision, the Chamber has found that they do not oppose the admission of the unredacted original. The Defence has shown that the document is relevant and probative and has demonstrated with sufficient specificity where the document fits into its case. The Chamber therefore admits 1D01103.1 into evidence. Further, the Chamber instructs the Defence to upload a complete translation of 1D01103.1 into eCourt within three weeks of the date of issue of this decision.

11. The document bearing Rule 65 *ter* no. 1D01057 has been marked for identification as D159. The Prosecution contests admission on the basis that the document is redacted.¹⁰ At a Housekeeping Session on 24 November 2011, the Chamber advised the Defence that, assuming discussions under Rule 54 *bis* did not take the matter any further, it would have to explain the redactions regarding this document in any future bar table motion.¹¹ The Defence has not indicated whether or not an unredacted version of the document exists and, if it does exist, to which specific matters the redactions relate. In light of this failure, and taking the Prosecution objections into account, the Chamber denies admission.

b. Operative processing of members of extremist groups

12. The Prosecution does not oppose admission of the documents bearing Rule 65 *ter* nos 1D01826 and 1D01857.¹² The Defence has shown with sufficient specificity (i) the relevance and

⁹ Response, Confidential Annex A, p. 37.

¹⁰ Response, Confidential Annex A, p. 52.

¹¹ T. 15133.

¹² Response, Confidential Annex A, pp. 68-70.

probative value of the documents and (ii) how they fit in the Defence case and they are therefore admitted into evidence.

13. With regard to the documents bearing Rule 65 *ter* nos 1D01411, 1D01412, 1D01413, 1D01418, 1D01423, 1D01424, 1D01798, 1D01808, 1D01813, and 1D01886, the Prosecution objects to admission on the basis that while the original unredacted versions of the documents are uploaded in eCourt in B/C/S, the Defence has only provided a translation of the redacted versions.¹³ With regard to the documents bearing Rule 65 *ter* nos 1D01415, 1D01417, 1D01420, and 1D01421, the Prosecution contests admission on the grounds that the Defence has not provided a translation of the unredacted version of the documents and further that a section of each of the four documents is missing from the translation.¹⁴ In relation to the documents bearing Rule 65 *ter* nos 1D01420 and 1D01421, in addition to the two objections referenced above, the Prosecution seeks the inclusion of quotation marks around any Serbian DB codenames which are contained in the revised translations.¹⁵ With regard to the documents bearing Rule 65 *ter* nos 1D01533, 1D01534, 1D01537, 1D01546, 1D01856, and 1D01892, the Prosecution objects to admission on the basis that the Defence has not provided a translation of the unredacted version of the documents and also seeks the inclusion of quotation marks around any Serbian DB codenames which are contained in the revised translations.¹⁶

14. The original B/C/S versions of the unredacted versions of each of the documents referred to above are available in eCourt.¹⁷ However, the Defence has provided the translations of the redacted versions. As such, the discussion contained at paragraph 9 of this decision is relevant to the determination of the admissibility of these documents. Having compared the unredacted B/C/S versions of the documents with the redacted translations in accordance with paragraph 9 of this decision, the Chamber considers that in relation to the documents bearing Rule 65 *ter* nos 1D01856, and 1D01892, 1D01411, 1D01413, 1D01418, 1D01423, 1D01424, 1D01798, 1D01808, 1D01813, and 1D01886, the nature and extent of the redactions do not oppose the admission of the unredacted originals. The Defence has shown with sufficient specificity (i) the relevance and probative value of the documents and (ii) how they fit in the Defence case. The unredacted documents are therefore admitted into evidence. The Chamber instructs the Defence to upload complete translations of the unredacted documents into eCourt within three weeks of the date of issue of this decision.

¹³ Response, Confidential Annex A, pp. 56-59, 62-63, 67-68, 71.

¹⁴ Response, Confidential Annex A, pp. 58-61.

¹⁵ Response, Confidential Annex A, pp. 60-61.

¹⁶ Response, Confidential Annex A, pp. 63-66, 69-72.

¹⁷ Documents bearing Rule 65 *ter* nos: 1D01533.1, 1D01534.1, 1D01537.1, 1D01546.1, 1D01856.1, 1D01892.1, 1D01420.1, 1D01421.1, 1D01415.1, 1D01417.1, 1D01411.1, 1D01412.1, 1D01413.1, 1D01418.1, 1D01423.1, 1D01424.1, 1D01798.1, 1D01808.1, 1D01813.1, and 1D01886.1.

15. With regard to the documents bearing Rule 65 *ter* nos 1D01415, 1D01417, 1D01420, 1D01421, 1D01533, 1D01534, 1D01537, 1D01546, and 1D01412, although the unredacted original versions of the documents have been uploaded into eCourt, the nature and extent of the redactions in the English translations are such that it is not possible for the Chamber to properly determine their admissibility. Accordingly, the Chamber denies their admission.

c. Other information gathered on extremist groups and activities.

16. With regard to documents bearing Rule 65 *ter* nos 1D01106, 1D01107, 1D03228, 1D03354, 1D03070, 1D03078, 1D03418, 1D03407, 1D03041, and 1D01047, the Prosecution does not object to admission but does not agree with the relevance of the documents as expounded by the Defence.¹⁸ The Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they fit in the Defence case. They are therefore admitted into evidence.

17. The Prosecution objects to the admission of documents bearing Rule 65 *ter* nos 1D01959 and 1D03546 but does not object to the admission of the unredacted versions of the documents, namely documents bearing Rule 65 *ter* nos 1D01959.1 and 1D03546.1, which have already been uploaded into eCourt along with complete translations.¹⁹ The Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they fit in the Defence case. The unredacted documents are therefore admitted into evidence.

18. The document bearing Rule 65 *ter* no. 1D01410 contains redactions. The unredacted version of the document has been uploaded into eCourt in B/C/S as the document bearing Rule 65 *ter* no. 1D01410.1. However, the translation is still redacted. In line with the reasoning contained at paragraph 9 of this decision, the Chamber has analysed the nature and extent of the redactions. The Chamber considers that the redactions are such that they adversely affect the Chamber's ability to properly determine the document's admissibility. The Chamber therefore denies admission.

¹⁸ Response, Confidential Annex A, pp. 72-82.

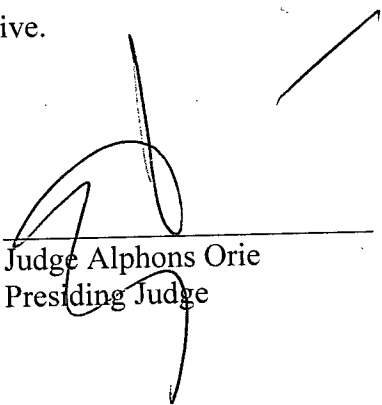
¹⁹ Response, Confidential Annex A, pp. 75-77.

IV. DISPOSITION

19. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and
- (i) **ADMITS** into evidence the documents bearing Rule 65 *ter nos* 1D03255 (under seal), 1D03143 (under seal), 1D03430 (under seal), 1D03544.1 (under seal), 1D01102 (under seal), 1D01104, 1D01021 (under seal), 1D01026 (under seal), 1D01027 (under seal), 1D01028 (under seal), 1D01029 (under seal), 1D01032 (under seal), 1D01033 (under seal), 1D01060 (under seal), 1D01062 (under seal), 1D01065 (under seal), 1D01077 (under seal), 1D01078 (under seal), 1D01079 (under seal), 1D01080 (under seal),
 - (ii) 1D01081 (under seal), 1D01082 (under seal), 1D01142, 1D01182, 1D01826, 1D01857, 1D01106 (MFI D150), 1D01107, 1D03228 (under seal), 1D03354 (under seal), 1D03041 (under seal), 1D03070 (under seal), 1D03078 (under seal), 1D03418 (under seal), 1D03407 (under seal), 1D01103.1 (under seal), 1D03549.1 (under seal), 1D01047 (under seal), 1D01411.1 (under seal), 1D01413.1 (under seal), 1D01418.1 (under seal), 1D01423.1 (under seal), 1D01424.1 (under seal), 1D01798.1 (under seal), 1D01808.1 (under seal), 1D01813.1 (under seal), 1D01886.1 (under seal), 1D01856.1 (under seal), 1D01892.1 (under seal), 1D01959.1 (under seal), 1D03526.1 (under seal) and, 1D03546.1 (under seal).
 - (iii) **DENIES** the admission into evidence of the documents bearing Rule 65 *ter nos* 1D01057 (MFI D159), 1D01415, 1D01417, 1D01420, 1D01421, 1D01533, 1D01534, 1D01537, 1D01546, 1D01412, and 1D01410.
 - (iv) **INSTRUCTS** the Defence to remove the translation currently attached to document bearing Rule 65 *ter no.* 1D03544 and re-upload it separately into eCourt, and to notify the Registry of the document ID numbers under which it has been uploaded, within three weeks of the date of issue of this decision;
 - (v) **INSTRUCTS** the Defence to upload into eCourt complete translations of documents bearing Rule 65 *ter nos* 1D01103.1, 1D01856.1, 1D01892.1, 1D01411.1, 1D01413.1, 1D01418.1, 1D01423.1, 1D01424.1, 1D01798.1, 1D01808.1, 1D01813.1, 1D03526.1, and 1D01886.1, and to notify the Registry of the document ID numbers under which the translations have been uploaded into eCourt, within three weeks of the date of issue of this decision;

- (vi) **INSTRUCTS** the Registry, upon notification by the Defence of the document ID numbers, to attach the translations to the exhibits and to file a notification on the record;
- (vii) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this sixth day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]