

4-03-69-T
D62258 - D62254
28 June 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: 28 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: 28 June 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THE SIMATOVIĆ DEFENCE FIRST BAR
TABLE MOTION**

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 1 June 2012 the Simatović Defence (“Defence”) filed a motion requesting the admission of 22 documents from the bar table (“First Bar Table Motion”).¹ The First Bar Table Motion includes the Prosecution’s position on the admission of each document.² On 15 June 2012 the Prosecution formally responded to the First Bar Table Motion and provided an overview of its position on these documents.³

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that these 22 documents are relevant and probative either in relation to the credibility of Witness Slobodan Lazarević, Witness JF-005, or to MUP identity cards.⁴ In the Confidential Annex to the First Bar Table Motion (“Confidential Annex”) the Defence briefly outlines each document’s contents, source, and purported relevance.⁵ The First Bar Table Motion states that the Stanišić Defence does not oppose admission or provide any comments on these documents.⁶

3. The Prosecution does not object to the admission of the documents bearing Rule 65 *ter* nos 2D00146, 2D00147, 2D00333, 2D00097, 2D00098, 2D00143, 2D00154, 2D00005, 2D00007, 2D00053, 2D00152 and 2D00153.⁷

4. The documents bearing Rule 65 *ter* nos 2D00152 and 2D00153 are identified as relevant by the Defence to show that all members of the MUP at a certain time possessed the same type of identity card.⁸ The documents bearing Rule 65 *ter* nos 2D00146, 2D00147, 2D00097, 2D00098, 2D00154, and 2D00143 are identified as relevant by the Defence to the credibility of Witness JF-005.⁹ The Prosecution notes that these documents were requested by the Defence prior to the testimony of the witness but were only received afterwards.¹⁰ The documents bearing Rule 65 *ter* nos 2D00005, 2D00007 and 2D00053, are identified as relevant by the Defence to the credibility of Witness Slobodan Lazarević.¹¹ The Prosecution notes that these documents were received by the

¹ Simatović Defence First Bar Table Motion with Confidential Annex, 1 June 2012.

² Confidential Annex, pp. 40896-40885.

³ Prosecution Response to Simatović First Bar Table Motion (“Response”), 15 June 2012.

⁴ First Bar Table Motion, para. 5.

⁵ Confidential Annex, pp. 40896-40885.

⁶ First Bar Table Motion, para. 7.

⁷ Confidential Annex, pp. 40895-40891, 40889-40887; Response, para. 8.

⁸ Confidential Annex, pp. 40887.

⁹ Confidential Annex, pp. 40895, 40893-40891.

¹⁰ Ibid.

¹¹ Confidential Annex, pp. 40889-40888.

Defence before this witness testified and should have been put to the witness during his testimony.¹² The document bearing Rule 65 *ter* no. 2D00333 is a Defence request to the National Council for Cooperation with the ICTY, identified as relevant by the Defence in that it supports the National Council's reply, already admitted as exhibit D21.¹³ Whilst not objecting, the Prosecution does not consider admission of this document necessary.¹⁴

5. The Prosecution objects to the admission of the documents bearing Rule 65 *ter* nos 2D00145, 2D00151, 2D00035, 2D00150, 2D00381, 2D00382, 2D00383, 2D00384, and 2D01690 as they are correspondence and cover letters relating to other documents being tendered or already in evidence.¹⁵ As the Prosecution does not dispute the authenticity of the other documents being tendered or already in evidence, it submits that these documents have no probative value.¹⁶ The Prosecution also objects to the document bearing Rule 65 *ter* no. 2D00033 because it has low probative value and the Defence has not indicated to which aspects of Witness Lazarević's evidence the document is relevant.¹⁷ The Prosecution notes that this document should have been put to the witness during his testimony.¹⁸

III. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decision.¹⁹

IV. DISCUSSION

7. The Chamber considers that the documents bearing Rule 65 *ter* nos 2D00152 and 2D00153 meet the standard for admission as set out in Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules") and finds that the Defence has demonstrated with clarity and specificity where and how each document fits into its case. The Chamber will therefore admit these documents into evidence.

8. The documents bearing Rule 65 *ter* nos 2D00005, 2D00007, 2D00033 and 2D00053 have been tendered to refute the credibility of Witness Lazarević who testified in February 2010.²⁰

¹² Ibid.

¹³ Confidential Annex, pp. 40894.

¹⁴ Ibid.

¹⁵ Confidential Annex, pp. 40896, 40891-40890, 40888-40885; Response, para. 7.

¹⁶ Confidential Annex, pp. 40896, 40891-40890, 40888-40885.

¹⁷ Confidential Annex, pp. 40890.

¹⁸ Ibid.

¹⁹ First Decision on Stanišić Defence Bar Table Motion, 23 May 2012, paras 9-10.

9. The documents bearing Rule 65 *ter* nos 2D00005, 2D00007 and 2D00053 relate to convictions and further investigations of the witness in relation to fraud. These documents would have been relevant in the context of Witness Lazarević's testimony, and by seeking to admit these documents through the bar table the Defence has prevented the witness from responding and the other parties from questioning him on these documents. However, the Prosecution does not object to admission of these documents, and the witness was questioned several times during cross-examination in relation to the crimes at issue in the documents.²¹ Further, the Chamber recalls its invitation to the parties of 8 July 2010 in relation to the cross-examination of Witness Lazarević.²² Therefore, exceptionally, the Chamber, finding that these documents meet the standard for admission as set out in Rule 89 (C) of the Rules and that the Defence has demonstrated with clarity and specificity where and how each document fits into its case, will admit these documents into evidence.

10. The document bearing Rule 65 *ter* no. 2D00033 is a letter from the National Council for Cooperation with the ICTY, which states that Witness Lazarević has not been in professional military service, among other things. The document would have been relevant in the context of the Witness Lazarević's testimony, and in seeking to admit the document through the bar table the Defence has prevented the witness from responding and other parties from questioning him on it. Considering that the Prosecution objects to the document's admission, the Chamber will, under the present circumstances, deny its admission from the bar table.

11. The documents bearing Rule 65 *ter* nos 2D00146, 2D00147, 2D00097, 2D00098, 2D00143, and 2D00154 have been tendered to refute the credibility of Witness JF-005.²³ The Chamber notes that these documents, although sought before, were not received until after the witness testified.²⁴ The Chamber finds that these documents meet the standard for admission set out in Rule 89 (C) of the Rules and finds that the Defence has demonstrated with clarity and specificity where and how each document fits into its case.

12. The documents bearing Rule 65 *ter* nos 2D00145, 2D00151, 2D00035, 2D00150, 2D00384 and 2D01690 are cover letters for other documents sent and received by the Defence. The documents bearing Rule 65 *ter* nos 2D00333, 2D00381, 2D00382 and 2D00383 are requests made by the Defence to the National Council for Cooperation with the ICTY. As there is no dispute about

²⁰ Confidential Annex, pp. 40890-40888.

²¹ T. 3417-3420, 3481-3484.

²² Confidential Invitation to the Parties in Relation to Matters Arising out of the Cross-Examination of Witness Lazarević, 8 July 2010.

²³ Confidential Annex, pp. 40895, 40893-40891.

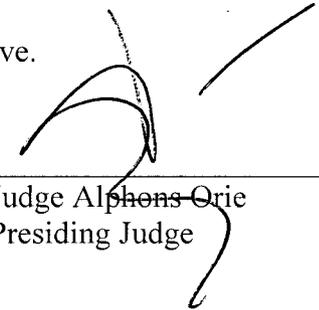
²⁴ Ibid.

the authenticity of the related documents, the Chamber deems that these cover letters and correspondence do not have the requisite probative value, and as a result will deny their admission.

V. DISPOSITION

13. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and
- (i) **ADMITS** into evidence the documents bearing Rule 65 *ter* nos 2D00005, 2D00007, 2D00053, 2D00097 (under seal), 2D00098 (under seal), 2D00143 (under seal), 2D00146 (under seal), 2D00147 (under seal), 2D00152, 2D00153 and 2D00154 (under seal);
 - (ii) **DENIES** admission into evidence of the documents bearing Rule 65 *ter* nos 2D00033, 2D00035, 2D00145, 2D00150, 2D00151, 2D00333, 2D00381, 2D00382, 2D00383, 2D00384 and 2D01690; and
 - (iii) **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 Twenty-eighth of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]