

IT-03-69-T
Dk2896 - Dk2892
18 July 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: 18 July 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 18 July 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**SECOND DECISION ON STANIŠIĆ DEFENCE MOTION FOR
ADMISSION INTO EVIDENCE THROUGH THE BAR TABLE
OF DOCUMENTS THAT WERE DENIED ADMISSION
WITHOUT PREJUDICE**

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 a motion requesting admission of 674 documents from the bar table (“Bar Table Motion”).¹ On 23 and 24 May 2012, and 1, 6, and 14 June 2012, the Chamber issued nine decisions on the Bar Table Motion (“Bar Table Decisions”) relating to the various categories of documents tendered therein.² On 23 May 2012, the Chamber issued the First Bar Table Decision, addressing three categories of the minutes of sessions of various bodies (“Session documents”): (1) Republika Srpska: Sessions of the Assembly, SDS Deputies’ Club, Serbian National Council, Government and War Presidency (“Category 1 Session documents”); (2) Sessions and Decisions/Statements of the SFRY Presidency and the FRY Supreme Defence Council (“Category 2 Session documents”); and (3) Sessions of the FRY Council for coordination (“Category 3 Session documents”).³

2. The Chamber stressed at the outset the importance of providing clarity and specificity as to how each document is relevant and fits into the Defence case when tendering documents from the bar table.⁴ The Chamber admitted Category 1 Session documents bearing Rule 65 *ter* nos 1723-1725, 2164, 1736, 2165, 1675, 1350, 1352, 1355, 1357, 1359, 1364, 1366, 1368, 1370, and 1372, and Category 2 Session documents bearing Rule 65 *ter* nos 1D05302, 1D05303, 1D05304, 1D05306, 1416, 1417, 1421, 1422, and 1427.⁵ The Chamber, however, denied admission of the remaining Session documents as the Defence did not identify the specific portions thereof which are relevant to its case, and/or did not provide sufficient page references in support of its general arguments, preventing the Chamber from being able to properly assess their relevance and probative value.⁶

3. On 5 June 2012, the Defence filed a motion requesting the admission of 99 documents from the bar table which were denied without prejudice through some of the Bar Table Decisions (“Motion”). The Defence submits that it has now sufficiently addressed the issues underlying the

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

² First Bar Table Decision, 23 May 2012; Second Bar Table Decision, 23 May 2012; T. 19765-19768; Fourth Bar Table Decision, 24 May 2012; Fifth Bar Table Decision, 24 May 2012; Sixth Bar Table Decision, 1 June 2012; Seventh Bar Table Decision, 6 June 2012; Eighth Bar Table Decision, 6 June 2012; Ninth Bar Table Decision, 14 June 2012.

³ First Bar Table Decision, para. 15.

⁴ First Bar Table Decision, para. 23.

⁵ First Bar Table Decision, para. 28.

⁶ First Bar Table Decision, paras 25-27.

Chamber's prior denial of admission without prejudice of many of the Session documents.⁷ The Motion covers 25 Category 2 and one Category 3 Session documents.⁸ The Defence indicates that it now seeks to tender excerpts of most of these Session documents, having allocated thereto the same Rule 65 *ter* numbers, save for the addition of a ".1" extension, as their counterparts in the Bar Table Motion.

4. On 19 June 2012, the Prosecution filed its response to the Motion ("Response"), providing its comments on each of the 27 Session documents.⁹ While the Prosecution does not object to the admission of the Session documents subject of the Motion, it stresses that it has not had the opportunity to view the actual documents sought to be tendered as these have not been uploaded into eCourt.¹⁰ The Prosecution has had to rely instead on the previously uploaded complete documents and focus its attention on the page numbers specified by the Defence in its bar table chart.¹¹ In addition to its comments on each Session document, the Prosecution stresses that the negative inference sought by the Defence from the minutes of the Supreme Defence Council ("SDC") is particularly weak in light of the nature of the SDC as laid down in the FRY Constitution, and of SDC-related documents not tendered by the Defence.¹² In this regard, the Prosecution notes that the text of Article 135 of the FRY Constitution is illegible in the English translation of P946, and requests that the document with Evidence Record Number 05209602 be attached to P946 as an additional English translation thereof.¹³ If the Chamber admits the SDC records, the Prosecution intends to tender excerpts thereof which appear to refer to the RDB.¹⁴

5. On 28 June 2012, the Defence filed a Corrigendum correcting some of the page numbers and descriptions of the Session documents subject of the Motion, and tendering an additional document with 65 *ter* no. 1398.1 ("Corrigendum").¹⁵

II. APPLICABLE LAW

⁷ Stanišić Defence Motion for Admission of Documents into Evidence through the Bar Table of Documents that were Denied Admission Without Prejudice, 5 June 2012, para. 6.

⁸ The Category 2 Session documents are those with Rule 65 *ter* nos 1D05305.1, 1D05301.1, 1376.1, 1D02030.1, 1380.1, 1D05307.1, 1382.1, 1D02585.1, 1384.1, 1392.1, 1D03598.1, 1399.1, 1D03602.1, 1D03603.1, 1D03604.1, 1D03606.1, 1412.1, 1413.1, 1414.1, 1415.1, 1418.1, 1423.1, 1424.1, 1425, and 1426. The lone Category 3 Session document bears Rule 65 *ter* no. 1442.1.

⁹ Prosecution Response to Bar Table Motion, 19 June 2012.

¹⁰ Response, paras 15-16.

¹¹ Response, para. 16.

¹² Response, paras 5-10.

¹³ Response, FN 7.

¹⁴ Response, paras 8-10.

¹⁵ Stanišić Corrigendum to "Second Additional Motion for Admission of Documents into Evidence through the Bar Table" and "Motion for Admission of Documents into Evidence through the Bar Table of Documents that were Denied Admission Without Prejudice" both filed on 4 June 2012, 28 June 2012, paras 6-7.

6. The Chamber recalls and refers to the applicable law as set out in its First Bar Table Decision.¹⁶

III. DISCUSSION

7. As with its previous Bar Table Decisions, the Chamber will deal with the various categories of documents subject of the Motion through separate decisions. The Chamber will address Categories 2 and 3 of the Session documents in the present decision, which were previously denied without prejudice in the First Bar Table Decision.¹⁷ The Chamber has already issued a decision with respect to the personnel files previously denied admission without prejudice,¹⁸ and will issue one further decision on the remainder of the Motion.

8. As noted above, the Prosecution does not object to the admission of any of the Session documents, but instead disputes the conclusions and negative inferences the Defence draws from them.¹⁹ The Prosecution adds that it may tender additional portions of the Session documents or other documents in rebuttal.²⁰

9. The Defence indicates that the Session document with 65 *ter* number 1D05305.1 was not on its Rule 65 *ter* document list. The Prosecution, however, has commented on this document and has not objected to its admission. The Chamber therefore *proprio motu* decides to add this document to the Defence Rule 65 *ter* exhibit list.

10. The Chamber has previously admitted excerpts of documents, provided that the parties have access to the sources thereof so as to be able to contextualize the excerpts tendered.²¹ The Defence explains (i) the relevance and probative value of each of the 27 Session documents, and (ii) how they fit into its case, pointing to the relevant pages thereof.²²

11. The Chamber observes, however, that the Defence seeks to draw various conclusions from the absence of any reference in these Session documents to Accused Stanišić or the Serbian DB. In relation to documents tendered to establish facts by negative inference, the Chamber reiterates its exhortation that the Defence provide clear references to such documents in its final brief, and to

¹⁶ First Bar Table Decision, paras 9-10.

¹⁷ Motion, Confidential Annex A, pp. 1-149.

¹⁸ First Decision on Stanišić Defence Motion for Admission of Documents into Evidence through the Bar Table of Documents that were Denied Admission Without Prejudice, 18 July 2012.

¹⁹ Response, para. 15, Confidential Annex A, pp. 1-149.

²⁰ Response, Confidential Annex A, pp. 1-149.

²¹ T. 20150-20151.

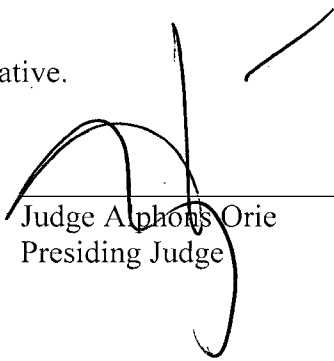
²² Motion, Confidential Annex A, pp. 1-149; Corrigendum, paras 6-7.

elaborate on the conclusions it invites to draw from them, including, if appropriate, an explanation of how they refute the Prosecution evidence relating to the same issues.²³

IV. DISPOSITION

12. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and
- (i) **PROPRIO MOTU DECIDES** to add the document with Rule 65 *ter* number 1D05305.1 to the Stanišić Defence Rule 65 *ter* exhibit list;
 - (ii) **GRANTS** the Prosecution request that the document with Evidence Record Number 05209602 be attached to P946 as an additional English translation and **DIRECTS** the Registry to do so:
 - (iii) **ADMITS** into evidence documents bearing Rule 65 *ter* numbers 1D05305.1, 1D05301.1, 1376.1, 1D02030.1, 1380.1, 1D05307.1, 1382.1, 1D02585.1, 1384.1, 1392.1, 1D03598.1, 1398.1, 1399.1, 1D03602.1, 1D03603.1, 1D03604.1, 1D03606.1, 1412.1, 1413.1, 1414.1, 1415.1, 1418.1, 1423.1, 1424.1, 1425, 1426, and 1442.1, once these have been uploaded into eCourt;
 - (iv) **DIRECTS** the Defence to upload the admitted documents into eCourt, and to advise the Chamber, the Registry and the parties once these have been uploaded;
 - (v) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned; and
 - (vi) **DECIDES** to issue a further Decision on the Motion in due course.

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


 Judge Alphons Orie
 Presiding Judge

Dated this eighteenth day of July 2012
 At The Hague
 The Netherlands

[Seal of the Tribunal]

²³ Second Bar Table Decision, para. 16.