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DU2906 - DU2898
18 July 2012

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**UNITED
NATIONS**



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

**FIRST DECISION ON STANIŠIĆ DEFENCE MOTION FOR
ADMISSION INTO EVIDENCE THROUGH THE BAR TABLE
OF PERSONNEL FILES 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 Between 23 May 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 24 May 2012, the Chamber issued its Fifth Bar Table Decision addressing 60 alleged personnel files.³ The Chamber denied the admission into evidence of those documents, without prejudice, due to the lack of specificity with which the Defence had explained their relevance, as well as due to redactions and translation issues in some of the documents.⁴ The Chamber noted that while each document may be relevant for a reason contained in the description, without adequate referencing or explanation, the Chamber was unable to sufficiently assess the relevance and probative value of each document.⁵ The Chamber concluded that the Defence had not demonstrated, with clarity and specificity, where and how each individual document would fit into its case, and thus failed to fulfil the requirements for admission.⁶

2. On 5 June 2012, the Defence filed a motion requesting the admission from the bar table of 99 documents which had previously been denied without prejudice through the First and Fifth Bar Table Decisions (“Motion”). The Defence submits that it has now sufficiently addressed the issues underlying the Chamber’s prior denial of admission without prejudice of the personnel files.⁷ The Defence indicates that it now seeks to tender excerpts of the personnel files, having allocated to them the same Rule 65 *ter* numbers, save for the addition of a “.1” extension, as their counterparts in the Bar Table Motion.⁸

3. On 12 June 2012, the Prosecution advised the Defence, by informal communication, that the documents subject of the Motion had not yet been uploaded into eCourt, and inquired as to when these would be uploaded. On 13 June 2012, the Defence replied by means of an informal

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 The document subject of the Fifth Bar Table Decision which is not covered by the present Motion is the document bearing 65 *ter* no. 1D05333.1.

⁴ Fifth Bar Table Decision, paras 4, 6, 8-10. 1D05312 had previously been admitted as D449.

⁵ Fifth Bar Table Decision, para. 6.

⁶ *Ibid.*

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 Motion, para. 11.

communication and provided courtesy copies of 15 personnel files addressed by the Motion.⁹ These documents consisted of either updated versions of the original B/C/S personnel files, their English translations, or both. The Defence added that it is currently uploading the remaining personnel files into eCourt under their proper 65 *ter* nos. The Defence submits that in the meantime, the Prosecution and the Chamber can use the personnel files currently in eCourt and locate the relevant portions thereof on the basis of the Evidence Record Numbers (“ERNs”) indicated in the bar table chart annexed to the Motion. The Defence further stated that the portions of the documents tendered through the Motion will eventually be uploaded into eCourt and the Prosecution will be advised once the upload is complete.

4. On 19 June 2012, the Prosecution filed its response to the Motion (“Response”), providing its comments on each of the 56 personnel files.¹⁰ While the Prosecution does not object to the admission of most of these documents, 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.¹¹ The Prosecution has had to rely instead on the previously uploaded complete documents and focus its attention on the ERNs specified by the Defence in its bar table chart.¹² The Prosecution objects, however, to the admission of documents bearing Rule 65 *ter* nos 1D05327.1 and 1D05352.1, as portions thereof appear to have been removed by the Defence.¹³ In addition, the Prosecution objects to the admission of the document bearing Rule 65 *ter* no. 1D05341.1, the original B/C/S version of which appears to be missing two pages.¹⁴

II. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law as set out in its First Bar Table Decision.¹⁵

III. DISCUSSION

6. 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 the

⁹ These are documents identified in the Motion as having Rule 65 *ter* nos 1D05313.1, 1D05318.1, 1D05324.1, 1D05327.1, 1D05332.1, 1D05335.1, 1D05338.1, 1D05341.1, 1D05345.1, 1D05351.1, 1D05352.1, 1D0535.1, 1D05357.1, 1D05358.1, and 1D05368.1.

¹⁰ Prosecution Response to Stanišić Defence Motion for Admission of Documents through the Bar Table, with Confidential Annex A, 19 June 2012.

¹¹ Response, paras 15-16.

¹² Response, para. 16.

¹³ Response, paras 13-14, Confidential Annex A, pp. 234-235, 246-247.

¹⁴ Response, Confidential Annex A, pp. 240-241.

¹⁵ First Bar Table Decision, paras 9-10.

category of 56 alleged personnel files in the present decision, which were among the 60 such documents subject of the Fifth Bar Table Decision.¹⁶

7. The Chamber notes that the personnel files have now been uploaded into eCourt under the “.1” 65 *ter* numbers referred to in the bar table chart annexed to the Motion.¹⁷

8. As noted above, the Prosecution does not object in principle to the admission of any of these 55 documents, and its objections to the documents bearing Rule 65 *ter* nos 1D05327.1, 1D05341.1, and 1D05352.1 are limited to their incomplete nature and/or redactions therein which appear to have been carried out by the Defence.¹⁸ The Prosecution does not object to the redactions by the Serbian government in the document bearing Rule 65 *ter* no. 1D05327.1.¹⁹

¹⁶ Motion, Confidential Annex A, pp. 223-247.

¹⁷ The Chamber observes the following discrepancies between the Defence’s description of various documents and those actually uploaded into eCourt: (1) While the Defence states that the document bearing Rule 65 *ter* no. 1D05315.1 corresponds to ERNs 05587845 to 05587862 (Motion, Confidential Annex A, p. 226), the corresponding document in eCourt consists of two pages with ERNs 05587851 and 05587855. (2) While the Defence identifies the document bearing Rule 65 *ter* no. 1D05324.1 as corresponding to ERNs 05588092 to 05588097 (Motion, Confidential Annex A, p. 230), the B/C/S version in eCourt consists of ERNs 06819524 to 06819529. Moreover, the English translation in eCourt contains the heading that it is the Defence draft translation of 05588092 to 05588097, but nevertheless appears to correspond to the B/C/S version consisting of ERNs 06819524 to 06819529. (3) The Defence indicates that the document bearing Rule 65 *ter* no. 1D05329.1 consists of ERNs 0558-8304 to 0558-8306 (Motion, Confidential Annex A, p. 233), while the corresponding document in eCourt consists of ERNs 05588360 to 05588362. The Prosecution notes that the Defence repeated the ERN corresponding to the previous document in the chart, bearing Rule 65 *ter* no. 1D05328.1 (Response, Confidential Annex A, p. 235). (4) The Defence describes the document bearing 65 *ter* no. 1D05332.1 as corresponding to ERNs 05588778 to 05588785 (Motion, Confidential Annex A, p. 234), while the B/C/S version in eCourt consists of ERNs 06822007 to 06822015. Moreover, the English translation in eCourt contains the heading that it is the Defence draft translation of 05588778 to 05588785, but nevertheless appears to correspond to the B/C/S version consisting of ERNs 06822007 to 06822015. (5) The Defence describes the document bearing 65 *ter* no. 1D05335.1 as corresponding to ERNs 07042316 to 07042321 (Motion, Confidential Annex A, p. 234), while the B/C/S version in eCourt consists of ERNs 06818586 to 06818591. The English translation in eCourt contains the heading that it is the Defence draft translation of ERNs 07042316 to 07042321, but nevertheless appears to correspond to the B/C/S version consisting of ERNs 06818586 to 06818591. (6) The Defence describes the document bearing 65 *ter* no. 1D05338.1 as corresponding to ERN 07042280 (Motion, Confidential Annex A, p. 236), while the B/C/S version in eCourt consists of ERN 06822434. The English translation in eCourt contains the heading that it is the Defence draft translation of ERN 07042280, but nevertheless appears to correspond to the B/C/S version consisting of ERN 06822434. (7) The Defence describes the document bearing Rule 65 *ter* no. 1D05337.1 as corresponding to ERNs 07042016 to 07042045 (Motion, Confidential Annex A, p. 236), when the ERNs of the corresponding document in eCourt are 07042031 to 07042035. (8) The document bearing Rule 65 *ter* no. 1D05367.1 is described by the Defence as consisting of several pages, with ERNs 07043651 to 07043660 (Motion, Confidential Annex A, p. 246), while the corresponding document in eCourt consists only of the first page of this ERN series, 07043651. (9) The Defence describes the document bearing 65 *ter* no. 1D05345.1 as bearing ERN 07041338 to 07041351 (Motion, Confidential Annex A, p. 239), while the B/C/S version in eCourt consists of only two pages, the ERN on the first page of which is not visible, while the ERN on the second page is not fully legible but nevertheless does not appear to fall within the ERN range indicted by the Defence. (10) The Defence describes the document bearing 65 *ter* no. 1D05351.1 as corresponding to ERNs 07041872 to 07041912 (Motion, Confidential Annex A, p. 241), while the B/C/S version in eCourt consists of ERNs 06819299 and 06819301 to 06819306. (11) The Defence describes the document bearing 65 *ter* no. 1D05358.1 as corresponding to ERNs 07042866 to 07042870 (Motion, Confidential Annex A, p. 243), while the B/C/S version in eCourt consists of ERNs 06820949 to 06820953.

¹⁸ Response, Confidential Annex A, pp. 234-235, 240-241, 246-247.

¹⁹ Response, Confidential Annex A, pp. 234-235.

9. 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.²⁰ The Prosecution acknowledges that while it is appropriate to tender excerpts of lengthy documents, this practice is unnecessary with respect to the alleged personnel files concerned which are not of excessive length.²¹ The Chamber notes that the Defence has not offered any explanation as to why it appears to have removed portions of the documents bearing Rule 65 *ter* nos 1D05327.1 and 1D05352.1 when compared to their counterparts without a “.1” extension in their Rule 65 *ter* nos. These removed portions are in addition to the redactions noted by the Chamber when it previously denied the admission of these documents.²² Furthermore, the Chamber notes that a yellow piece of paper covers a portion of the text in the second page of the B/C/S version of the document bearing 65 *ter* no. 1D05334.1.

10. As regards the documents bearing 65 *ter* nos 1D05318.1, 1D05341.1, and 1D05357.1, the Chamber observes that while they are now unredacted, the English versions appear to be incomplete compared to the B/C/S versions.²³

11. The Chamber considers that the nature and extent of the removed portions and/or incomplete translations prevent it from properly determining the admissibility of 1D05318.1, 1D05327.1, 1D05334.1, 1D05341.1, 1D05352.1, and 1D05357.1. The Chamber therefore denies their admission.

12. The Chamber observes that with respect to the remaining 50 documents, the Defence tenders the same ERNs as those previously tendered through the Bar Table Motion. In addition, the B/C/S and English versions of the documents bearing Rule 65 *ter* nos 1D05324.1, 1D05332.1, 1D05335.1, 1D05338.1, 1D05345.1, 1D05351.1, 1D05353.1, 1D05357.1, and 1D05358.1 are now unredacted. Furthermore, the B/C/S and English versions of the document bearing Rule 65 *ter* no. 1D05368.1 now appear to be of equal length. The document bearing Rule 65 *ter* no. 1D05313.1 remains redacted, however, and the Chamber understands the Defence explanation that an unredacted version thereof is unavailable to mean that the Defence is unable to obtain one.²⁴ Having

²⁰ T. 20150-20151.

²¹ Response, para. 14.

²² Fifth Bar Table Decision, para. 8.

²³ The Chamber observes that while the Defence describes the document bearing 65 *ter* no. 1D05318.1 as pertaining to ERNs 05587926 to 05587949 (Motion, Confidential Annex A, p. 228), the document in eCourt corresponds to ERNs 06818716 to 06818718, and 05587926. In addition, the Chamber notes that while the Defence describes the document bearing 65 *ter* no. 1D05357.1 as pertaining to ERNs 07042815 to 07042859 (Motion, Confidential Annex A, p. 243), the document in eCourt corresponds to ERNs 06820904 to 06820907. In addition, the English version in eCourt bears the heading “Defence Draft Translation of 05630/8-1”.

²⁴ Motion, para. 10, Confidential Annex A, pp. 224-225,

analyzed the nature and extent of the redactions, the Chamber considers they are not such as to prevent admission of the document.²⁵

13. The Chamber further notes that while the Defence had provided an English translation of the document bearing 65 *ter* no. 1D05353.1 in its informal communication of 13 June 2012, this has not been uploaded into eCourt.²⁶ It appears that the Defence mistakenly uploaded the B/C/S version as the English translation. Nevertheless, the Chamber has analysed the translation as contained in the informal communication of 13 June and, also, the B/C/S version and considers that they are consistent with one another.

14. The Chamber finds that the Defence now explains (i) the relevance and probative value of each of the 50 alleged personnel files, and (ii) how they fit into its case. Further, the Prosecution does not object to their admission. The Chamber is therefore satisfied that these documents meet the standard for admission under Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence and relevant jurisprudence and admits the documents into evidence. The Chamber instructs the Defence to upload the English translation of 1D05353.1 into eCourt within one week of this decision being issued.

IV. DISPOSITION

15. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and

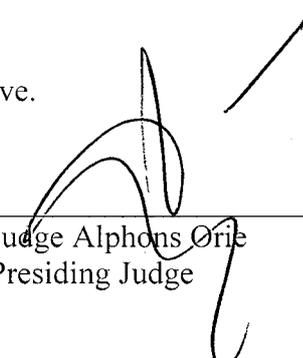
- (i) **ADMITS** into evidence, under seal, documents bearing Rule 65 *ter* nos 1D05310.1, 1D05311.1, 1D05313.1, 1D05314.1, 1D05315.1, 1D05316.1, 1D05317.1, 1D05319.1, 1D05320.1, 1D05321.1, 1D05322.1, 1D05323.1, 1D05324.1, 1D05325.1, 1D05326.1, 1D05328.1, 1D05329.1, 1D05330.1, 1D05331.1, 1D05332.1, 1D05335.1, 1D05336.1, 1D05337.1, 1D05338.1, 1D05339.1, 1D05340.1, 1D05343.1, 1D05344.1, 1D05345.1, 1D05346.1, 1D05347.1, 1D05348.1, 1D05349.1, 1D05350.1, 1D05351.1, 1D05353.1, 1D05354.1, 1D05355.1, 1D05356.1, 1D05358.1, 1D05359.1, 1D05360.1, 1D05361.1, 1D05363.1, 1D05364.1, 1D05365.1, 1D05366.1, 1D05367.1, 1D05368.1, and 1D05369.1;

²⁵ Fifth Bar Table Decision, para. 9.

²⁶ The Defence describes the document bearing 65 *ter* no. 1D05353.1 as corresponding to ERNs 07042096 to 07042512 (Motion, Confidential Annex A, p. 242), while the B/C/S version in eCourt consists of ERNs 06819892 to 06819894.

- (ii) **INSTRUCTS** the Defence to upload the translation of ID05353.1 into eCourt within one week of the date of issue of this decision;
- (iii) **DENIES** admission into evidence of documents bearing Rule 65 *ter* nos 1D05318.1, 1D05327.1, 1D05334.1, 1D05341.1, 1D05352.1, and 1D05357.1;
- (iv) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned; and
- (v) **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 eighteenth day of July 2012
At The Hague
The Netherlands

[Seal of the Tribunal]