

IT-03-69-T
D44183 - D44180
03 October 2012

44183
SP



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: 3 October 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 3 October 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ REQUEST FOR CERTIFICATION
TO APPEAL THE TRIAL CHAMBER'S DECISION ON
DEFENCE MOTION FOR EXCLUSION OF SPECIFIED
EXHIBITS AND ADMISSION OF VARIOUS OTHER
DOCUMENTS**

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 15 August 2012, the Chamber issued a decision (“Decision”)¹ which, *inter alia*, denied a Defence Motion for Exclusion (“Motion for Exclusion”) of specified Prosecution exhibits (“Exhibits”).² On 17 August 2012, the Stanišić Defence (“Defence”) filed a motion (“Motion”) requesting certification to appeal the Decision.³ On 28 August 2012, the Prosecution filed its response (“Response”).⁴

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the Decision will significantly affect the outcome of the trial as the non-exclusion of the Exhibits “could lead to individual criminal responsibility” being attributed to the Accused.⁵ The Defence relies on a decision to grant Certification in the case of *Gotovina et al.* (“Gotovina Certification Decision”) in support of its contention.⁶ The Defence further submits that granting certification may materially advance the proceedings as it would “avoid a retrial if the Trial Chamber is ultimately found [by the Appeals Chamber] to have admitted these documents into evidence in a manner that affects the Accused’s fair trial rights”.⁷ The Defence also submits, in broad terms, that an assessment by the Appeals Chamber of the Chamber’s Guidance⁸ (“Guidance”), and decisions based on it, would assist in avoiding the need to seek a re-trial.⁹

3. The Prosecution contends that the Motion fails to meet the cumulative conditions for certification.¹⁰ It submits that an interlocutory appeal of the Decision will not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, nor will it materially advance the proceedings.¹¹ It contends that the impact of admission of the Exhibits will only be known at the conclusion of the proceedings and that granting an interlocutory appeal now will

¹ Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various other Documents, 15 August 2012.

² Stanišić Defence Motion for the Exclusion of Specified Prosecution Exhibits Admitted during Cross-Examination or, in the Alternative, Various other Remedies to Ensure an Effective Defence, 29 May 2012.

³ Stanišić Defence Request for Certification to Appeal the Trial Chamber’s Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various other Documents, 17 August 2012.

⁴ Prosecution Response to Stanišić Defence Request for Certification to Appeal the Trial Chamber’s Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various other Documents, 28 August 2012. Motion, para. 6.

⁶ Motion, paras 5, 7; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Čermak and Markač Defence Requests for Certification to Appeal the Trial Chamber Decision of 21 April 2010 to Reopen the Prosecution’s Case, 10 May 2010.

⁷ Motion, para. 8.

⁸ Although not specifically stated, the Chamber understands this as a reference to the following document: Guidance on Admission into Evidence of Documents Tendered by the Prosecution during the Defence Case and the Reasons for Decisions on Past Admissions of Such Documents, 26 August 2011.

⁹ Motion, paras 9-10.

¹⁰ Response, para. 1.

prolong rather than advance the proceedings.¹² The Prosecution contends that the Defence's reliance on the Gotovina Certification Decision is incorrect as the underlying decision in relation to which certification was granted was very different from the Decision in the present case.¹³

III. APPLICABLE LAW

4. Rule 73 (B) of the Rules of Procedure and Evidence ("Rules") requires that the Trial Chamber be satisfied of two cumulative criteria in order for it to grant a request for certification to appeal: 1) that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that in finding such an issue exists, it is the opinion of the Trial Chamber that an immediate resolution by the Appeals Chamber may materially advance the proceedings.

IV. DISCUSSION

5. The Chamber notes at the outset that it has previously addressed similar Defence arguments regarding the general application of the Guidance in a separate decision on certification to appeal in the present case ("Certification Decision").¹⁴ In keeping with the Certification Decision, the Chamber will only consider arguments regarding the Guidance in so far as they pertain to concrete disputes regarding the Exhibits, and not on general arguments relating to the appropriateness of the Guidance as made by the Defence.¹⁵

6. In addition, the Chamber notes the Defence submission that the non-exclusion of the Exhibits "if the Trial Chamber finds they are of probative value, could lead to individual criminal responsibility for the accused".¹⁶ The Chamber understands the Defence submission regarding probative value as a reference to the *weight* that the Chamber may ultimately give to the Exhibits.

7. The Chamber acknowledges that each piece of evidence admitted in a case has the potential to play a role in determining the individual criminal responsibility of the accused. The Defence asserts that the non-exclusion of these specific Exhibits could lead to individual criminal responsibility being attributed to these Accused. However, the Defence makes a generic argument in support of this contention which does not demonstrate that these specific Exhibits are special in

¹¹ Response, para. 2.

¹² Response, paras 2-4.

¹³ Response, paras 3, 6-7.

¹⁴ Decision on Stanišić Defence Request for Certification to Appeal the Trial Chamber's Guidance on the Admission into Evidence of Documents Tendered by the Prosecution during the Defence Case and Reasons for Decision on Past Admissions of Such Documents, 19 October 2011.

¹⁵ Certification Decision, para. 9; Motion para. 9.

how they impact upon the individual criminal responsibility of the accused when compared with any other evidence already admitted in the trial, including other personnel files. The Chamber, having analysed the Exhibits, and noting that they constitute a number of personnel files, considers that their non-exclusion does not constitute an issue that would, as suggested by the Defence, significantly affect the outcome of the trial, nor the fair and expeditious conduct of the proceedings.

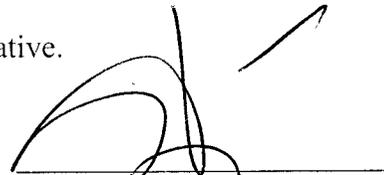
8. For the foregoing reasons, the Chamber considers that the first criterion of Rule 73 (B) has not been met.

9. In light of the Chamber having determined that the first criterion of Rule 73 (B) has not been satisfied, and considering that the two criteria are cumulative in nature, the Chamber will not address the Defence arguments in relation to the second criterion of Rule 73 (B).

V. DISPOSITION

10. For the foregoing reasons, pursuant to Rule 73(B) of the Tribunal's Rule of Procedure, the Chamber **DENIES** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this third day of October 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁶ Motion, para. 6.