

IT-01-42-T
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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 Former Yugoslavia since 1991

Case No. IT-01-42-T
Date: 26 May 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 26 May 2004

PROSECUTOR

v.

PAVLE STRUGAR

**DECISION ON THE ADMISSIBILITY OF CERTAIN
DOCUMENTS**

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Philip Weiner

Counsel for the Accused:

Mr. Goran Rodić
Mr. Vladimir Petrović

I. THE MOTION

1. This decision of Trial Chamber II is in respect of the Prosecution's oral motion of 18 May 2004, immediately before closing the case for the Prosecution, to have admitted into evidence the following documents:

- MFI P84, MFI P86.1, MFI P86.2, MFI P86.3, MFI P51, being documents tendered by the Prosecution during trial and marked for identification, but not yet admitted into evidence;
- Statement by Dr. Šegedin dated 15 April 2004, five hospital records of Ivo Vlašica relating to the treatment he received for his 1991 injury, being documents tendered for the first time to rebut issues raised in cross-examination of Ivo Vlašica whose evidence concluded on 27 February 2004;
- Document 65 *ter* no. 55, document 65 *ter* no. 350, document 65 *ter* no. 421, being documents tendered in full for the first time.

2. The Defence objected to the admission of each of these documents, aside from documents marked MFI P86.1, MFI P86.2, MFI P86.3 and the five hospital records of Ivo Vlašica relating to the treatment he received for his 1991 injury.¹ The Chamber heard oral argument from the parties on 18 May 2004 and granted the parties until 21 May at 5.00 p.m. to file submissions in writing, if they so wished. Both parties availed themselves of this opportunity.² The Chamber will group the documents into appropriate categories and deal with them in that way.

1. Documents relating to Ivo Vlašica's 1991 injury

3. Ivo Vlašica is listed in the Indictment³ as one of the individuals injured as a result of the shelling in the Old Town of Dubrovnik on 6 December 1991. On the basis of medical documentation tendered by the Prosecution during his testimony, an issue was identified between

¹ The position of the Defence based on oral arguments submitted on 18 May 2004 appeared to be that it objected to all the documents tendered, but its subsequent written submission, *infra* fn. 2, suggests that the Defence do not object to the following documents: MFI P84, MFI P86.1, MFI P86.2, MFI P86.3 and the hospital records (as yet unmarked) relating to Ivo Vlašica's 1991 injury and treatment. The Defence clarified its position in a telephone communication with the Legal Officer on 25 May 2004, namely that they do not maintain their objection in relation to documents MFI P86.1, MFI P86.2, MFI P86.3 and the hospital records (as yet unmarked) relating to Ivo Vlašica's 1991 injury and treatment.

² See Prosecution's Submissions on the Admission into Evidence of Certain Documents, 21 May 2004. The submissions were later amended to delete the reference in the first sentence of paragraph 4 to the testimony of Dr. Kaiser. The Prosecution indicated that it was no longer seeking to rely on Dr. Kaiser's testimony in relation to document 65 *ter* no. 421. See Amendment to the "Prosecution's Submissions on the Admission into Evidence of Certain Documents", filed 21 May 2004, 24 May 2004. See also Defence Submission Concerning Admissibility, 21 May 2004.

³ Third Amended Indictment of 10 December 2003.

the parties as to whether the relevant injury was to Mr. Vlašica's right or left leg. The following documents speak to this issue.

(a) MFI P84

4. This document was tendered through the Prosecution witness Ivo Vlašica and marked for identification. It is a statement dated 18 February 2004 and signed by Dr. Jakša Šegedin as head of the ward and Mr. Ljiljana Betica-Rodić as head of the hospital confirming that Ivo Vlašica was treated in the surgery ward of the General Hospital in Dubrovnik from 6 - 21 December 1991.

(b) MFI P86.1, P86.2, P86.3

5. These documents, which are official records of the Croatian government relating to Mr. Vlašica's 1991 injury, were tendered by the Prosecution through the witness Ivo Vlašica during the course of his testimony.⁴ At that time, a decision on the admissibility of the documents was delayed to enable the Defence to review the documents, which they had received only one day earlier.⁵ MFI P86.1 is an official decision of the Dubrovnik Office for Work, Health and Social Welfare dated 10 June 1996, recognising Ivo Vlašica as a "civilian war invalid" entitled to "disability benefit" on account of "the wounding of his right upper leg", an injury incurred when he was "wounded by shrapnel on 6 December 1991". MFI P86.2 is the document from the First Instance Medical Committee for the medical examination of the person covered by the Law on the Protection of Military and Civilian War Invalids dated 23 April 1996 and confirms that Ivo Vlašica is entitled to recognition of his invalidity on account of "the wounding of the right upper leg". MFI P86.3 is apparently a substantially illegible handwritten version of MFI P86.2.

(c) Statement of Dr. Jakša Šegedin

6. This document is being tendered for the first time. It is a statement dated 15 April 2004 signed by Dr. Jakša Šegedin the current Chief of the Surgical Trauma Ward at the General Hospital in Dubrovnik. Dr. Šegedin is also the author of MFI P84 and in his statement he provides an explanation of the way in which that document was compiled, as well as giving an overview of the medical records, created contemporaneously with Ivo Vlašica's treatment at the hospital in 1991, which the Prosecution now seeks to tender.

⁴ See T. 3357 - 3361.

⁵ T. 3361.

(d) Hospital records relating to Ivo Vlašica's 1991 injury

7. The Prosecution seeks to tender for the first time five hospital records (labelled "A" through "E") relating to Ivo Vlašica's 1991 injury. Document "A" appears to be the entry for Mr. Vlašica in the hospital's registration log. Document "B" is the case history document for Mr. Vlašica. Document "C" is the Specialist's report, dated 6 December 1991. Document "D" is the report of the X-ray department dated 6 December 1991. Document "E" is the anaesthesia chart also dated 6 December 1991.

2. Damage to property in Dubrovnik

8. The Indictment alleges that numerous buildings and structures were damaged in the course of the shelling of Dubrovnik on 6 December 1991. Schedule II attached to the Indictment lists in greater detail the damage alleged. The following documents are tendered by the Prosecution in connection with these allegations.

(a) MFI P51 and Documents 65 ter nos. 55 and 350

9. In the course of October, November and December 1991, the Institute for the Protection and Conservation of the Historical Monuments of Dubrovnik (hereinafter "Institute") apparently carried out three separate surveys of damage to structures within the Old Town. The first report appears to deal with the damage at the end of October 1991. The second report appears to deal with damage in October and November 1991. The third and last report is cumulative and appears to deal with damage throughout the period 1 October to 31 December 1991. This latter report is the subject of direct evidence and has already been marked for identification in this trial (MFI P51). Together with MFI P51, the two earlier reports (document 65 ter no. 55 and 350, respectively) are now tendered in full for the first time.⁶

3. Meeting between UNESCO representatives and officials of the SFRY and the Republics of Croatia and Serbia

(a) Document 65 ter no. 421

10. This document purports to be the "Minutes of the Meetings with the Authorities in Yugoslavia" by the Mission of Mr. D. Janicot, Director of the Executive Office, Special

⁶ The front cover and the damage report relating to Fort Imperial on Mount Srđj (2 pages in total) from the report of October 1991, and the front cover and the list of the 45 buildings examined (2 pages in total) from the report of October and November 1991, were earlier admitted as Exhibits D82 and D81, respectively. See T. 6137 (Exhibit D81) and T. 6143 (Exhibit D82).

Representative of the Director-General of UNESCO, accompanied by Mr. Vogrić, 28 October – 2 November 1991 (Belgrade, Ljubljana, Zagreb).⁷

II. THE LAW

11. The admissibility of evidence is principally governed by Rule 89 (C) of the Rules of Procedure and Evidence which states that a Chamber “may admit any relevant evidence which it deems to have probative value.”

12. While Rule 89 (C) appears to grant the Trial Chamber “broad discretion”, the Appeals Chamber has held that it “must be interpreted so that safeguards are provided to ensure that the Trial Chamber can be satisfied that the evidence is reliable.”⁸ With this in mind, the Appeals Chamber has indicated that the reliability of a statement is relevant to its admissibility, and not just to its weight. Indeed, “[a] piece of evidence may be so lacking in terms of the indicia of reliability that it is not ‘probative’ and is therefore inadmissible.”⁹ This consideration has been commonly expressed in the case-law as a requirement, said to be implicit in Rule 89 (C), that evidence must have “sufficient indicia of reliability”.¹⁰

13. Although there is no general prohibition against the admission of hearsay evidence in cases before the Tribunal,¹¹ the fact that the evidence is hearsay, and whether the hearsay is first-hand or more removed, may be relevant to a determination of the probative value of that evidence.¹²

14. Written statements, like those of Dr. Šegedin, present a slightly special case as regards admissibility. The regime governing such statements encompasses three provisions of the Rules, the general provision, Rule 89 (C), the more specific Rule 92 *bis*, and Rule 89 (F).

15. Rule 92 *bis* governs the admissibility of “evidence of a witness in the form of a written statement in lieu of oral testimony”.¹³ Its lengthy provisions identify stringent requirements that must be met before such evidence may be admitted.

⁷ The original document bears the ERN nos. 03449330 – 03449339.

⁸ *Prosecutor v. Dario Kordić et al*, Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, paras 20 and 22.

⁹ *Ibid.*, para. 24.

¹⁰ See e.g. *Prosecutor v. Zejnil Delalić et al*, Case No. IT-96-21-AR 73.2, Decision on Application of Defendant Zejnil Delalić for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence, 4 March 1998, paras 19 and 20.

¹¹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

¹² *Ibid.*

¹³ Rule 92 *bis* of the Rules.

16. Rule 89(F) merely states that a Chamber “may receive the evidence of a witness orally or, where the interests of justice allow, in written form.”

17. The Appeals Chamber has held that Rule 89 (C) permits the admission of hearsay evidence in written form, but that the more specific provisions of Rule 92 *bis* must apply where a written statement is prepared for the purposes of legal proceedings.¹⁴ Thus, “[a] party cannot be permitted to tender a written statement given by a prospective witness to an investigator of the OTP under Rule 89 (C) in order to avoid the stringency of Rule 92 *bis*.”¹⁵ Rule 92 *bis* is therefore to be considered as the *lex specialis* “which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89 (C).”¹⁶ As a corollary, hearsay material which was not prepared for the purposes of legal proceedings falls outside the scope of Rule 92 *bis* and is, in principle, admissible under Rule 89 (C), subject to the safeguards implicit in that provision.¹⁷

18. The Chamber will not consider Rule 89 (F) in detail, other than to say that recent jurisprudence indicates that it may allow a party to circumvent the strictures of Rule 92 *bis* in admitting the written statement of a witness that has been prepared for the purposes of legal proceedings, provided that the witness is made available for cross-examination.¹⁸ As there is no immediate suggestion of Dr. Šegedin testifying in this case, the provision would appear not to be available to assist the Prosecution in this application.

19. The Chamber wishes to emphasise that the decision to admit a particular piece of evidence is no indication of the ultimate weight to be accorded to it.

III. DISCUSSION

20. The Chamber turns first to deal with the documents sought to be tendered on the issue of the injury sustained by Ivo Vlašica.

21. Beginning with the medical records of Ivo Vlašica (documents as yet unmarked) and the official records of the Croatian government relating to Ivo Vlašica’s 1991 injury (Exhibits

¹⁴ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002 (hereafter “*Galić Decision*”), paras 27 and 28.

¹⁵ *Ibid.*, para. 31.

¹⁶ *Ibid.*, para. 31.

¹⁷ *Ibid.*, para. 31.

¹⁸ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.4, Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 30 September 2003, paras 16 – 18.

MFI P86.1, P86.2 and P86.3) the Prosecution submits that these documents are admissible pursuant to Rule 89(C) of the Rules.¹⁹ The Defence do not now oppose the admission of these documents.²⁰

22. The Chamber finds these documents to be admissible under the more general provision of Rule 89 (C) of the Rules, rather than being subject to the strictures of Rule 92 *bis*, since they are not “written statements prepared for the purposes of legal proceedings”, being more similar to what the Appeals Chamber described as “official reports written by someone who is not called as a witness”.²¹ Being of the view that the threshold standard for admissibility set out in Rule 89 (C) of the Rules is met in relation to these documents, the Chamber will admit them.

23. As regards the statement of Dr. Šegedin dated 15 April 2004 (document as yet unmarked), the parties submit the following.

24. The Prosecution submits that this document is admissible pursuant to Rule 89 (C) of the Rules. The Prosecution argues that the document is explanatory in nature, tendered to rebut the Defence allegations as to the questionable reliability of Exhibit MFI P84. The Prosecution argues that without the doctor’s clarifying statement, the Chamber will be left with a false impression of the evidence.²²

25. The Defence contends that there is no legal basis for admitting Dr. Segedin’s statement. It submits that it first received a copy of the statement on 17 May at 2.00 p.m. Citing to the Appeals Chamber’s Decision dated 7 June 2002 in the *Galić* case, which held that “[a] party cannot be permitted to tender a written statement given by a prospective witness to an investigator of the OTP under Rule 89 (C) in order to avoid the stringency of Rule 92 *bis*”²³, it further submits that the statement is inadmissible under Rule 89 (C) for this reason.

26. The Chamber finds that Dr. Šegedin’s statement of 15 April 2004 was prepared for the purposes of legal proceedings and therefore, that it cannot be admitted under Rule 89 (C), but must meet the stricter standards of Rule 92 *bis* to be admissible. Consequently, the statement is inadmissible on its face as it does not meet, *inter alia*, the requirements set out in Rule 92 *bis* (B).

27. As regards the statement dated 18 February 2004 and signed by Dr. Šegedin as head of the ward and Mr. Ljiljana Betica-Rodić as head of hospital (MFI P84), the Prosecution submit it is admissible under Rule 89 (C) and the Defence oppose its admission. The Chamber observes that

¹⁹ T. 6729.

²⁰ See Defence written submissions and *supra* fn. 1.

²¹ See *Galić* Decision, paras 27, 28 and 31.

²² T. 6728 – 6729.

²³ *Galić* Decision, para. 31.

this statement is merely a recitation of the matters contained in the original hospital records, which are now before the Chamber. Considering that the Chamber has access to the original documents, this statement has minimal added probative value. However, the statement, which is merely explanatory in nature, has been the subject of direct evidence²⁴ and meets the threshold standard pursuant to Rule 89 (C). Therefore, it will be admitted.

28. The Chamber will now address the admissibility of the three reports of the Institute cataloguing damage to the Old Town of Dubrovnik in October, November and December 1991.

29. The Prosecution argues that the three reports are admissible. In its submission, MFI P51 is admissible on the grounds that it is relevant and probative as to the issue of damage to the Old Town in 1991. The Prosecution states that MFI P51 is not being tendered "as primary evidence of proof of damage to each of those buildings which are listed in the schedule"²⁵ to the Indictment. Rather, it is being tendered on the basis that it "broadly confirms" the evidence of damage given by other witnesses. The Prosecution submits that the necessary indicia of reliability are provided in the testimony of the three witnesses who contributed to parts of the report, namely Mr. Vuković, Mr. Kaiser and Ms. Peko, as well as by comparing the testimony of the eye-witnesses and the video evidence of damage with the contents of the report.²⁶ Further indicia of reliability, it is argued, are found in the fact that the report was not compiled for the purpose of court proceedings, but rather to provide a basis for assessing the extent of the damage and the potential costs of repair.²⁷ The Prosecution further argues that the Defence objection to MFI P51 makes the two earlier reports, apparently by the Institute, on damage "relevant for the filtering process"²⁸, that is, to identify which items of damage listed in the last report (MFI P51) relate to damage which occurred before 6 December 1991.

30. The Defence opposes the admission of the three reports. The Defence submits that in addition to the requirements for admissibility set out in Rule 89 (C) of the Rules, the jurisprudence of the Tribunal has held that reliability is "an inherent component" of any admissibility determination.²⁹ The Defence further submits that in civil law systems, the requirements for admissibility are twofold: firstly, that the evidence is obtained lawfully and, secondly, that the Accused is in a position to challenge the evidence.³⁰ The Defence argues that the fact that nothing is known of the provenance of the reports from October, and October and November 1991 renders

²⁴ T. 3335 – 3337.

²⁵ T. 6750.

²⁶ Prosecution's written submissions, para. 8.

²⁷ Prosecution's written submissions, para. 9.

²⁸ T. 6741. See generally, T. 6738 – 6747 and T. 6750 – 6752.

²⁹ T. 6748.

them inadmissible. As regards MFI P51, the Defence submits that the report is inadmissible on the grounds that it lacks probative value and is unreliable. In addition, it is submitted that since MFI P51 comprises 450 individual notes originally compiled by individuals, many of whom have not testified in this trial, the Defence has not had the opportunity to challenge the contents of large parts of the report.³¹

31. At the outset, the Chamber observes that MFI P51 (the report for the period 1 October to 31 December 1991) has been the subject of a great deal of evidence in this trial.³² Two of its seventeen listed authors and collaborating members (i.e. those who compiled the entries in the report either independently or jointly) have testified in this trial, namely Lucijana Peko and Slobodan Vukovic. In addition, Dr. Colin Kaiser, a UNESCO representative who is listed as one of the consultants to the report, testified as to the general methodology applied in compiling it.³³ The Chamber has heard evidence about the way in which the report was compiled, each of its approximately 450 entries on damage having been documented by one or more of the seventeen listed authors and collaborating members,³⁴ many of whom had no previous experience in documenting war damage.

32. The report purports to deal with damage between 1 October and 31 December 1991. Of course that includes damage caused on 6 December 1991, which is the damage the subject of the Indictment, but it is necessary, therefore, to be able to separate out damage dealt with in the report which was caused on 6 December, from all other damage. The report itself purports to identify the damage caused on 6 December by the date of damage given for each building surveyed. However, it is manifest from the evidence that, in the case of most buildings, the sole basis for the asserted date is hearsay information obtained from unknown persons who are described merely as neighbours or tenants.³⁵ Whether the neighbours spoke from personal knowledge or hearsay knowledge is not known. The report itself, as a document, is therefore not shown to be reliable as to an essential factual issue, i.e. the date on which damage was caused. The position with respect to the type of projectile is much the same, although it is not so critical.³⁶ While other oral and video evidence may enable the identification of some damage dealt with in the report as having been caused on 6 December 1991, this damage appears to be dealt with in those parts of the report which

³⁰ T. 6749.

³¹ T. 6749. See generally T. 6748 – 6750 and T. 6752. See also Defence written submissions, paras 9 – 17.

³² In total, the Chamber heard 12 full days of evidence relating to MFI 51.

³³ In some cases, Colin Kaiser carried out the inspections personally and he himself compiled several of the minutes in relation to certain damage. However, even for those parts of the report he himself compiled, he testified that he would be unable to testify to anything without going back and looking at the original forms. T. 2549 – 2554, T. 2682 – 2687.

³⁴ Colin Kaiser in his testimony agreed that the report consists of individual minutes or records that were made related to the individual buildings and structures. T. 2552.

³⁵ See e.g. T. 6090 and T. 6101.

are separately admitted into evidence as distinct exhibits. As another possible means of identifying which damage in the report was caused on 6 December 1991, the Prosecution also seeks to rely on the two earlier Institute damage reports which are dealt with elsewhere in these reasons. However, as is discussed below, the Prosecution has not led any evidence as to the provenance of the two earlier reports, and, furthermore, there is no evidence to indicate these reports are either reliable or exhaustive as to the damage caused before 6 December 1991.

33. The Chamber also recalls the fact that the report (MFI P51) was originally conceived as, and still bears the title of a "preliminary" report. That is to say, the expectation of its authors was that a final report on damage would follow. Finally, the Chamber observes that although the intention of the authors of the report may have been to catalogue damage from 6 December 1991, as appears from both the title and the contents, earlier damage has also been recorded.³⁷ Even Colin Kaiser, one of the consultants, refused to vouch for the accuracy of the report, stating "You know I didn't carry out this survey. You know I wasn't looking at the teams. You know I am not responsible for this work."³⁸

34. Recalling the fact that any assessment of the probative value of a particular piece of evidence must include an evaluation of its reliability, the Chamber finds that only those entries in the report (MFI P51) where the damage review was personally undertaken and subsequently confirmed in court by an author, in this case, Lucijana Peko³⁹ and Slobodan Vukovic⁴⁰ bear sufficient indicia of reliability to meet the threshold standard for admission under Rule 89 (C). Even these entries are subject to questions of reliability insofar as the entries rely on hearsay with respect to the date of the damage and the type of projectile.

35. The Chamber recalls that it has already admitted as Exhibit P174 those entries contained in MFI P51 relating to structures which were personally inspected by Slobodan Vukovic.⁴¹ In admitting the extracts, the Presiding Judge, speaking for the Chamber, stated the following:

Could I indicate that the live question clearly is the reliability that is to be attached to the content, but on the face of the present evidence, the document is clearly relevant. It is clearly directly of probative value to issues which this Chamber must decide. And it is of a nature which on the present evidence indicates that it is the product - the work - of the witness with others, and he vouches generally for its accuracy and reliability.

³⁶ See e.g. T. 6089 and T. 6090 - 6091.

³⁷ T. 2580 - 2584.

³⁸ T. 2925 - 2696.

³⁹ See T. 1862, where Lucijana Peko confirms the list of buildings (admitted as P52) which she personally examined.

⁴⁰ See T. 5922, where Slobodan Vukovic confirms the list of buildings that he personally examined.

⁴¹ See T. 5927 - 5928.

For the same reasons, the Chamber finds those entries in MFI P51 relating to structures personally reviewed by Lucijana Peko and listed in Exhibit P52 to be admissible as relevant and probative in relation to the issue of property damage. The remaining entries in the report are, in the Chamber's view, inadmissible as they do not bear sufficient indicia of reliability to be of assistance to the Chamber.

36. The Chamber finds the two earlier reports on damage, apparently prepared by the Institute, to be inadmissible. The Prosecution has not led any evidence as to the way in which these reports were prepared. The Chamber, therefore, has no basis on which to make an assessment as to the reliability of these documents and must decline to admit them. The Prosecution's submission that these two earlier reports have become relevant because of the Defence objection to MFI P51 is illogical. The Prosecution case alleges only damage caused on 6 December 1991. MFI P51 has always dealt with damage caused between 1 October 1991 and 30 December 1991. If the two earlier reports serve to identify what was damaged before 6 December 1991, as is contended, and therefore, when read with MFI P51 enable the damage caused on 6 December 1991 to be identified, which seems to be the effect roughly of the Prosecution's contention, then it has always been the case that it was essential for the Prosecution to have the two earlier reports in evidence to be read with MFI P51 which the Prosecution has constantly sought to tender. Yet no effort whatsoever has been made to authenticate or to provide in evidence anything relating to the reliability of the two earlier reports. It is quite misleading to suggest the two earlier reports have only become relevant because of the position taken by the Defence to MFI P51. The Defence has done no more than point out the defect in the Prosecution's position.

37. The final document for consideration is document 65 *ter* no. 421.

38. The Prosecution submits that it would have sought to tender this document through Mr. Janicot, who was originally listed as a witness in the Prosecution case, but who will not now appear. The Prosecution originally submitted that Dr. Colin Kaiser testified as to his attendance at the meetings to which the document relates, thus "laying a foundation" for its admission into evidence.⁴² However, this submission was later withdrawn by the Prosecution, as the evidence of Dr. Kaiser upon which it sought to rely appears to relate to a meeting which took place at the end of November 1991, rather than at the end of October, beginning of November 1991.⁴³

⁴² Prosecution's written submissions, para. 4.

⁴³ See *supra* fn. 2.

39. In the Defence submission, this document is inadmissible as it does not meet the basic requirements for admissibility, in that the authenticity, source and time of the document are unknown.⁴⁴

40. The Chamber observes that while Dr. Kaiser's testimony about the content of a meeting that Mr. Janicot and he attended with authorities in the former Yugoslavia⁴⁵ appears to be broadly consistent with the content of the meeting minuted in the document whose tender is sought, the fact is that Dr. Kaiser's recollection of the date on which the meeting was held differs from the date indicated in the minutes by more than a month. Under these circumstances, the Chamber is of the view that, the foundation in the evidence for the admission of this document is insufficient. The document, therefore, will not be admitted.

IV. DISPOSITION

41. Based on the foregoing, the Chamber will admit the following documents into evidence:

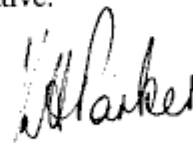
- MFI P84, MFI P86.1, MFI P86.2, MFI P86.3
- Hospital records of Ivo Vlašica relating to treatment for his 1991 injury
- Those entries in MFI P51 reviewed by Lucijana Peko and listed in Exhibit P52.

The remaining documents, or parts thereof, are not admitted.

42. The Chamber requests the Registry to (a) mark as exhibits documents P84, P86.1, P86.2, P86.3 and to (b) assign exhibit numbers to those documents which are now admitted and which have not previously been marked for identification, and to inform the Chamber and the parties of the exhibit numbers in writing as soon as practicable.

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

Dated this twenty-sixth day of May 2004
At The Hague
The Netherlands



Judge Kevin Parker
Presiding

[Seal of the Tribunal]

⁴⁴ T. 6753.

⁴⁵ See T. 2380 – 2383.