



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-05-88/2-T

Date: 7 February 2012

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 7 February 2012

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON FIRST MOTION BY THE ACCUSED FOR
ADMISSION OF DOCUMENTS FROM THE BAR TABLE**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

THIS TRIAL CHAMBER of the 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 (“Tribunal”) is seized of the Accused’s “First Request for Admission of Documents from the Bar Table”, submitted in BSC on 30 November 2011 and filed publicly in English on 7 December 2011 (“Motion”), and hereby renders its decision thereon.

I. GENERAL SUBMISSIONS

1. In the Motion, the Accused seeks the admission of seven documents (“Proposed Documents”) from the bar table pursuant to Rules 73 and 89(C) of the Rules of Procedure and Evidence (“Rules”).¹ He submits that the Proposed Documents are relevant as they directly relate to the charges against him concerning the persecution of the civilian population of the Žepa enclave.² The Accused further submits that the Proposed Documents are authentic and were produced during the events in Žepa in July 1995, and as such, their content is clear and there is no need to present them through witnesses.³ Finally, the Accused submits that the Proposed Documents form part of a collection of evidence that the Prosecution had disclosed to him (“Žepa collection”) and that is included in the Electronic Disclosure System.⁴

2. The Prosecution filed its public “Consolidated Response to the Accused’s First and Second Bar Table Motions, With Appendices A-C” (“Response”) on 20 December 2011⁵ whereby it made specific submissions with respect to each proposed document but did not challenge their relevance.⁶

II. APPLICABLE LAW

3. Rule 89 provides, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

4. The admission of evidence from the bar table is a practice established in the case law of the Tribunal.⁷ Evidence may be admitted from the bar table if it is considered to fulfill the requirements

¹ Motion, para. 1.

² Motion, para. 2.

³ Motion, para. 2.

⁴ Motion, para. 3. The Accused submits that this collection is included in one binder entitled “Žepa 1995” (ERN 0185-4640-0185-5698) that is bearing the stamp of the “Assembly of the Republic of Bosnia and Herzegovina, Sarajevo” and is preceded by an archival list (“Archival List”) with the ERN 0185-4643-0185-4643 (Appendix A to the Prosecution’s Response).

⁵ Response, para. 1.

⁶ See Response, paras. 3–9, to be dealt with in further detail in Section III of this Decision.

set out in Rule 89. Once these requirements are satisfied, the Chamber maintains discretion over the admission of evidence under Rule 89.

III. SPECIFIC SUBMISSIONS AND DISCUSSION

5. The Chamber recalls its “Order Concerning Guidelines on the Presentation of Evidence and Conduct of Parties during Trial”, filed on 24 February 2010, wherein it stated that the “preferred method for tendering evidence is for the evidence to be tendered through a witness while the witness is on the stand”.⁸ The Chamber considers, nonetheless, that the admission of evidence through the bar table is an efficient method by which contemporaneous, documentary evidence can be considered for admission if all requirements for admission are satisfied.⁹

6. The specific documents sought for admission by the Accused are Ex. D00102 (MFI) and its alternate version Rule 65 *ter* number 1D00962; Ex. D00110 (MFI) and its alternate version rule 65 *ter* number 1D00963; as well as Rule 65 *ter* numbers 1D00736, 1D00960 and 1D00961. The Chamber notes that the Prosecution has not challenged the relevance of the Proposed Documents. It will deal with the parties’ specific submissions and its discussion of these documents in more detail below.

(a) Ex. D00102 (MFI) and Ex. D00110 (MFI) and their alternate versions

7. Ex. D00102 (MFI) and Ex. D00110 (MFI) have been discussed with Hamdija Torlak during his testimony on 31 August 2010¹⁰ and 1 September 2010, respectively. They were marked for identification pending additional information about their source and background.¹¹ The Accused submits that he acquired these two documents from a CD accompanying Semir Halilović’s book *Državna Tajna /State Secret/*.¹² The Accused further submits that he has located identical versions

⁷ See, e.g., *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on the Prosecution’s First Bar Table Motion, 13 April 2010; *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion to Re-Open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table, 7 December 2009; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Admission of Exhibits from the Bar Table, Motion to Amend the Bar Table Motion, and Oral Motion for Admission of Additional Exhibit, 14 March 2008; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006.

⁸ Order Concerning Guidelines on the Presentation of Evidence and Conduct of Parties during Trial, 24 February 2010, para. 20.

⁹ Decision on Prosecution’s Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 11.

¹⁰ In his Motion, the Accused submits incorrectly that the respective exhibit was marked for identification on 31 October 2010, whereas it was marked for identification on 31 August 2010.

¹¹ Motion, para. 5. See Hamdija Torlak, T. 4665 (31 August 2010) and Hamdija Torlak, T. 4792 (1 September 2010).

¹² Motion, paras. 6, 9.

of Ex. D00102 (MFI) and Ex. D00110 (MFI) disclosed by the Prosecution in its Žepa collection; these are, respectively, Rule 65 *ter* numbers 1D00962¹³ and 1D00963.¹⁴

8. The Prosecution submits that Rule 65 *ter* number 1D00962 is a more complete and better legible version of Ex. D00102 (MFI) and agrees to its admission, with the provision of a revised translation.¹⁵

9. The Accused has satisfied the Chamber of the provenance of Ex. D00102 (MFI). The relevance of this document is not in dispute. Further, the Chamber notes that issues with respect to the poor quality of Ex. D00102 (MFI) and its accompanying translation arose during the testimony of Defence Witness Petar Skrbić on 31 January 2012.¹⁶ The Accused informed the Chamber that it had already requested a revised translation of the more legible alternate version, namely Rule 65 *ter* number 1D00962, which it will upload into e-court upon receipt. Rule 65 *ter* number 1D00962 was subsequently assigned Ex. D00349 (MFI) pending review of the translation.¹⁷ Considering that both exhibits were discussed during the testimony of Hamdija Torlak and Petar Skrbić respectively, the Chamber is of the view that both documents should be kept in evidence, in other words, Rule 65 *ter* number 1D00962, now Ex. D00349 (MFI), with its pending more complete and better legible version as well as Ex. D00102 (MFI) with its corresponding translation.

10. In light of the above, the Chamber will admit Ex. D00102 into evidence. In order to point to the existence of the more legible version, the Chamber requests the Registry to add a surrogate sheet in e-court accompanying Ex. D00102, to indicate the presence of a better legible version at Ex. D00349 (MFI).

11. The Accused, similarly, has satisfied the Chamber of the provenance of Ex. D00110 (MFI). Its relevance is not in dispute. The Prosecution submits it does not oppose its admission, but submits that there is no need for the admission of the identical alternate version located by the Accused, that is Rule 65 *ter* number 1D00963.¹⁸

12. The Chamber will admit into evidence Ex. D00110. It however sees no need for the admission of Rule 65 *ter* number 1D00963, the identical alternate version of the proffered exhibit in question.

¹³ Motion, para. 7. The Chamber notes that the Accused referred to the document as Rule 65 *ter* number 1D00926 in paras. 4 and 7 of his Motion. The correct number is, however, Rule 65 *ter* number 1D00962, as stated for example in paras. 1 and 3 of the Motion and as reflected in e-court.

¹⁴ Motion, para. 9.

¹⁵ Response, para. 3, fn. 6.

¹⁶ See T. 18627–18629 (31 January 2012).

¹⁷ See T. 18633 (31 January 2012).

¹⁸ Response, para. 5.

(b) Rule 65 ter number 1D00736

13. Rule 65 *ter* number 1D00736 is a document with an annexed letter dated 25 July 1995 signed by Alija Izetbegović, addressed to the President of the Security Council requesting that it orders the evacuation of the civilian population from Žepa under the full protection of UN troops.¹⁹ The Prosecution has no objection to its admission.²⁰

14. Having reviewed the Accused submission and the document in question, the Chamber is satisfied with its relevance and probative value as set out under Rule 89 and that the Accused has demonstrated how it fits into the case. The Chamber will therefore admit this document into evidence.

(c) Rule 65 ter number 1D00690

15. Rule 65 *ter* number 1D00690 is entitled “Analysis and Chronology of Events in Žepa from 11 July to 20 July 1995” disclosed by the Prosecution in its Žepa collection.²¹ The document displays a chronology of events within the specified time period, including, *inter alia*, “the activities of the aggressor”, “the activities of our forces”, as well as information as to the “security and morale condition”. The Accused submits that this document demonstrates, *inter alia*, that there was a “strong link between the Žepa Brigade and the Main Staff of the BH Army”, and that it is relevant for establishing the reasons for the attacks on Srebrenica and Žepa.²² The Prosecution does not object to its admission, but takes issue with the Accused assertions regarding the date, authorship and recipient of the document.²³

16. The Chamber notes that its interpretation of a document in evidence is not bound by the submissions of the parties. Having reviewed the document in detail, in particular the events and dates discussed therein, it is satisfied with its relevance and probative value as set out under Rule 89. In addition, the Accused has satisfactorily demonstrated how the proffered document fits into the case. The Chamber shall therefore admit Rule 65 *ter* number 1D00960 into evidence.

(d) Rule 65 ter number 1D00961

17. Rule 65 *ter* number 1D00961, entitled “Draft Plan for the Evacuation of Žepa”, was signed in Sarajevo on 18 July 1995 by Dr. Bećir Heljić, Rašid Kulovac and Sejdaljija Sućeska and bears a

¹⁹ In his Motion, the Accused refers to the document as bearing the United Nations Document Number S/1995/661, however this should read S/1995/611 instead as the uploaded document in the e-court system sets out. See Motion, para. 10.

²⁰ Response, para. 6.

²¹ Motion, paras. 12–17.

²² Motion, paras. 15–16.

stamp. The Accused submits that this document supports the argument that the Muslim leadership had an intention to evacuate the population of Žepa.²⁴ He submits that the document is of key importance in light of the charge of alleged persecution.²⁵ The Prosecution submits that Rule 65 *ter* number 1D00961 is not complete in that it excludes the accompanying cover page.²⁶ This cover page is a letter dated 18 July 1995 addressed to General Delić, bearing a signature, handwritten initials, and type-signed initials “A.I.” as well as a stamp of the Republic of Bosnia and Herzegovina.²⁷ According to the Prosecution, paragraph 4 of this letter notes the attachment of the “Draft Plan for the Evacuation of Žepa”, that is Rule 65 *ter* number 1D00961.²⁸ Upon condition that this cover letter is included with the proffered document, the Prosecution does not oppose the admission of Rule 65 *ter* number 1D00961.²⁹

18. The Chamber is satisfied that the Accused has demonstrated how the proposed document fits into the case and, moreover, that it is relevant and has probative value as set out under Rule 89. However, having reviewed the Archival List accompanying the Prosecution’s Žepa collection, the Chamber notes that the document in question indeed consists of three, not only two pages.³⁰ It also notes that the missing cover letter to the “Draft Plan for the Evacuation of Žepa” is not translated into English yet.³¹ In light of the above and for the exhibit to mirror a complete picture of the events, the Chamber grants admission of this document on the condition that the cover letter is included as part of Rule 65 *ter* number 1D00961. Since the translation of the cover letter is still outstanding, the proposed exhibit shall be marked for identification pending translation of the cover letter.

IV. DISPOSITION

Accordingly, for the reasons set out above, pursuant to Rule 89 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART**, and:

(1) **ADMITS** into evidence Ex. D00102 previously marked for identification, and

REQUESTS the Registry to add a surrogate sheet to Ex. D00102 in order to provide a cross-reference to the more legible version, that is Ex. D00349 (MFI) pending translation;

²³ Response, para. 7.

²⁴ Motion, paras. 18–20.

²⁵ See Motion, para. 21.

²⁶ Response, para. 8.

²⁷ Response, para. 8, See Appendix B to Response.

²⁸ Response, para. 9. Appendix B to Response, para. 4.

²⁹ Response, para. 9.

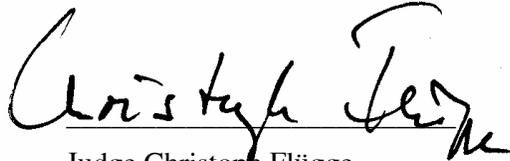
³⁰ Appendix A to Response, item 17.

³¹ The Prosecution notes that a translation of the cover letter is outstanding, Response, fn. 19.

- (2) **ADMITS** into evidence Ex. D00110 previously marked for identification;
- (3) **ADMITS** into evidence Rule 65 *ter* numbers: 1D00736, 1D00960 and requests the Registry to assign exhibit numbers for each of these documents; and
- (4) **ADMITS** into evidence the two page document assigned Rule 65 *ter* number 1D00961, and

REQUESTS the Registry to include the cover letter bearing ERN number 0185-4663-0185-4663 with the other two pages currently uploaded under Rule 65 *ter* number 1D00961, to assign an exhibit number to this document as a whole, and to mark it for identification pending translation of the cover letter.

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



Judge Christoph Flügge

Presiding Judge

Dated this seventh day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]