



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-08-91-T
Date: 13 March 2012
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 13 March 2012

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION DENYING PROSECUTION'S MOTION TO
ADMIT INTO EVIDENCE MFI P171 AND P911**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. Trial Chamber II (“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 Prosecution’s motion to remove ‘MFI’ designation and admit into evidence exhibits P00171 and P00911, filed on 20 January 2012. The Defence for Mićo Stanišić (“Defence”) responded on 23 January opposing the Motion (“Response”).¹

2. P171 is a newspaper article according to which Mićo Stanišić attended the establishment of certain police units in Trebinje on 1 April 1992. P911 is a report by the Bosnia and Herzegovina (“BiH”) Ministry of Interior (“MUP”) dated 6 March 1992 about the security situation in Sarajevo from 1 to 4 March 1992.

II. PROCEDURAL BACKGROUND

3. On 15 December 2010, the Trial Chamber denied the Prosecution’s request to add P171 to its Rule 65 *ter* exhibit list.² It held that although the document is *prima facie* relevant and probative to issues in the case, Aleksandar Krulj, who testified about it, did not authenticate it.³ It further found that the Prosecution was not diligent in the search of its archive prior to filing its Rule 65 *ter* exhibit list, that it was not clear when P171 was disclosed to the Defence, and that in order to ensure adequate protection of the rights of the Accused, it was not in the interest of justice to add P171 to the Prosecution’s Rule 65 *ter* exhibit.⁴

4. On 29 January 2010, the Trial Chamber marked for identification (“MFI”) P911 on the basis that the witness to whom it was put at the time had not seen it before, had reservations about the document, and that it was incomplete.⁵

5. On 15 December 2011, the Trial Chamber invited the parties to review 53 outstanding MFI documents and to inform the Trial Chamber of their positions on these documents.⁶ As a result, the parties notified the Trial Chamber that with respect to 12 documents, there was no longer an

¹ Stanišić response opposing the Prosecution’s motion to remove ‘MFI’ designation and admit into evidence P00171 and P00911, 23 January 2012.

² Decision granting in part Prosecution’s motion to amend its Rule 65 *ter* exhibit list to add documents marked for identification, 15 December 2010 (“15 December 2010 Decision”), paras 30, 33.

³ 15 December 2010 Decision, para. 30.

⁴ *Ibid.*, para. 31.

⁵ Hearing, 29 January 2010, T. 5820.

⁶ Hearing, 15 December 2011, T. 26423.

objection to their admission into evidence and the Trial Chamber admitted them into evidence.⁷ The parties further notified the Trial Chamber that they no longer sought to have admitted into evidence 37 documents and that one document on the Trial Chamber's list had already been admitted.⁸

6. At the hearing of 18 January 2012, the Trial Chamber denied the admission into evidence of P171 and P911 partly because the witnesses to which they were shown could not testify to their contents, and partly because the Prosecution missed the opportunity to tender them through its bar table motion.⁹ The Prosecution then indicated that it was in the process of making a written motion on this matter, and asked for the decision to be revoked.¹⁰ The Trial Chamber granted this request and the Prosecution filed the Motion.¹¹

III. SUBMISSIONS

7. In the Motion, the Prosecution submits that the reason it wants to have P171 admitted into evidence is to show that Mićo Stanišić was in Trebinje on 1 April 1992 and not that a special police unit was established there at that time.¹² It argues that Aleksandar Krulj confirmed Stanišić's presence in Trebinje at this time, and also that a group of policemen was summoned to salute him.¹³ The Prosecution further argues that the Trial Chamber's finding on Stanišić's whereabouts on 1 April 1992 may have a substantial effect on a number of issues in this case, and that P171 should be evaluated in light of different testimonies and exhibits.¹⁴

8. The Prosecution further submits that P171 supports its challenge to the authenticity of exhibit 1D78.¹⁵ According to the Prosecution, the latter exhibit purports that Mićo Stanišić was at a meeting of the SR BiH Advisory Board" elsewhere from Trebinje on 1 April 1992.¹⁶ The Prosecution adds that Defence expert Bajagić relied on this exhibit when he concluded that all three parties in BiH accepted that each one of them had the right to establish its own ministry of internal affairs.¹⁷ It argues that there was a meeting of the BiH joint MUP on 1 April 1992 which was attended by the then Minister Delimustafić and his senior staff who all signed a dispatch regarding

⁷ Hearing, 18 January 2012, T. 26658, 26659.

⁸ Prosecution's notification of documents given an 'MFI' designation, for which admission into evidence is not requested, 19 January 2012; Notice of exhibits previously marked for identification that the Stanisic [sic] Defence no longer seeks to tender into evidence, 19 January 2012; Supplement to notice of exhibits previously marked for identification that the Stanisic [sic] Defence no longer seeks to tender into evidence, 20 January 2012; Župljanin Defence notice on voluntary rejection of proposed evidence to be admitted as defence exhibit, 19 January 2012.

⁹ Hearing, 18 January 2012, T. 26659.

¹⁰ Hearing, 18 January 2012, T. 26660-26662.

¹¹ Hearing, 18 January 2012, T. 26660-26662.

¹² Motion, paras 10-12.

¹³ *Ibid.*, para. 5.

¹⁴ *Ibid.*, para. 12, see also fn. 12.

¹⁵ *Ibid.*, paras 7-8.

¹⁶ *Ibid.*, para. 7.

that meeting.¹⁸ The Prosecution submits that the absence of Mićo Stanišić's signature on that dispatch can be explained by his presence elsewhere, namely in Trebinje.¹⁹

9. As to the applicable legal standard, the Prosecution argues that the request to have P171 admitted into evidence should not be treated as a request for reconsideration, as the current application is not about adding the document to its Rule 65 *ter* list, but rather about having it admitted into evidence.²⁰ In case the Trial Chamber disagrees, the Prosecution requests leave to make a separate filing regarding P171 in the form of a motion for reconsideration.²¹

10. With regard to P911, the Prosecution argues that the reservations that the Trial Chamber had at the time it MFI'd the document "should now fall away".²² It submits that Defence witness Dragan Andan testified that the report was consistent with what he heard and saw at the time.²³ It further submits that exhibit P643 complements P911, and that a number of intercepted telephone conversations corroborate the information in P911.²⁴

11. The Defence submits that the Motion, in so far as it is dealing with P171, should have been a motion for reconsideration as the Trial Chamber denied the addition of this document to the Rule 65 *ter* list.²⁵ It argues that the Prosecution has failed to plead its application properly and has not shown an error in reasoning in respect of this document.²⁶ The Defence adds that it has consistently objected to the admission of newspaper articles as hearsay evidence and that witness Aleksandar Krulj described the contents of the article to be "a pure lie".²⁷ With regard to the Prosecution's reliance on other evidence in support of its Motion, the Defence submits that the Prosecution's submissions are incomplete and do not reflect the evidence.²⁸ Moreover, it goes on, those submissions are irrelevant to the issue at hand.²⁹

12. As to P911, the Defence submits that none of the three witnesses to whom this document was shown ever saw the report.³⁰ It adds that when the Prosecution showed the document to witnesses Dragan Andan and Goran Mačar it did not request that the MFI designation be

¹⁷ *Id.*

¹⁸ *Ibid.*, para. 10, referring to Exhibit P2320.

¹⁹ *Ibid.*, para. 10.

²⁰ *Ibid.*, fn. 6, pp. 2, 3.

²¹ *Id.*

²² *Ibid.*, para. 17.

²³ *Ibid.*, para. 14.

²⁴ *Ibid.*, paras 15, 16, 18.

²⁵ Response, paras 3-5.

²⁶ *Ibid.*, para. 5.

²⁷ *Ibid.*, para. 6.

²⁸ *Ibid.*, para. 7.

²⁹ *Id.*

³⁰ *Ibid.*, para. 8.

removed.³¹ The Defence further submits that Vitomir Žepinić testified that the document is incomplete, not fully accurate and not an official MUP report.³²

13. In Reply, the Prosecution reiterates why it chose not to file the motion in respect of P171 as a motion for reconsideration, adding that the issue of Mićo Stanišić's whereabouts on 1 April 1992 only became significant in light of the testimony of Defence expert witness Bajagić and the contents of Exhibit P2320.³³ The Prosecution further argues that Aleksandar Krulj's evidence that the document was a "pure lie" only refers to the part of the document about the review of some special police unit.³⁴

IV. DISCUSSION

14. As noted above, the Trial Chamber denied the Prosecution's request to add P171 to the Prosecution's Rule 65 *ter* list on the basis that Aleksandar Krulj was unable to authenticate it, and in order to ensure adequate protection of the rights of the Accused. Since then, the Prosecution showed the document to Defence witness Goran Mačar who had nothing to say about the document.³⁵ The Prosecution did not tender P171 either through Aleksandar Krulj or through Goran Mačar. The first time it sought to tender P171 was through the Motion, on the basis that the document shows the whereabouts of Mićo Stanišić on 1 April 1992, which in the Prosecution's view is a matter which may have a substantial impact on the Trial Chamber's finding about a number of other issues.³⁶ The Motion as such is a new motion, and not a motion for reconsideration of the Trial Chamber's 15 December 2010 Decision.

15. However, the fact that the Trial Chamber denied the addition of P171 to the Prosecution's Rule 65 *ter* list in that Decision is an important factor in the consideration of the present Motion. Ordinarily, according to the practice at the Tribunal, a party tendering a document into evidence must make sure that the document is on its Rule 65 *ter* exhibit list.³⁷ Only then can the document be tendered into evidence. The Prosecution has failed to explain how this procedural step should be omitted in the present case.

³¹ *Id.*

³² *Id.*

³³ Reply, para. 3.

³⁴ *Ibid.*, para. 4.

³⁵ Goran Mačar, 12 July 2011, T. 23162, 23163.

³⁶ Among those issues, the Prosecution mentions the efficacy of the conclusions drawn by the Defence police expert Professor Bajagić, the authenticity and accuracy of other exhibits, "the knowledge and intent of key participants in the events, and the credibility of various witnesses", Motion, para. 12.

³⁷ Order on guidelines on the admission and presentation of evidence ("Guidelines"), 10 Sep 2009, Annex A, para. 6; Public redacted Decision on Prosecution's motions for admission of evidence pursuant to Rule 92 *ter* (ST012 and ST019), 2 October 2009, para. 23.

16. The Prosecution sought to tender P171 following the Trial Chamber's invitation to the parties to review the outstanding MFIs. The Trial Chamber finds that the Prosecution has had ample opportunity to ask for reconsideration of the 15 December 2010 Decision prior to this invitation. Considering the stage of the trial when the Motion was filed—the presentation of evidence by the parties had been concluded,³⁸ and the Trial Chamber was in the process of calling three Chamber's witnesses³⁹—the Trial Chamber finds that the Prosecution's Motion in respect of P171 is untimely.

17. Moreover, the Trial Chamber notes that it has previously held that newspaper articles are often not sufficiently reliable to serve as evidence unless they have been tendered through a witness.⁴⁰ The Trial Chamber recalls that Rule 89(D) of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that a Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. For the foregoing reasons, the Trial Chamber will therefore deny the Motion in respect of P171.

18. With regard to P911, the Trial Chamber notes that since it marked this document for identification on 29 January 2010, the document was shown to Defence witnesses Dragan Andan and Goran Mačar on 31 May and 11 July 2011 respectively.⁴¹ The Prosecution did not tender this document on either of these occasions. However, considering that P911—unlike P171—is on the Prosecution's Rule 65 *ter* list, the Trial Chamber will consider the Motion in respect of P911.

19. Dragan Andan testified that, on the basis of his personal experience, parts of the document in relation to Sarajevo are "probably correct".⁴² He never saw the document and stated that he had no information about what was reported about other places mentioned in the document.⁴³ Moreover, when Goran Mačar was shown the document, he stated that he had never seen it, and did not testify to its contents.⁴⁴ The Trial Chamber is not convinced that the testimony of Dragan Andan concerning this document meets the threshold for admissibility into evidence as set out in Rule 89(C) of the Rules.

20. Turning to the Prosecution's argument that P911 is corroborated by exhibit P643 and intercepts of telephone conversations which are also in evidence, the Trial Chamber finds that the

³⁸ At the moment there is however a pending confidential Prosecution motion seeking leave to present evidence in rebuttal filed on 17 February 2012.

³⁹ Order scheduling the appearance of three witnesses pursuant to Rule 98, 15 February 2012.

⁴⁰ Decision granting in part the Prosecution's bar table motion and granting the Prosecution's supplemental bar table motion, 1 February 2011, para. 20.

⁴¹ Dragan Andan, 31 May 2011, T. 21586; Goran Mačar, 11 July 2011, 21132-23133.

⁴² Dragan Andan, 31 May 2011, T. 21586.

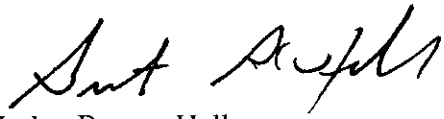
⁴³ *Id.*

⁴⁴ Goran Mačar, 11 July 2011, 21132-23133. The Trial Chamber notes that on this occasion the document was referred to as P991 whereas it should have been referred to as P911, as it was later corrected – see Goran Mačar, 20 July 2011, T. 23597.

Prosecution has not sufficiently shown how P911 is corroborated by these documents. In the view of the Trial Chamber, the Prosecution's argument that there is a link between P643 and P911 is not supported by its reference to the testimony of Vitomir Žepinić.⁴⁵ On that occasion, the witness stated that P911 was partially accurate, incomplete and that he would not accept it as an official MUP report.⁴⁶ As to the telephone intercepts, the Prosecution merely lists eight exhibits without explaining their connection to P911. For the foregoing reasons, the Trial Chamber will deny the admission into evidence of P911.

21. For the reasons set out above and pursuant to Rule 89(C) and (D) of the Rules, the Trial Chamber **DENIES** the Motion.

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


Judge Burton Hall
Presiding

Dated this 13th day of March 2012

At The Hague

The Netherlands

[Seal of the Tribunal]

⁴⁵ See Motion, para. 15.

⁴⁶ Vitomir Žepinić, 29 January 2010, T. 5819-5820.