



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-95-5/18-T

Date: 3 May 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 3 May 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON THE ADMISSION OF EXHIBITS THROUGH HERBERT OKUN

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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”), *ex proprio motu*, issues this decision in relation to the admission into evidence of certain exhibits.

1. On 22–28 April 2010, during the course of hearing the testimony of Herbert Okun (“witness”), both the Office of the Prosecutor (“Prosecution”) and the Accused sought the admission into evidence of a number of documents. Among the items shown to the witness were extracts from records of sessions of the Bosnian Serb Assembly held in 1991 and 1992. In accordance with its practice concerning the admission of parts of large documents used with a witness, the Chamber initially admitted only those portions of the records that were put to the witness. However, on 27 April 2010, the presiding Judge stated as follows:

the Chamber had the opportunity to reconsider the issue of admission of these kind of contemporaneous record, given that they are minutes of the assemblies, and, as such, they are relevant and of probative value. And if both parties agree, for convenience and everything, we are minded to admit it in its entirety.¹

Accordingly, and in light of the fact that both the Prosecution and the Accused agreed that the entire records of the relevant Assembly sessions should be in evidence, the Chamber admitted into evidence in their entirety the documents with Rule 65 *ter* numbers 00002, 00005, 00007, 04984, and 00009, as exhibits D82, D83, D84, D85, and D86, respectively.² Similarly, the Chamber admitted exhibits D88, D89, D90, D92, D115 in their entirety, also being records of Assembly sessions.

2. Having reviewed the transcript, the Trial Chamber considers it necessary to ensure that a consistent approach is taken with regard to these Assembly records shown to a witness during his or her testimony, where it is clear that they are relevant and of probative value and where both parties agree that they should be in evidence. For this reason, the Trial Chamber will also reconsider its earlier decision to admit only selected pages of the document with Rule 65 *ter* number 06147 and will instead admit the entirety of this document with the exhibit number D87.³ The Chamber notes, in contrast, that no part of the Assembly records with Rule 65 *ter* numbers 00055 and 00061 were shown to the witness during his oral testimony, but rather that selected pages of these documents were admitted as associated exhibits pursuant to Rule 92 *ter* of the Rules, as P795 and P796 respectively. Only those pages of the documents put to the

¹ T. 1721 (27 April 2010).

² T. 1722 (27 April 2010).

³ See T. 1719 (27 April 2010).

witness during his prior testimony, admitted in this case pursuant to Rule 92 *ter*, can be considered to be indispensable and inseparable parts of that admitted prior testimony.

3. In addition, the Chamber takes this opportunity to remind the parties of the terms of its Order on the Procedure for the Conduct of the Trial, with regard to documents that are marked for identification. Any item which is marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.⁴ Thus, when the difficulty pertaining to a document which has been marked for identification has been resolved by, for example, the English translation of the document being uploaded into e-court, the offering party should inform the Chamber either orally or in writing, and the Chamber will then decide on the admission of that item. The parties should endeavour to resolve the reason for the document being marked for identification as soon as possible.

4. The Chamber notes that there remain five items that were marked for identification during the course of the witness's evidence (D98, D106, D116, D118, and D119). With regard to D98, D116, and D118, the Accused should notify the Chamber in writing as soon as the English translations are available through e-court. Within three days of such notification, the Prosecution should state whether it has any objection to the admission of the relevant document, following which the Chamber will rule on the matter. With regard to D106, an English translation is attached in e-court, while the BCS original appears largely illegible. On 28 April 2010, the Prosecution sought to make some inquiries concerning the provenance of the document before stating its position concerning its admissibility.⁵ The Prosecution should make any submissions it wishes in relation to this document by 5 May 2010, and the Accused should ensure that a legible version of the BCS original is loaded into e-court by the same date. With regard to D119, the Prosecution also requested to review the document before making any comments on its admissibility.⁶ Once again, it should make any submissions it wishes in relation to this document by 5 May 2010. Following the parties fulfilling these necessary requirements, the Chamber will decide on the admission of D106 and D119.

5. For all the reasons outlined above, pursuant to Rules 54 and 89 of the Rules, the Trial Chamber hereby **ADMITS** the document with Rule 65 *ter* number 06147 in its entirety as exhibit D87, and **ORDERS** as follows:

⁴ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O and Q.

⁵ T. 1770–1771 (28 April 2010).

⁶ T. 1817 (28 April 2010).

- (i) the Accused shall notify the Chamber in writing as soon as the English translations of D98, D116, and D118 are available through ecourt;
- (ii) within three days of such notification, the Prosecution shall state whether it has any objection to the admission of D98, D116, and/or D118;
- (iii) the Accused shall ensure that a legible version of the BCS original of D106 is loaded into ecourt by 5 May 2010;
- (iv) the Prosecution shall make any submissions it wishes in relation to D106 and D119 by 5 May 2010; and

REQUESTS the Registry to take all necessary measures to implement the terms of this decision.

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



Judge O-Gon Kwon
Presiding

Dated this third day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]