



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: 05 April 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 05 April 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**OMNIBUS DECISION DEALING WITH OUTSTANDING
MATTERS**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

1. A housekeeping session was held on 18 February 2011 (“HKS”). Due to time constraints, not all matters could be addressed. Rather than holding a second housekeeping session, following consultation with the parties, the Chamber decided to issue the present omnibus decision in order to deal with all remaining matters of the Prosecution’s case.

2. The Prosecution informed the Chamber and the parties by informal communications of 21 and 28 February 2011 that revised versions of exhibits **P1601** and **P1602** had been uploaded. Having heard of no objections, the Chamber hereby **INSTRUCTS** the Registry to replace the old versions with the revised ones.

3. In relation to Rule 65 *ter* number **4263** (a list of employees at the State Security Service), the Chamber had deferred its decision on admission of this document in its “Decision on the Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table” of 3 February 2011, pending submission of a revised translation. The Prosecution has provided a new translation and the Chamber hereby **ADMITS** the document into evidence under seal, pending the resolution of the protective measures requests currently before the Chamber, and further **REQUESTS** the Registry to assign an exhibit number to the document and inform the Chamber and the parties of the number so assigned.

4. **Witnesses JF-030 and JF-053** testified before this Chamber provisionally in closed session. The Prosecution offered to review the respective testimonies of the witnesses with a view to making submissions on which parts could be made public at a later stage. The Chamber **REQUESTS** the Prosecution to make such submissions by the end of April 2011.

5. At an informal meeting between the parties and Chamber staff following the HKS, the Stanišić Defence submitted that it withdrew its objections against admission of document **MFI P1698** (a statement of Ilija Kojić). Having examined the document, the Chamber finds it relevant and of probative value and **ADMITS** it into evidence publicly.

6. In relation to document **MFI P1688** (an 11th Corps Security Department report), the Stanišić Defence objected to its admission into evidence, arguing that it wished to receive further information on the provenance of the document.¹ Previously the Prosecution had submitted that the document had been obtained from the Croatian State Archives on 27 January 2005.² The Chamber has not been informed if the Prosecution has provided any further information regarding this

¹ T.11244-11245.

document. Nevertheless, the Chamber is satisfied that the document is relevant and of probative value and **ADMITS** it into evidence publicly. The Stanišić Defence may - during its Defence case, should there be one - tender further material rebutting the authenticity or content of this document.

7. Through informal communications on 18 and 28 February 2011, the Prosecution requested that exhibits **P1605** and **P2495-P2506** be made public. Having examined these documents, the Chamber **INSTRUCTS** the Registry to change their status to public.

8. In relation to document **MFI P1666** (Information chart signed by Witness JF-029), the only outstanding matter was whether it needed to be under seal. Through an informal communication on 28 February 2011, the Prosecution requested that the document be made public. Having examined the document, the Chamber **ADMITS** P1666 into evidence publicly.

9. In relation to Rule 65 *ter* numbers **1589, 4409, 4475 and 5162** tendered by the Prosecution in its "Prosecution Residual Bar Table Motion for Admission of Exhibits from the Bar Table" of 28 February 2011, the Prosecution submits that the Stanišić Defence does not object to their admission and that the Simatović Defence takes issue with the authenticity of only one of them – 65 *ter* number 4409. The Chamber considers that all four documents have positive indicia of authenticity such as stamps and/or signatures. Additionally, 65 *ter* number 4409 was received from Croatia pursuant to a Request for Assistance ("RFA"). The mere fact that, pursuant to the national law, the Croatian government cannot officially verify the authenticity of this document as it was not produced by a Croatian state body, does not raise any significant doubt as to its authenticity. Further, the Chamber finds all four documents relevant to the issues raised in the Indictment and of probative value. Accordingly, the Chamber **ADMITS** 65 *ter* numbers 1589, 4409, 4475 and 5162 into evidence publicly, and **REQUESTS** the Registry to assign exhibit numbers to the documents and inform the Chamber and the parties of the numbers so assigned.

10. In relation to **P1522** (transcript from another case before the Tribunal), the Chamber notes that it raised the issue of its admissibility during the HKS.³ The Stanišić Defence at the time asked for a few additional days in order to file a detailed submission presenting its objections. The Chamber has not received it.

11. During the HKS, the Chamber pointed out that the admission of a transcript from another case in this Tribunal is governed by Rule 92 *ter* and that the Prosecution has not sought any

² Ibid.

attestation from the witness in relation to P1522. In its informal communication of 14 December 2010, the Prosecution clarified that it sought to tender P1522 in its entirety if MFI D122 and MFI D123 were admitted, and otherwise sought to tender selected portions of P1522 to provide context on re-examination of Witness JF-047 based on the cross-examination conducted by the Stanišić Defence. The Chamber notes that it denied admission of MFI D122 and MFI D123 at the HKS,⁴ and will therefore consider admission only of the selected portions of transcript. The Chamber considers in this respect that providing context for questions to a witness should normally be done by reading portions of the witness' prior evidence to him or by letting a witness otherwise familiarize himself with such portions. The Chamber therefore **DENIES ADMISSION** of both P1522 and the selected portions thereof.

12. In relation to document **MFI P2127** (Prosecution RFA sent to the Republic of Serbia and response thereto), the Chamber has considered the Stanišić Defence's objections against admission, which appear to rest on the fact that the document contains a lot of irrelevant information.⁵ The document's length is not such as to require the Prosecution to only submit portions of it. Furthermore, the document provides some background in relation to exhibit P2126. Accordingly, it may assist the Chamber in giving weight, if any, to exhibit P2126 and the testimony of Witness JF-047. Accordingly, the Chamber **ADMITS** P2127 into evidence under seal.

13. As previously announced, the Chamber **ADMITS** into evidence **MFIs P2160 and P2161** (Scorpions videos). At the same time, the Chamber **INSTRUCTS** the Prosecution to create and file a spreadsheet which will assist the Chamber in determining the weight, if any, to be given to the videos. This spreadsheet should contain several columns where the Prosecution identify: (a) time code ranges of the videos, (b) descriptions of what can be seen during certain time code ranges, (c) whether any parts of the videos were played in court and whether any witnesses commented on them, (d) the relevance of what can be seen during certain time code ranges, and finally (e) Defence comments about the descriptions or the relevance.

14. On 18 March 2011, the Prosecution filed its "Prosecution Submission on Scorpions Trnovo Video". It informed the Chamber that due to an error in processing the evidence in the Prosecution's database, the copy of the video tendered as ERN number V000-5095 and marked as P2161 was in fact a video under ERN number V000-5181 – a video containing identical footage but

³ T. 11282-11286.

⁴ T. 11279-11282.

⁵ T. 11290-11291.

being however approximately 5 minutes shorter than ERN V000-5095. The Prosecution therefore seeks admission of the additional footage into evidence from the bar table. Neither the Stanišić Defence nor the Simatović Defence responded to this submission. The Chamber finds that in order to keep a still from V000-5095 – admitted into evidence as D226 – in the proper context and to ensure the completeness of the trial record, the additional footage from the actual V000-5095 should be admitted into evidence. In order to keep the time codes referred to by JF-024 in his testimony intact, instead of replacing P2161 with a full version of ERN V000-5095, the additional footage should be admitted under the separate exhibit number. The Chamber **REQUESTS** the Prosecution to upload the footage from ERN V000-5095 that is missing in P2161 and **ADMITS** it into evidence publicly, and further **REQUESTS** the Registry to assign an exhibit number to the additional footage and inform the Chamber and the parties of the number so assigned.

15. In relation to document **MFI D3** (Official note of interview with Emil Čakalić), the Prosecution appears to base its objections to admission on the fact that there is more reliable evidence in Čakalić's testimony in the *Milošević* case.⁶ While that may be true, the objection touches on a matter of weight rather than admissibility. The Simatović Defence had chosen to tender only the official note. As for the suggested additional tendering of parts of Čakalić's testimony from the *Milošević* case pursuant to Rule 92 *bis*,⁷ the Chamber notes that during the Prosecution's case the Defence, not having submitted its witness list, is generally not in a position to tender witness statements pursuant to Rule 92 *bis*. The Prosecution has not taken any steps, such as seeking an addition to its witness list, to formally tender parts of Čakalić's previous testimony under Rule 92 *bis*. Accordingly, the Chamber does not consider itself seised of a request for admission under Rule 92 *bis*. The Chamber **ADMITS** D3 into evidence publicly.

16. In relation to documents **MFIs D60-D66** (medical and other documents concerning Witness Slišković), the Chamber considers that the documents may assist it in assessing the weight, if any, to be given to the testimony of the witness. The Chamber finds them relevant and of probative value and **ADMITS** into evidence D60-D61 and D64-D65 publicly, and D62-D63 and D66 under seal.

17. In relation to document **MFI D85** (statement of Edin Garaplija), the Chamber, having been informed by the parties through an informal communication on 14 December 2010 of the provenance of this document, apparently stemming from a trial against Mr Garaplija, and having examined the document, is not satisfied that it meets the requirements of admission under Rule 89

⁶ T. 1915.

⁷ Joint Submission on Exhibit D3, 15 October 2010, para. 16.

(C) at this stage. Accordingly, the Chamber **DENIES** admission of document D85 without prejudice. The Defence may during its Defence case, should there be one, submit further information on the document's authenticity and re-tender it.

18. In relation to documents **MFIs D147-D148** (diaries of Witness JF-057), on 25 January 2011, in an informal communication, the Simatović Defence provided to the Chamber and the Prosecution translations of the excerpts of the diaries it intended to tender. The Prosecution has not raised any objections against admission of the excerpts and only opposed the initial tendering on the basis that the entire diaries should not be admitted due to the partial lack of relevance.⁸ The Chamber finds the excerpts to be relevant and of probative value. Accordingly, the Chamber **INSTRUCTS** the Simatović Defence to upload corresponding excerpts of the BCS diary into eCourt, **INSTRUCTS** the Registry to replace D147 and D148 with the BCS and English excerpts, and **ADMITS** into evidence, under seal, the revised versions of D147 and D148.

19. In relation to **MFIs D212 and D213** (transcripts from the Scorpions trial), the Chamber has considered the Prosecution's objection to admission of the latter.⁹ In its confidential 25 February 2011 "Prosecution Submission in Relation to D213 MFI (Transcript from Scorpions Trial)", the Prosecution challenged the accuracy and reliability of the non-sworn statement by an accused made in proceedings before the third court and recorded in D213. The Chamber finds that the document is an authentic transcript of court proceedings and is relevant to the issues raised in the Indictment. The Prosecution's objection goes to the weight, if any, to be given to this document, rather than to the issue of admissibility as such. At the same time, the Chamber finds that in order to ensure that it is given the full context in which the statement in D213 was made, additional portions of the transcript from the same proceedings – provided by the Prosecution in Annex A to its 25 February 2011 submission – should be admitted into evidence. The Chamber is also satisfied as to the admissibility of MFI D212, which was not objected to by the Prosecution. Accordingly, the Chamber **INSTRUCTS** the Prosecution to upload the excerpts into eCourt, **ADMITS** into evidence under seal D212, D213 and the excerpts provided in Annex A to the abovementioned Prosecution submission and **REQUESTS** the Registry to assign an exhibit number to the excerpts and inform the Chamber and the parties of the number so assigned.

20. In its "Decision on the Prosecution's Second Motion for Admission of Exhibits from the Bar Table" of 10 March 2011, the Chamber deferred its decision on admissibility of 65 *ter* numbers

⁸ See T. 9492.

⁹ T. 10211-10212.

109, 742, 5076 and 6084. On 11 March 2011, after a legible copy of 65 *ter* number 109 was uploaded into e-Court by the Prosecution, the Simatović Defence withdrew its objection to the admission of this document in its “Simatović Defence Submission”. The Prosecution also uploaded a legible copy of 65 *ter* number 742 and missing parts of the original BCS version of 65 *ter* number 6084 into e-Court. The Chamber finds all three documents relevant and of probative value. In relation to 65 *ter* number 5076, the Chamber notes that it is a duplicate of P2443 and therefore should not be admitted for a second time. Accordingly, the Chamber **ADMITS** 65 *ter* numbers 109 and 742 into evidence publicly and 65 *ter* number 6084 under seal, pending the resolution of the protective measures requests currently before the Chamber, and **REQUESTS** the Registry to assign exhibit numbers to the documents and inform the Chamber and the parties of the numbers so assigned.

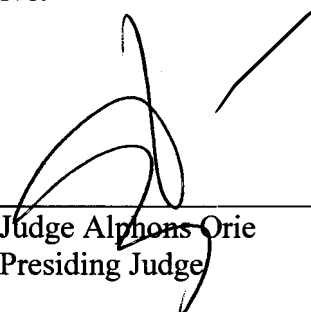
21. The Chamber notes that in its “Prosecution Reply to Defence Response to Prosecution’s Second Bar Table Motion” of 7 February 2011 (“Reply”), the Prosecution submitted that it withdraws its application for admission of 65 *ter* number 5934.¹⁰ However, the Chamber notes that this submission appears to contain an error since the description of this document seems to indicate that the Prosecution meant to withdraw 65 *ter* number 5928. The Chamber therefore considers the application for admission in relation to 65 *ter* number 5934 as still pending before it. Noting that the Defence teams do not object to its admission and finding that this document is relevant and of probative value, the Chamber **ADMITS** 65 *ter* number 5934 into evidence provisionally under seal, pending the resolution of the protective measures requests currently before the Chamber, and **REQUESTS** the Registry to assign an exhibit number to the document and inform the Chamber and the parties of the number so assigned.

22. On 22 March 2011, the Prosecution filed its “Prosecution Second Residual Motion for Admission of Exhibits from the Bar Table” seeking admission of 65 *ter* numbers **1541** and **6076**. On 23 March 2011, the Chamber in an informal communication shortened the deadline for filing any responses thereto, setting it to 29 March 2011. Neither the Stanišić Defence nor the Simatović Defence responded. The Chamber finds these documents relevant and of probative value. Accordingly, the Chamber **ADMITS** 65 *ter* numbers 1541 into evidence publicly and 6076 under seal pending the resolution of the protective measures requests currently before the Chamber and

¹⁰ See Reply, para. 3, wherein the Prosecution submits that it withdraws its application for admission of item number 244 as described in the chart contained in Annex A to the Reply. 65 *ter* number 5934 is referred to as item number 244 in Annex A; see p. 141.

REQUESTS the Registry to assign exhibit numbers to the documents and inform the Chamber and the parties of the numbers so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this fifth day of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]