

IT-03-69-T
D44593- D44589
31 October 2012

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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: 31 October 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 31 October 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF REBUTTAL EVIDENCE: SERBIAN DB PERSONNEL
FILES**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 24 September 2012, the Prosecution filed a motion seeking the admission of rebuttal evidence in the form of 34 documents consisting of excerpts of personnel files (“Motion” and “Excerpts”, respectively).¹ On 3 October 2012, the Defence each requested the Chamber for an extension of time to respond to the Motion.² The Chamber granted this request by means of informal communication on 4 October 2012. On 15 October 2012, the Simatović Defence filed its response (“Simatović Response”),³ as did the Stanišić Defence (“Stanišić Response”).⁴

2. The Prosecution submits that the Stanišić Defence has been selective in its use of personnel files in the Bar Table Motion in order to distance the accused from the Red Berets, JATD and/or JSO (“The Unit”).⁵ The Prosecution submits that the Excerpts rebut the Defence case regarding the continuity of the period of operation of the Unit,⁶ and the negative inferences upon which the Defence seeks to rely.⁷ The Prosecution also argues that the Excerpts rebut the Defence’s conclusions regarding various forms contained within the personnel files⁸ and its contentions that (i) the Unit was subordinate to the RSK in 1992⁹ and (ii) Vasilje Mijović’s Unit in Bratunac was controlled by RS authorities.¹⁰

3. In Response, the Simatović Defence contends that the Prosecution has not adequately indicated which specific witness testimony or exhibits the Excerpts purport to rebut, and also contests the accuracy of the Prosecution’s descriptions of them.¹¹ The Simatović Defence further suggests that the Prosecution failed to seek admission of the Excerpts previously and is now attempting to have them admitted by way of rebuttal evidence.¹² The Stanišić Defence argues that the Prosecution has continuously changed its case against the Accused and that it is incorrect in claiming that the Stanišić Defence has changed its position on the date of formation of the Unit.¹³ The Stanišić Defence further submits that the Excerpts do not meet the standard for admission of rebuttal material and that the Prosecution, by seeking admission of the

¹ Prosecution Motion for Admission of Rebuttal Evidence: Serbian DB Files, (Confidential Annexes A and B), 24 September 2012.

² Urgent Stanišić Defence Request for Extension of Time to File Responses to the Prosecution’s Three Rebuttal Motions, 3 October 2012; Defence Request for Additional Time to Respond, 3 October 2012.

³ Simatović Defence Response to Prosecution Rebuttal Motions, 15 October 2012.

⁴ Stanišić Defence Response to Prosecution Motion for Admission of Rebuttal Evidence Regarding Serbian DB Personnel Files, 15 October 2012.

⁵ Motion, paras 5, 9-10.

⁶ Motion, paras 5, 18.

⁷ Motion, para. 5.

⁸ Motion paras 12-17.

⁹ Motion, para. 19.

¹⁰ Motion, para. 20.

¹¹ Simatović Response, Confidential Annex 1, p. 1.

¹² Ibid.

Excerpts, is attempting to add 33 new perpetrators to its case.¹⁴ The Stanišić Defence, in the event that the Excerpts are admitted, further seeks an adjournment of the trial for a period of six weeks to enable it to investigate the Excerpts, to present rejoinder evidence and include an analysis of the Excerpts in its final brief.¹⁵

II. APPLICABLE LAW

4. The Chamber refers to the law as contained in its decision of 20 September 2012 regarding the admission of rebuttal evidence.¹⁶

III. DISCUSSION

5. As a preliminary matter the Chamber grants the Stanišić Defence and Prosecution requests to exceed the word limit.¹⁷

6. In relation to the documents bearing 65 *ter* nos 6566, 6567, 6569, 6571, 6577, 6578, 6579, 6581, 6587, 6589, 6591, 6595, 6596, 6598, 6599, 6601, 6602, 6604, 6606, 6607, 6609, 6570, 6573, 6574, 6580, 6583, 6584, 6588, 6590, 6593, 6597, 6603, 6605 and 6608 the Prosecution relies on these Excerpts, which contain a cross-section of documents from various personnel files, in order to rebut Defence assertions regarding the date of formation and/or the continuity of the Unit.

7. The Chamber considers that the above Excerpts relate to a significant issue that arises directly out of Defence evidence, namely the date of formation and the continuity of the Unit, which could not reasonably have been anticipated by the Prosecution. In this regard, the Chamber notes that in its pre-trial brief, the Defence contended that the Unit had only come into existence in 1996, while in the Bar Table Motion it asserts that the Unit was not “fully formed” in 1991 and was in fact established upon the creation of the JATD.¹⁸

8. More importantly, the Chamber considers that the Prosecution could not have reasonably foreseen during the presentation of its case-in-chief that the Defence would present a large number of extracts from the DB personnel files, and anticipate the specific inferences the Defence would draw from these documents. The Prosecution also could not have reasonably

¹³ Stanišić Response, paras 4-7.

¹⁴ Stanišić Response, paras 8-13, 26-31.

¹⁵ Stanišić Response, para. 35

¹⁶ Decision on Prosecution Motion for Admission of Rebuttal Evidence Regarding Witness JF-057, 20 September 2012, paras 5-6.

¹⁷ Motion, para. 21; Stanišić Response, para. 2.

¹⁸ Defence Pre-trial Brief paras 171-173, 177; Bar Table Resubmission Motion, Annex A, p. 223.

foreseen the Defence submissions regarding negative inferences, in other words what the Defence would contend was relevant as a result of its absence from a particular document. The Chamber considers it reasonable that, in going through the collections of documents from which the Defence tendered a large number in order to show certain negative inferences, the Prosecution should be allowed to tender a limited amount of documents from these same collections to rebut the inferences made, provided that the Prosecution directly and very specifically indicates which evidence, led by the Defence during its case, it intends to rebut.

9. The Chamber also considers that each of the Excerpts is highly probative, thus fulfilling the rebuttal test. While a significant number of the Excerpts exceed 15 pages in length,¹⁹ the Chamber considers the Prosecution has demonstrated with sufficient specificity where and how each of the documents fits into its case. The Excerpts will therefore be admitted into evidence.

10. The Chamber notes that in relation to some of the Excerpts, the Prosecution has made additional arguments in support of their admission.²⁰ However, considering that the Chamber has already dealt with the admission of the documents it does not consider it necessary to address these additional arguments.

11. Finally, the Stanišić Defence requests an adjournment of the trial for a period of six weeks in order to investigate the Excerpts, address them in its final brief and present rejoinder evidence.²¹ The Chamber considers that, on the whole, it has not been provided with any adequate factual or legal basis for this request and consequently denies it.

¹⁹ Documents bearing Rule 65 *ter* nos 6567, 6569, 6574, 6577, 6578, 6579, 6583, 6588, 6589, 6590, 6591, 6593, 6595, 6596, 6597, 6598, 6599, 6602, 6603, 6609.

²⁰ For example: in relation to the documents bearing Rule 65 *ter* nos 6574 and 6588 the Prosecution contends that these excerpts rebut the Defence assertion that Vučković commanded a unit that was not linked to the accused or the Serbian DB, Motion, Annex A pp. 5-6, 11-12; in relation to documents bearing Rule 65 *ter* nos 6590, 6603 and 6604 the Prosecution suggests that these excerpts rebut the Defence assertion that there was no Serbian DB unit in Bratunac, Motion, Annex A, pp. 13-14, 21-22; in relation to the documents bearing Rule 65 *ter* nos 6584, 6588 and 6593, the Prosecution asserts that these excerpts rebut the Defence contentions that the Unit in Ilok was not a Serbian DB unit, Motion, Annex A, pp. 10-12, 15-16.

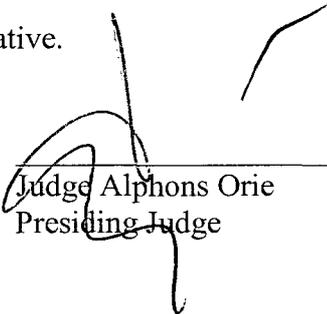
²¹ Stanišić Response, para. 35.

IV. DISPOSITION

12. For the foregoing reasons, the Chamber

- (i) **GRANTS** the Stanišić Defence and Prosecution requests to exceed the word limit;
- (ii) **GRANTS** the Motion and **ADMITS** the documents bearing Rule 65 *ter nos* 6566, 6567, 6569, 6571, 6577, 6578, 6579, 6581, 6587, 6589, 6591, 6595, 6596, 6598, 6599, 6601, 6602, 6604, 6606, 6570, 6573, 6574, 6580, 6583, 6584, 6588, 6590, 6593, 6597, 6603, 6605, 6607, 6608, and 6609;
- (iii) **DENIES** the Stanišić Defence request for a six week adjournment of the proceedings;
- (iv) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and to 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 thirty-first day of October 2012
At The Hague
The Netherlands

[Seal of the Tribunal]