

4-09-92-T
D 76362 - D 76339
31 January 2014

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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-09-92-T
Date: 31 January 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 31 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT
EVIDENCE FROM THE BAR TABLE – PROOF OF DEATH
DOCUMENTS**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 31 October 2013, the Prosecution filed a motion ("Motion") tendering 695 documents from the bar table, which include 261 proof of death documents.¹ The Prosecution also sought leave to add 187 of these proof of death documents to its Rule 65 *ter* exhibit list.² The Defence responded to the Motion on 30 December 2013.³ The Chamber will deal with the 261 proof of death documents listed in Annex B to the Motion ("Documents") in this decision.⁴ The remaining documents, listed in Annex A to the Motion, will be addressed in a separate decision, which will also contain a full procedural history in relation to the Motion.

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decision.⁵

III. DISCUSSION

3. The Chamber notes that Rule 65 *ter* number 6368 was (conditionally) admitted in a previous decision.⁶ Accordingly, the request to have this document admitted is moot. Furthermore, the tendered excerpts of the documents bearing Rule 65 *ter* numbers 10109, 12210a, 12279a, 12298a, 12323a, 12333a, 12589a, and 26415a have been re-tendered in a subsequent motion.⁷ The Chamber will deal with the admission of these excerpts in its decision on that motion. Lastly, the Prosecution informed the Chamber on 30 January 2014 through an informal communication that it is still awaiting a full translation for document bearing Rule 65 *ter* number 12337. The Chamber thus defers its decision on this document.

¹ Prosecution Motion to Admit Evidence from the Bar Table, 31 October 2013. The Chamber refers to the Motion for the Prosecution's submissions. The Prosecution also indicated that it requests the Chamber to take judicial notice of the Documents' authenticity, see Motion, para. 1. However, as this request is not repeated at the end of the submission under 'Relief Requested' and considering that the Prosecution has not directed the Chamber to the instances where previous Chambers ruled on the Documents' authenticity, the Chamber will not further consider this issue.

² Addendum to Prosecution Motion to Admit Evidence from the Bar Table, 27 November 2013, paras 2-3.

³ Defence Response in Opposition to "Prosecution Motion to Admit Evidence from the Bar Table", 30 December 2013 ("Response"). The Chamber granted the Defence additional time to respond on 18 November 2013, see T. 19441.

⁴ The Chamber notes that the tendered excerpts for Rule 65 *ter* numbers 1343, 12771, 26999, and 27351 have been uploaded with the suffix "a".

⁵ Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

⁶ Decision on Prosecution's 29th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 2 December 2013, para. 15.

⁷ Prosecution Bar Table Submission of Proof of Death Documents in Connection with Witness Ewa Tabeau, 19 December 2013.

4. The Defence states as follows in relation to the Documents: “it is inappropriate to deal with [the Documents] at this time, and [the Defence] reserves the right to comment on the same and raise objections when the Defence expert has reviewed the same and been granted access to the Demographic Unit Archives and databases. Thus this Response shall not deal with [the Documents]”.⁸ The Documents have been tendered during the Prosecution’s case and it is appropriate to deal with them at this stage. The Defence was granted additional time to respond to the Motion but has not requested additional time in order to specifically respond to the tendering of the Documents or sought the Chamber’s assistance in seeking access to documents or databases. The Defence is free to challenge these Documents at a later stage, if it so wishes.

5. The Documents are death certificates, court rulings on death, identification reports, autopsy reports, records of exhumations, and missing person certificates and thus relate to proving the death or identity of alleged victims of the incidents charged in the Indictment, namely in schedules A, B, and G. Accordingly, the Chamber is satisfied as to the Documents’ relevance. The Prosecution has categorised the Documents in relation to the charged scheduled incidents in Annex B of the Motion. The Chamber is thus satisfied that it has demonstrated how they fit into the Prosecution’s case. Regarding their probative value, the Chamber notes that the Documents appear to originate from official sources and are aimed at establishing death or identity of individuals. The Chamber is satisfied that the requirements for admission from the bar table have been met.

6. The Chamber notes that the Prosecution’s descriptions of certain of the Documents refer to names of victims, whereas the actual documents do not mention such names but only a reference number.⁹ The Chamber accepts these documents on the basis of the Prosecution’s submissions but clarifies that if the Prosecution wants to establish the identity of the individuals at issue, it would need to correct this gap by evidentiary means.

7. Considering the above findings, as well as the Defence’s position as set out above which did not include any argument about prejudice, the Chamber also finds that the requirements for adding the 187 documents to the Prosecution’s Rule 65 *ter* exhibit list have been met.

IV. DISPOSITION

8. For the foregoing reasons, pursuant to Rule 89 (C) of the Rules, the Chamber

GRANTS the Motion in relation to the Documents **IN PART**;

⁸ Response, para. 4.

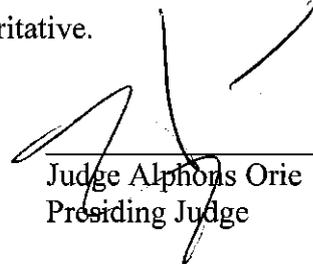
⁹ See for example Rule 65 *ter* numbers 27498 or 27491.

GRANTS the Prosecution leave to add the 187 documents to its Rule 65 *ter* exhibit list;

ADMITS into evidence the documents listed in Annex B of the Motion with the exception of those mentioned in paragraph 3 above;

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

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



Judge Alphons Orie
Presiding Judge

Dated this Thirty-First day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]