



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: 11 March 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 11 March 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SECOND PROSECUTION MOTION FOR
ADMISSION OF EXCERPTS FROM MLADIĆ NOTEBOOKS
AND THIRD PROSECUTION NOTIFICATION OF EXCERPTS
FROM MLADIĆ NOTEBOOKS**

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

I. PROCEDURAL HISTORY

1. On 7 October 2010, the Chamber granted the Prosecution leave to add 18 military notebooks (“Notebooks”) to its Rule 65 *ter* exhibit list.¹ Simultaneously the Chamber also granted the Prosecution leave to use in court 21 portions of the Notebooks that the Prosecution had already identified as relevant to its case (“Excerpts”)², setting out the conditions for their use.³ On 10 December 2010, the Prosecution requested admission of the Excerpts into evidence from the bar table.⁴ The Prosecution also gave notice of two further excerpts (“December 2010 Excerpts”) it intended to use pursuant to the 7 October 2010 Decision.⁵ Through an informal communication on 17 December 2010, the Chamber informed the parties that the December 2010 Excerpts could be used in Court from 10 January 2011. On 10 March 2011, the Chamber granted admission of the Excerpts from the bar table.⁶

2. On 27 January 2011, the Prosecution filed its “Second Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Third Prosecution Notification of Excerpts from Mladić Notebooks” (“Motion”). In its Motion, the Prosecution tenders one of the December 2010 Excerpts, informing the Chamber that admission of the other December 2010 Excerpt will not be sought.⁷ The Prosecution also gave notice of 15 additional excerpts (“January 2011 Excerpts”), that it intends to use (“Notification”) and indicated “its intention to tender the January 2011 Excerpts into evidence from the bar table on the date that the Chamber determines that the Prosecution may use [the January 2011 Excerpts]”.⁸ Consequently the Prosecution requested the Chamber to consider the Notification as a motion for admission from the bar table of the January 2011 Excerpts.⁹ On 3 February 2011, in an informal communication, the Chamber, granted this request.¹⁰ At the same time, the Chamber invited the parties to file their responses to the request for admission of one of

¹ Decision on Sixteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex (Mladić Notebooks), 7 October 2010 (“7 October 2010 Decision”).

² Ibid.

³ According to the 7 October 2010 Decision the Chamber is to determine the specific interval between notice and use of newly identified portions on a case by case basis, taking into consideration, *inter alia*, the time period between notifications and the size of specific portions, allowing adequate time; see the 7 October 2010 Decision, para. 15.

⁴ Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, filed publicly with confidential Annexes A and B, 10 December 2010.

⁵ Ibid.

⁶ Decision on Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, 10 March 2011 (“10 March 2011 Decision”).

⁷ Motion, para. 2.

⁸ Motion, paras 2, 8.

⁹ Motion, para. 2.

¹⁰ The Chamber also noted that it had created the system of an interval between notification and use of additional excerpts in order to allow the Defence time to analyse and prepare for the use of the excerpts in Court. Since the

the December 2010 Excerpts and the January 2011 Excerpts by 14 February 2011. Neither the Stanišić Defence nor the Simatović Defence filed a response.

II. SUBMISSIONS

3. The Prosecution relies on the fact that the Notebooks were seized from the apartment of Bosilijka Mladić, Ratko Mladić's wife, as strong evidence of the Notebooks authenticity. In addition the Prosecution relies on the testimony of Manojlo Milovanović, who testified that he recognised the handwriting in the Notebooks to be that of Mladić.¹¹ The Prosecution submits that the January 2011 Excerpts and the tendered December 2010 Excerpt are contemporaneous accounts that appear to have been kept for Mladić's own private use. The Prosecution contends that this would indicate that Mladić likely recorded events as accurately as he was able. The Prosecution further submits that the tendered documents are richly corroborated by other documentary and testimonial evidence.¹²

4. The Prosecution further submits that the January 2011 Excerpts and the tendered December 2010 Excerpt are relevant to the case as they concern meetings between members of the alleged Joint Criminal Enterprise ("JCE") where goals of the alleged JCE were articulated. Moreover, the Prosecution highlights that some January 2011 Excerpts describe the preparations for, and execution of, the attack on Škabrnja, evidence of the forcible transfer and deportation of non-Serbs as well as involvement by the Serbian State Security ("DB") in smuggling weapons to Bosnia. Finally, the Prosecution argues that some January 2011 Excerpts corroborate certain conversations from the Mladić audio files tendered into evidence in a separate motion.¹³

III. APPLICABLE LAW

5. The Chamber recalls the applicable law governing admission of evidence from the bar table as set out in its previous decision and refers to it.¹⁴

Prosecution has indicated its intention to seek admission of the current excerpts from the bar table, any interval granted in respect of them will allow the Defence to analyse the excerpts and prepare written responses.

¹¹ Motion, para. 6.

¹² Motion, para. 7.

¹³ Motion, para. 5, referring to Nineteenth Prosecution Motion for Leave to Amend its 65th Exhibit List (Mladić Audio Files) and Motion for Admission of Excerpts from Mladić Audio Files, filed on 19 January 2011 ("Mladić Audio Files Motion").

¹⁴ See Decision on the Prosecution's Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, paras 10-11.

IV. DISCUSSION

6. The Chamber recalls that it has already found the Notebooks *prima facie* probative. This decision was based on consideration of the positive indications that Mladić was in a unique position and privy to such information, so as to be likely to keep such notes, as well as the facts that the Notebooks were discovered in his wife's residence and that his handwriting was recognised by Milovanović.¹⁵ Based on the above and noting that the probative value of the January 2011 Excerpts and the tendered December 2010 Excerpt is not challenged by the Defence, the Chamber finds them sufficiently probative for the purpose of their admission from the bar table.

7. The Chamber considers that the January 2011 Excerpts appear to be relevant to the 1991 events in Bruška, Nadin and Škabrnja (excerpts 1-4, 7 and 11), the forcible transfer of the Croat population (excerpts 7 and 10) and the DB involvement in Croatia and Bosnia in 1991 (excerpts 6, 8 and 9). Moreover, two January 2011 Excerpts (excerpts 5 and 15) as well as the tendered December 2010 Excerpt constitute evidence relevant to the existence of the alleged JCE. Based on the above and noting that the relevance of the January 2011 Excerpts and the tendered December 2010 Excerpt is not challenged by the Defence, the Chamber finds them sufficiently relevant for the purpose of their admission from the bar table.

8. The Chamber considers that the relevance of three January 2011 Excerpts (excerpts 12-14) cannot be established without reference to the Mladić Audio files tendered by the Prosecution in a separate motion.¹⁶ The Chamber will therefore decide on their admissibility in its decision on that motion.

9. Based on the foregoing, the Chamber finds that the tendered December 2010 Excerpt and excerpts 1-11 and 15 of the January 2011 Excerpts fulfil the requirements of Rule 89 of the Rules of Procedure and Evidence ("Rules").

V. DISPOSITION

10. For the reasons set out above and pursuant to Rule 89 of the Rules, the Chamber:

GRANTS the Motion in part;

ADMITS into evidence the tendered December 2010 Excerpt bearing Rule 65-ter number 6118;

¹⁵ See 7 October 2010 Decision, para. 13; see also 10 March 2011 Decision, paras 12-14.

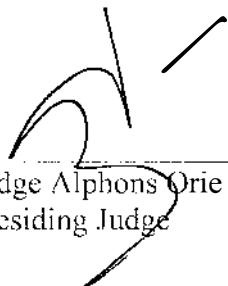
¹⁶ See Mladić Audio Files Motion.

ADMITS into evidence excerpts 1-11 and 15 of the January 2011 Excerpts as identified in Annex B to the Motion;

DEFERS its decision on admissibility of excerpts 12-14 of the January 2011 Excerpts;

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 being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this eleventh day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]