

IT-03-69-T
D 60802 - D 60799
24 May 2012

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**UNITED
NATIONS**



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: 24 May 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 24 May 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**FOURTH DECISION ON STANIŠIĆ DEFENCE BAR TABLE
MOTION OF 17 FEBRUARY 2012**

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

1. On 17 February 2012, the Stanišić Defence (“Defence”) filed the Stanišić Motion for Admission of Documents through the Bar Table, by which it requested the admission into evidence of 674 documents from the bar table (“Motion”).¹ On 23 March 2012, the Prosecution filed its response.² The Simatović Defence did not respond to the Motion.

2. On 23 May 2012, the Chamber issued its first decision on the Motion (“First Decision”). The Chamber refers to the First Decision for a detailed synopsis of the procedural history and submissions in respect of the Motion.³

II. APPLICABLE LAW

3. 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.⁴

III. DISCUSSION

4. By the Motion, the Defence requests the admission into evidence of over 670 documents which amount to more than 12,400 pages in total. These documents, if admitted, would constitute a very substantial part of the trial record. Due to the sheer number and volume of the documents submitted, the Chamber has decided to divide its decision on the Motion into separate decisions so as to afford the Defence sufficient notice of the Chamber’s position with respect to each category of documents as soon as practically possible.

5. The present decision will address the request for admission of one category of documents included in the Third Bar Table Chart, namely intercepts.⁵ The Chamber will issue further decisions on the remainder of the Motion.

6. In relation to Rule 65 *ter* nos 919 and 922, the Defence submits that they are relevant as they demonstrate that Mr. Stanišić (“Accused”) did not contribute to a joint criminal enterprise as alleged by the Prosecution.⁶ With regard to Rule 65 *ter* nos 917 and 928, the Defence submits that

¹ Stanišić Motion for Admission of Documents through the Bar Table, with Confidential Annexes A, B, and C, 17 February 2012.

² Prosecution Response to Stanišić Motion and Additional Motion for Admission of Documents into Evidence through the Bar Table, with Confidential Annexes A and B, 23 March 2012 (“Response”).

³ First Decision, paras 1-8.

⁴ First Decision, paras 9-10.

⁵ Motion, Confidential Annex C, pp. 51-68.

⁶ *Ibid*, pp. 65-66.

they demonstrate that the Accused's "alleged messenger role was non-existent or negligible".⁷ The Defence further submits that Rule 65 *ter* no. 928 undermines the Prosecution's contention that there was a "criminal purpose that encompassed Croatia in late 1991".⁸

7. The Prosecution does not object to admission of these documents but contends that, while they have "some relevance", they have "very little, if any, probative value".⁹ The Prosecution, in effect, suggests that the intercepts lack probative value because they are not supportive of the purpose for which the Defence seeks to tender them. Further, the Prosecution suggests that the negative inferences that the Defence seeks to draw from the intercepts do not undermine the substance of the Prosecution's case.¹⁰

8. The Chamber considers that the Prosecution submissions are, broadly speaking, objections as to the manner in which the Defence characterises the intercepts. The tendering party's characterisation of the evidence and the final conclusions, if any, to be drawn from that evidence are not determinative of the test for admission set out in Rule 89 (C). In this instance, the Defence has satisfied the test in Rule 89 (C) by demonstrating with sufficient clarity and specificity (i) the relevance and probative value of the documents and (ii) where the documents fit into its case.

9. With regard to the remaining intercepts, namely Rule 65 *ter* nos 787, 790, 793, 801, 824, 789, 2264, 806, 807, 810, 811, 812, 821, 823, 826, 838, 847, 850, 851, 852, 854, 855, 857, 893, 894, 897, 901, 902, 904, 905, 907, 908, 909, 911, 912, 915, 930, 934, 945, 949, 1D02847, and 1D04546, the Prosecution has presented further comments specifically referring to the Defence's characterisation of the documents.¹¹ As discussed above, the Chamber considers that these arguments do not affect admissibility. Additionally, the Prosecution does not object to their admission. The Chamber considers that the Defence has demonstrated with sufficient clarity and specificity (i) the relevance and probative value of the documents and (ii) where the documents fit into its case. The Chamber observes that the original B/C/S version of the document bearing Rule 65 *ter* no. 897 is not uploaded on e-Court.

10. Notwithstanding the above, the Defence is introducing a number of these documents in order to show a *negative*, i.e. that something did not occur because the document made no reference to it. When such documents are tendered from the bar table, if viewed in isolation and without context provided by a tendering witness, there is a risk that less weight will ultimately be ascribed

⁷ Ibid, citing pp. 51, 56.

⁸ Ibid. p. 66.

⁹ Response, Confidential Annex A, pp. 373-375.

¹⁰ Ibid, pp. 374-375.

¹¹ Ibid, pp. 354-373, 375-377.

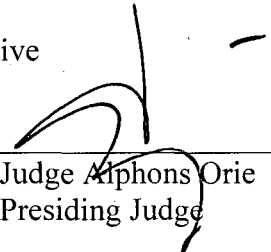
to them by the Chamber. In order to properly determine the weight of documents for which a negative inference is sought, the Chamber encourages the Defence, by providing clear references to these documents in its final brief, to elaborate on the conclusions, if any, it invites the Chamber to draw from them (collectively and/or individually), including, if appropriate, an explanation of how they refute the Prosecution evidence regarding the same issues.

IV. DISPOSITION

11. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and

- (i) **ADMITS** into evidence documents bearing Rule 65 *ter* nos 787, 790, 793, 801, 824, 789, 2264, 806, 807, 810, 811, 812, 821, 823, 826, 838, 847, 850, 851, 852, 854, 855, 857, 893, 894, 897, 901, 902, 904, 905, 907, 908, 909, 911, 912, 915, 917, 919, 922, 928, 930, 934, 945, 949, 1D02847, and 1D04546;
- (ii) **INSTRUCTS** the Stanisić Defence to upload the BCS original of Rule 65 *ter* no. 897 to e-Court within one week of the filing of this decision;
- (iii) **INSTRUCTS** the Registry to attach the uploaded BCS original of Rule 65 *ter* no. 897 to its English translation;
- (iv) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the number so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-fourth day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]