

IT-03-69-T
D 63916 - D 63912
14 September 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: 14 September 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 14 September 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ DEFENCE REQUEST FOR
RECONSIDERATION OF DOCUMENTS PREVIOUSLY
DENIED ADMISSION THROUGH THE BAR TABLE**

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”) requested the admission of documents through the bar table.¹ In a decision dated 19 June 2012 (“Ninth Bar Table Decision”) the Chamber denied admission of 11 of those documents.² The Chamber also denied the admission of a further two of those documents at housekeeping sessions on 7 and 12 June 2012.³ On 24 August 2012, the Defence filed the present Motion requesting reconsideration of the decision denying admission of the above 13 documents.⁴ On 6 September 2012, the Prosecution filed a Response (“Response”).⁵ The Simatović Defence did not file a Response to the Motion.

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the 13 documents were denied admission due to redaction, authentication, and translation issues which have since been resolved.⁶ The Defence further submits that to deny admission would cause an injustice as the documents are important in countering the Prosecution’s allegations against Stanišić.⁷

3. The Prosecution submits that the Defence has met the requirements of the reconsideration test, but defers to the Chamber.⁸ In relation to the document bearing 65 *ter* no. 2D00895, marked for identification as D462 prior to the denial of its admission, the Prosecution supports the Motion in seeking its admission.⁹ The Prosecution also requests that the document bearing Rule 65 *ter* no. 1D10051 be admitted into evidence as an associated exhibit to D462.¹⁰ With regards to the document bearing Rule 65 *ter* no. 1D05476, marked for identification as D783 prior to the denial of its admission, the Prosecution maintains its objection regarding provenance based on the absence of

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

² Ninth Decision on Stanišić Defence Bar Table Motion of 17 February 2012 and Decision on Prosecution Request for Admission of Rebuttal Evidence, 19 June 2012.

³ D783 was denied admission into evidence on 7 June 2012 (see T.20101); D462 was denied admission into evidence on 12 June 2012 (see T. 20145).

⁴ Stanišić Request for Reconsideration of Documents Previously Denied Admission through the Bar Table, with Confidential Annex A, 24 August 2012.

⁵ Prosecution Response to Stanišić Request for Reconsideration of Documents Previously Denied Admission through the Bar Table, 6 September 2012.

⁶ Motion, paras 1-2, 8-9.

⁷ Motion, paras 8-13.

⁸ Response, para. 3. The Chamber notes that the Prosecution refers erroneously to the Defence submission as a request for certification.

⁹ Response, para. 6.

¹⁰ Response, paras 7, 12. The Chamber notes that duplicate pages 48 and 49 of the original redacted B/C/S version do not appear in the unredacted B/C/S version. Instead the almost identical document with a slightly altered header appears at page 15 of the unredacted version. The Chamber notes this minor discrepancy but does not consider that it alters the nature of the document in any significant manner. The Chamber also notes that the unredacted translation at page 15 appears to be a translation of page 15 of the unredacted B/C/S original version.

the document in Serbian archives, in addition to insufficient indicia of reliability.¹¹ The Prosecution does not object to the admission of the remaining 11 documents.¹²

III. APPLICABLE LAW

4. The Appeals Chamber has held that the test for reconsideration is that the Applicant must “satisfy the Chamber of the existence of a clear error of reasoning in the [impugned decision], or of particular circumstances justifying its reconsideration in order to avoid injustice. Particular circumstances include new facts or new arguments. However, to succeed on this basis, an applicant must demonstrate how any new facts or arguments in a request for reconsideration justify reconsideration”.¹³

5. Rule 89 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

6. The Trial Chamber requires that “the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case”.¹⁴

IV. DISCUSSION

7. With regard to 11 of the 13 documents, namely the documents bearing Rule 65 *ter* nos 1D01383, 1D01384, 1D01385, 1D01386, 1D01388, 1D01390, 1D01392, 1D01393, 1D01395, 1D01399, and 1D01404, the Chamber denied their admission into evidence on the basis that (i) while unredacted original versions were provided, revised translations of those unredacted versions had not been made available and (ii) the redactions in the available translations were so substantial as to render the Chamber unable to decide properly on admission of the documents.¹⁵ With regard

¹¹ Response, paras 8-11.

¹² Response, para. 5.

¹³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.14, Decision on Jadranko Prlić’s Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para. 18.

¹⁴ Decision on the Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 11; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 18; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution Submission on the Admission of Documentary Evidence, 16 January 2008, para. 9.

¹⁵ Ninth Bar Table Decision, para. 11.

to 2D00895, it was denied admission because the revised translation did not correspond with the original document.¹⁶ 1D05476 was denied admission due to issues of authentication.¹⁷

8. The Defence has now uploaded “.1” versions of the documents bearing Rule 65 *ter* nos 1D01383, 1D01384, 1D01385, 1D01386, 1D01388, 1D01390, 1D01392, 1D01393, 1D01395, and 1D01399 into e-Court which contain complete translations of the unredacted documents. There does not appear to be any revised translation uploaded in relation to the document bearing Rule 65 *ter* no. 1D01404.1. The Chamber considers that the provision of the unredacted translations amounts to a new fact and that reconsideration is justified in an effort to avoid an injustice. The Chamber finds that the documents are relevant and probative and that the Defence has demonstrated with clarity and specificity how the documents fit into its case. They are therefore admitted into evidence.

9. With regard to the document bearing Rule 65 *ter* no. 1D01404.1, in the absence of a revised translation that corresponds to the unredacted original, the Chamber is not in possession of any new fact which would cause it to reconsider its adjudication as delivered in the Ninth Bar Table Decision, nor has the Defence alleged any clear error of reasoning on the part of the Chamber.¹⁸ As such, the request for reconsideration in relation to this document is denied.

10. With regard to the document bearing Rule 65 *ter* no. 2D00895, the unredacted original and its corresponding translation have now been uploaded as the document bearing Rule 65 *ter* no. 1D10051. The Chamber considers in light of this new fact that reconsideration is justified in an effort to avoid an injustice. The Chamber finds that the document is relevant and probative and the Defence has demonstrated with clarity and specificity how the document fits into its case. The document bearing Rule 65 *ter* no. 1D10051 is therefore admitted into evidence.

11. In relation to the document bearing Rule 65 *ter* no. 1D05476, the Defence submits that it has now received confirmation of its authenticity.¹⁹ The Chamber has considered the Defence Request to the National Council and the Response received by the Defence.²⁰ The National Council has stated that the “form” of the document “entirely corresponds to the form of documents which originated in a certain time period” and therefore, it can conclude with “great probability” that it is an authentic document.²¹ In light of this new information, reconsideration is justified in an effort to

¹⁶ T. 20145.

¹⁷ T. 18765, 20101.

¹⁸ Ninth Bar Table Decision, paras 11-12.

¹⁹ Motion, paras 3, 8, Confidential Annex A, pp. 10-11.

²⁰ 1D10052 and 1D10055 respectively.

²¹ 1D10055, p.1.

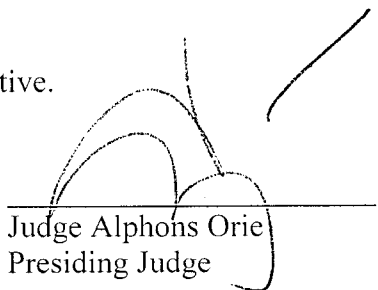
avoid an injustice. The Chamber takes the view that the information provided by the National Council is sufficient to establish the document's probative value for purposes of admission into evidence. The Chamber finds that the document is relevant and probative and the Defence has demonstrated with clarity and specificity how the document fits into its case. It is therefore admitted into evidence.

V. DISPOSITION

12. For the foregoing reasons, and pursuant to Rule 89 of the Rules, the Chamber **GRANTS** the Motion **IN PART** and

- (i) **ADMITS** into evidence the documents bearing Rule 65 *ter* nos 1D10051, 1D05476, 1D01383.1, 1D01384.1, 1D01385.1, 1D01386.1, 1D01388.1, 1D01390.1, 1D01392.1, 1D01393.1, 1D01395.1, 1D01399.1;
- (ii) **DENIES** the admission into evidence of the document bearing Rule 65 *ter* no. 1D01404.1;
- (iii) **REQUESTS** the Registry to change to status of D783 (1D05476) from 'Marked Not Admitted' to 'Exhibit';
- (iv) **REQUESTS** the Registry to assign exhibit numbers to the remaining documents admitted and inform the parties and the Chamber of the numbers so assigned;
- (v) **DENIES** all other requests.

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



Judge Alphons Orie
Presiding Judge

Dated this fourteenth day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]