

4-03-69-T
D 47471 - D 47467
05 February 2013

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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: 5 February 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 5 February 2013

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ DEFENCE REQUEST FOR
CERTIFICATION TO APPEAL DECISION ON MOTION FOR
ADMISSION INTO EVIDENCE OF REJOINDER MATERIAL**

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 7 December 2012, the Simatović Defence (“Defence”) filed a motion (“Motion”) seeking certification to appeal a prior decision of the Chamber (“Rejoinder Decision”).¹ On 21 December 2012, the Prosecution filed its Response (“Response”).²

2. The Defence submits that it did not tender a selection of documents relating to the notebooks allegedly authored by Ratko Mladić (“Mladić Notebook Documents”) at an earlier stage of the proceedings as the need to do so only arose following the Prosecution’s tendering of additional excerpts from the Mladić Notebooks suggesting that the Accused Simatović had acted as a “co-ordinator of the forces”.³ As regards the materials relating to entries in the Accused’s passport (“Passport Documents”) and the request to permit the witness referred to as Proposed Witness Two to testify, the Defence claims it could not have been expected to foresee the Prosecution’s contentions, which it submits caused it to seek the admission of the aforementioned evidence in rejoinder.⁴ It further submits that this proposed evidence is critical to “establishing Simatović’s role” during July and August 1995 and that “the failure to admit any evidence that Simatović could not have been anywhere in the territory of the former Yugoslavia at that time, will jeopardize Simatović’s right to a fair trial”.⁵ As to the testimony of the witness referred to as Proposed Witness One, the Defence contends that this testimony is necessary to clarify the contents of Prosecution documents admitted in rebuttal.⁶ With regards to the testimony of Witness JF-094, the Defence submits that while the witness previously testified about certain DB personnel files, they are not the same files as those tendered in rebuttal by the Prosecution.⁷ The Defence further submits that granting certification will materially advance the proceedings, as failing to do so could lead to a re-trial being ordered.⁸

3. In its Response, the Prosecution contends that many of the Defence arguments relate to the merits of the Rejoinder Decision and as such are outside the scope of an application for

¹ Simatović Defence Request for Certification to Appeal Decision on Defence Motion for Admission into Evidence of Rejoinder Material, 7 December 2012; Decision on Simatović Defence Motion for Admission into Evidence of Rejoinder Material, 5 December 2012.
² Prosecution Response to Simatović Defence Request for Certification to Appeal the Trial Chamber Decision on Rejoinder Evidence, 21 December 2012.
³ Motion, para. 9.
⁴ Motion, para. 10.
⁵ Ibid.
⁶ Motion, para. 11.
⁷ Motion, para. 12.
⁸ Motion, para. 14.

certification.⁹ The Prosecution submits that an interlocutory appeal of the Rejoinder Decision is not a matter that could significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.¹⁰ As regards the Passport Documents, the Prosecution suggests that the Defence’s arguments for admitting them centre on establishing a defence of alibi, to which the Prosecution maintains its previous objections.¹¹

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law as set out in a previous decision.¹²

III. DISCUSSION

5. The Chamber will address the Motion by referring to three separate categories of proposed evidence: (a.) Mladić Notebook Documents (b.) Passport Documents and (c.) Proposed Witnesses. The Chamber notes that the Defence has not advanced any submissions in relation to the documents referred to in the Rejoinder Decision as the “Babić Documents”.¹³

a. Mladić Notebook Documents

6. The Chamber notes that the Defence’s contentions focus on when it could reasonably have been expected to tender the Mladić Notebook Documents. The Chamber has already ruled, in the Rejoinder Decision, that the Defence could have been expected to submit the Mladić Notebook Documents at an earlier stage of the proceedings.¹⁴ The issue presently before the Chamber is whether that decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Chamber does not consider, nor has the Defence specifically argued, that the non-admission of the Mladić Notebook Documents constitutes such an issue, and will accordingly deny the Motion in relation to the proposed evidence in this category.

b. Passport Documents

7. The Chamber considers that the Defence’s contention that it could not have foreseen the Prosecution’s arguments regarding the Passport Documents, has already been addressed in the

⁹ Response, para. 2.

¹⁰ Ibid.

¹¹ Response, para. 3.

¹² Decision on Stanišić Request for Certification to Appeal the Trial Chamber’s Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various other Documents, 3 October 2012, para. 4.

¹³ Rejoinder Decision. para. 9.

¹⁴ Rejoinder Decision, para. 12.

Rejoinder Decision when the Chamber held that the Prosecution had not raised any new issue in rebuttal, which the Defence could not have been expected to address as part of its own case.¹⁵

8. Further, the Chamber notes the Defence's argument that it is important to establish that the Accused was not in the former Yugoslavia in July and August of 1995. The Chamber reiterates that the Defence originally sought the admission of one page from the Accused's passport in order to contradict the testimony of Witness Goran Stoparić and Witness JF-024 and that the Chamber ruled that it was not relevant to the issue of alibi.¹⁶ As such, the Chamber does not consider that the non-admission of the Passport Documents constitutes an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and will accordingly deny the Motion in relation to the proposed evidence in this category.

c. Proposed Witnesses

9. As regards Proposed Witness Two, the Chamber notes that the Defence sought to have the witness give evidence regarding the Accused's alleged presence in Greece in July and August 1995. Therefore, the Chamber considers that the reasoning applied in relation to the Passport Documents above, is equally applicable to Proposed Witness Two.

10. In arguing that Proposed Witness One's testimony would clarify the contents of the Prosecution documents admitted in rebuttal, the Defence has not identified, nor does the Chamber find, an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

11. With regard to witness JF-094, the Defence submits that the witness's testimony does not pertain to the personnel files newly tendered in rebuttal by the Prosecution and therefore these newly tendered files are distinct from those addressed in the witness's testimony. It further contends that if it is not permitted to question the witness about the newly tendered files this would "significantly affect the fair conduct of the proceedings".¹⁷ The Chamber notes that the defence has not submitted in what respect these newly tendered personnel files are in any way different from the ones about which JF-094 testified, his testimony primarily dealing with general issues relating to the authenticity and provenance of personnel files, rather than the individual details of each of those files. The Chamber reiterates that in admitting these specific personnel files under Rule 89(C), it was satisfied as to their probative value and reliability and the Defence did not provide any *prima*

¹⁵ Rejoinder Decision, para. 15.

¹⁶ Rejoinder Decision, para. 15; First Decision on Simatović Defence Second Bar Table Motion of 4 June 2012, 5 July 2012, para. 12.

¹⁷ Motion, para. 12.

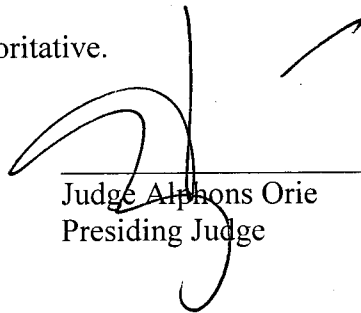
facie basis upon which to question that conclusion. Furthermore, the Chamber considers that even if the witness's original testimony concerned the authenticity of files other than those tendered in rebuttal, the Defence has not shown how the authenticity of the files tendered in rebuttal is an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. In light of the above, the Chamber will also deny the Motion in relation to the proposed evidence in this category.

12. For the foregoing reasons, the Chamber considers that the first criterion of Rule 73 (B) has not been met. In light of the Chamber having determined that the first criterion of Rule 73 (B) has not been satisfied, and considering that the two criteria are cumulative in nature, the Chamber will not address the Defence's arguments in relation to the second criterion of Rule 73 (B).

IV. DISPOSITION

13. For the foregoing reasons, pursuant to Rule 73(B) of the Tribunal's Rule of Procedure, the Chamber **DENIES** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this fifth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]