

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-T

Date: 13 July 2017

Original: English

IN THE TRIAL CHAMBER

Before: Judge Burton Hall, Presiding
Judge Joseph E. Chiondo Masanche
Judge Seon Ki Park

Registrar: Mr. Olufemi Elias

Decision of: 13 July 2017

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF EVIDENCE OF JURAJ JERNEIĆ PURSUANT TO
RULE 111**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Douglas Stringer

Counsel for the Defence:

Mr. Wayne Jordash and Mr. Iain Edwards for Mr. Jovica Stanišić
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Mr. Franko Simatović

THE TRIAL CHAMBER OF the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively);¹

BEING SEISED OF a motion filed on 24 May 2017, in which the Prosecution seeks, pursuant to Rule 111(A) of the Mechanism’s Rules of Procedure and Evidence (“Rules”), the admission of Juraj Jerneiċ’s written statement given to the Prosecution in November 2016 and nine associated exhibits;²

NOTING the Prosecution’s submission that: (i) the proposed evidence satisfies the requirements of Rules 105(C) and 111(A) of the Rules;³ (ii) its admission would advance the fair and expeditious conduct of the proceedings and would not cause prejudice since it pertains to allegations supported by other evidence from the original trial;⁴ (iii) the associated exhibits are an inseparable and indispensable part of Jerneiċ’s written statement;⁵ and (iv) the proposed evidence was not available during the original proceedings, could not have been discovered through the exercise of due diligence; and its admission is in the interest of justice;⁶

NOTING that Franko Simatović and Jovica Stanišić (collectively, “Accused”) oppose the admission of the proposed evidence on the basis, *inter alia*, that Jerneiċ did not testify in the original trial and that the proposed evidence does not fall within the limited circumstances identified in the decisions of the Trial Chamber where new evidence may be admitted;⁷

RECALLING that, on 2 February 2017, the Trial Chamber issued a decision limiting the Prosecution’s evidence primarily to that presented during the original trial and allowing the Prosecution to present new evidence only in certain limited circumstances, including where new

¹ Order Replacing a Judge in a Case Before a Trial Chamber, 21 February 2017, p. 1.

² Prosecution Motion for Admission of Evidence of Juraj Jerneiċ Pursuant to Rule 111, 24 May 2017 (with Annexes A and B) (“Motion”), paras. 1, 11, 15. *See also* Motion, Annexes A, B.

³ Motion, paras. 3-8. *See also* Prosecution Reply to Stanišić Defence Consolidated Response to Prosecution Motions for Admission of Evidence of (1) Juraj Jerneiċ (2) RFJ-108 (3) Ana Biċaniċ and (4) Vlado Vuković, 15 June 2017 (“Reply”), para. 10.

⁴ Motion, paras. 9, 10, 14. *See also* Reply, para. 10. The Prosecution adds that the rejection of the proposed evidence would negatively limit its ability to substantiate and contextualize reports in relation to the same events and indicates that it is amenable to delaying the appearance of the witness if the Accused need to conduct additional investigations. *See* Reply, paras. 10, 11.

⁵ Motion, para. 11.

⁶ Motion, paras. 12, 13, n. 27. *See also* Reply, para. 10. The Prosecution submits that Jerneiċ was only interviewed by the Croatian authorities on 18 September 2015 and was not identified to the Prosecution as a relevant witness when it received access to the relevant investigative file in February 2006. *See* Motion, para. 13; Reply, para. 10.

⁷ Simatović Defence Consolidated Response to Prosecution’s Motions for Admission of Evidence of RFJ-108, Juraj Jerneiċ, Vlado Vuković and Ana Biċaniċ Pursuant to Rule 111, 6 June 2017 (confidential), paras. 26-29; Stanišić Defence Consolidated Response to Prosecution Motions for Admission of Evidence Pursuant to Rule 111 of (1) Juraj Jerneiċ (2) RFJ-108 (3) Ana Biċaniċ and (4) Vlado Vuković, 8 June 2017 (public with a confidential Annex A), paras. 12-20. *See also* Decision on Prosecution Submission in Relation to the Chamber’s Limitation on New Evidence, 31 May 2017 (“Decision of 31 May 2017”); Decision on Stanišić’s Request for Stay of Proceedings, 2 February 2017 (“Decision of 2 February 2017”).

evidence was unavailable during the original proceedings, could not have been discovered through the exercise of due diligence, and its admission is in the interests of justice;⁸

NOTING the Prosecution's submission that the Trial Chamber's limitation on new evidence reflects legal errors affecting the fairness of the proceedings;⁹

RECALLING that the admission of new evidence is neither a starting point nor a matter of right in a retrial and that the Trial Chamber's decision to limit the Prosecution's evidence falls squarely within its discretion;¹⁰

RECALLING that the rationale for limiting the Prosecution's evidence is twofold, namely that the presentation of new evidence will inevitably prolong the proceedings and that it is particularly important to safeguard the rights of the Accused given that this retrial effectively provides the Prosecution a second chance to make its case;¹¹

CONSIDERING that Jernei  did not testify in the original trial and is, therefore, a new witness;¹²

RECALLING that the Trial Chamber indicated, *inter alia*, that requests for the admission of new evidence that was unavailable during the original proceedings should focus on evidence that the Prosecution deems critical;¹³

NOTING that the Prosecution submits that Jernei 's evidence pertains to allegations that are well-supported by evidence from the original trial;¹⁴

CONSIDERING further that the Prosecution does not demonstrate that Jernei 's evidence could not have been discovered through the exercise of due diligence during the original proceedings, given that Jernei 's record of the relevant events, which was submitted in 1991 for a book, is also contained in a publication released in 2005;¹⁵

FINDING, therefore, that the proposed evidence does not satisfy the requirements of the Decision of 2 February 2017 for admission of new evidence;

FOR THE FOREGOING REASONS,

⁸ Decision of 2 February 2017, para. 23.

⁹ Reply, paras. 8, 9.

¹⁰ Decision on Requests for Certification to Appeal Decision on Stani i 's Request for Stay of Proceedings, 1 March 2017, para. 10.

¹¹ Decision of 31 May 2017, para. 11.

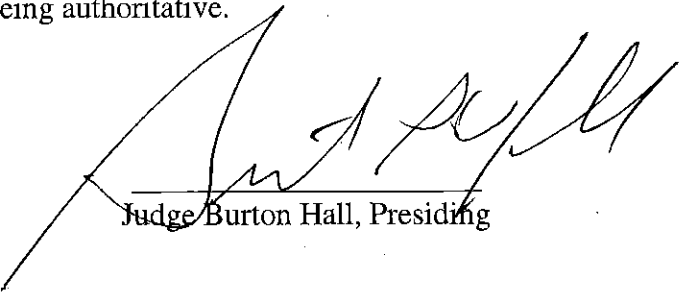
¹² See *The Prosecutor v. Jovica Stani i  and Franko Simatovi *, Case No. IT-03-69-T, Certificate on the Witness List, 2 July 2015 (confidential).

¹³ Decision of 31 May 2017, para. 18.

HEREBY DISMISSES the Motion.

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

Done this 13th day of July 2017,
At The Hague,
The Netherlands.



Judge Burton Hall, Presiding

[Seal of the Mechanism]

¹⁴ Motion, para. 14.

¹⁵ See Motion, para. 7; Annex A, para. 4. See also *supra* n. 6.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ Greffe du MPTI	<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye		
From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Other/ Autre :	
Case Name/ Affaire :	Prosecutor v. Jovica Stanišić and Franko Simatović		Case Number/ Affaire n° :	MICT-15-96-T	
Date Created/ Daté du :	13 July 2017	Date transmitted/ Transmis le :	13 July 2017	No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Title of Document/ Titre du document :	DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE OF JURAJ JERNEIĆ PURSUANT TO RULE 111				
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue			
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu			
	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu			
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu			
		<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/préciser) :			
Document type/ Type de document :	<input type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Indictment/ Acte d'accusation		
	<input checked="" type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers	<input type="checkbox"/> Warrant/ Mandat		
	<input type="checkbox"/> Order/ Ordonnance	<input type="checkbox"/> Book of Authorities/ Recueil de sources	<input type="checkbox"/> Notice of Appeal/ Acte d'appel		
	<input type="checkbox"/> Judgement/ Jugement/Arrêt	<input type="checkbox"/> Affidavit/ Déclaration sous serment			

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word est jointe)					
<input type="checkbox"/> English/ Anglais	<input checked="" type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input checked="" type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :					
Original/ Original en	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :					
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :	

Send completed transmission sheet to/ Veuillez soumettre cette fiche dûment remplie à :

JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014