

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-T

Date: 20 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: 20 July 2017

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
EVIDENCE OF LUKA BRKIĆ 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 30 June 2017, in which the Prosecution requests, pursuant to Rule 111(A) of the Mechanism’s Rules of Procedure and Evidence (“Rules”), the admission of: (i) Luka Brkić’s written statement given to the Prosecution of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in September 2000;² (ii) the transcript of Brkić’s testimony before the ICTY in the case of *Prosecutor v. Milan Martić*, Case No. IT-95-11 (“*Martić case*”);³ and (iii) four associated exhibits;⁴

NOTING the Prosecution’s submissions that: (i) the proposed evidence satisfies the requirements of Rules 105(C) and 111(A) of the Rules; (ii) its admission would advance the fair and expeditious conduct of the proceedings and would not infringe the fair trial rights of Jovica Stanišić and Franko Simatović; and (iii) the four associated exhibits are an inseparable and indispensable part of Brkić’s testimony in the *Martić case*;⁵

NOTING that Stanišić indicates that, in principle, he does not oppose the Motion;⁶

NOTING that Simatović did not file a response;

NOTING that, under Rule 105(C) of the Rules, the Trial Chamber may admit any relevant evidence which it deems to have probative value and that, under Rule 111(A) of the Rules, the Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the ICTY if the witness: (i) is present in court; (ii) is available for cross-examination and any questioning by the Judges; and (iii) attests that the written statement or transcript accurately reflects that witness’ declaration and what the witness would say if examined;

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;⁷

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 Luka Brkić Pursuant to Rule 111, 30 June 2017 (with Annexes A and B) (“Motion”), paras. 1, 16, *referring, inter alia, to* Annex A. *See* proposed exhibit with Rule 70 number 80165.

³ Motion, paras. 1, 16, *referring, inter alia, to* Annex A. *See* proposed exhibit with Rule 70 number 80167.

⁴ Motion, paras. 1, 14-16, *referring to* Annex B. *See* proposed exhibits with Rule 70 numbers 04109-04111, 02156.

⁵ Motion, paras. 1, 3-10, 12-16. *See also* Prosecution Reply to Stanišić Defence Consolidated Response to Prosecution Motion for the Admission of Evidence Pursuant to Rule 111 of Luka Brkić and Jasna Denona, 18 July 2017.

⁶ Stanišić Defence Consolidated Response to Prosecution Motions for the Admission of Evidence Pursuant to Rule 111 of Luka Brkić and Jasna Denona, 11 July 2017, para. 2.

CONSIDERING that, except for a handwritten list which is the first page of the document with Rule 70 number 80165,⁸ the proposed evidence was admitted in the original trial;⁹

CONSIDERING that the list is unsigned and bears no indicia of reliability and, thus, is not appropriate for admission into evidence;

CONSIDERING that the Indictment refers to crimes allegedly committed by Serb forces against non-Serb civilians in the village of Škabrnja in the Serb Autonomous Region of Krajina in November 1991¹⁰ and that Brkić's written statement and testimony in the *Martić* case contain information about the events in the area during the relevant period;¹¹

CONSIDERING that the four proposed associated exhibits form an inseparable and indispensable part of Brkić's testimony in the *Martić* case;¹²

FINDING, therefore, that the proposed evidence, with the exception of the list, is relevant, has probative value, and is appropriate for admission pursuant to Rule 111(A) of the Rules;

FOR THE FOREGOING REASONS,

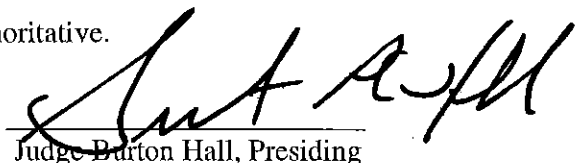
HEREBY GRANTS the Motion, in part;

DECIDES that the proposed evidence, with the exception of the list, is appropriate for admission into evidence subject to the fulfillment of the conditions set forth in Rule 111 of the Rules when the witness is present in court; and

DENIES the Motion in all other respects.

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

Done this 20 day of July 2017,
At The Hague,
The Netherlands.



Judge Burton Hall, Presiding

[Seal of the Mechanism]

⁷ Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017, para. 23.

⁸ Cf. Document with Rule 70 number 80165 with *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution Exhibit 1803.

⁹ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution Exhibits 1792, 1803, 1805-1808.

¹⁰ See, e.g., *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Third Amended Indictment, 10 July 2008, paras. 24, 32.

¹¹ See, e.g., Documents with Rule 70 number 80165, pp. 3-6; 80167, pp. 3227-3235, 3237-3239, 3242-3253, 3264-3277, 3279-3284.

¹² See, e.g., Document with Rule 70 number 80167, pp. 3241, 3242, 3254-3257, 3284-3291.



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