

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-T

Date: 5 September 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: 5 September 2017

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
EVIDENCE OF BORIVOJE SAVIĆ (RFJ-140) 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

1. The Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively)¹ is seised of the Prosecution’s request to admit the evidence of Borivoje Savić (RFJ-140) pursuant to Rule 111 of the Mechanism’s Rules of Procedure and Evidence (“Rules”).² Jovica Stanišić filed a response on 14 August 2017³ and Franko Simatović did not file a response. The Prosecution filed a reply on 21 August 2017.⁴

I. SUBMISSIONS

2. The Prosecution requests the admission of Savić’s written statement, prepared in 2012 for use in the case of *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, amalgamating: (i) statements given to the Prosecution of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in 2002 and 2003; (ii) testimony given before the ICTY in the original trial in July 2009; and (iii) clarifications given in 2008, 2009, and 2012.⁵ The Prosecution also seeks the admission of 31 associated exhibits that, in its view, form an inseparable and indispensable part of the amalgamated statement.⁶ The Prosecution submits that the proposed evidence satisfies the requirements of Rules 105 and 111(A) of the Rules and that its admission would enable the Prosecution to present its case in an efficient and expeditious manner without infringing the fair trial rights of the Accused.⁷

3. Stanišić responds that, although in principle Savić’s evidence is admissible as he was a witness in the original trial, he opposes the admission of: (i) the amalgamated statement arguing that it comes predominantly from statements and clarifications that were not tendered in the original trial and thus, in principle, is new evidence,⁸ and (ii) segments of the amalgamated statement arguing that they contains evidence of material facts that are outside the scope of the Indictment and

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 Borivoje Savić (RFJ-140) Pursuant to Rule 111, 31 July 2017 (with confidential Annexes A and B and public Annex C) (“Motion”).

³ Stanišić Defence Response to Prosecution Motion for the Admission of Evidence of Borivoje Savić (RFJ-140) Pursuant to Rule 111, 14 August 2017 (confidential with confidential Annex A) (“Stanišić Response”).

⁴ Prosecution Reply to Stanišić Defence Response to Prosecution Motion for the Admission of Evidence of Borivoje Savić (RFJ-140) Pursuant to Rule 111, 21 August 2017 (confidential) (“Reply”).

⁵ Motion, paras. 1, 14; Motion, Annex A, paras. 1, 2. The Prosecution requests the admission of the proposed evidence subject to the conditions set out in Rule 111(A) of the Rules. *See* Motion, paras. 3, 14.

⁶ Motion, paras. 1, 13, 14. *See* Motion, Annex B, referring to proposed associated exhibits with Rule 70 numbers 09296, 09340, 01992.1, 00106, 01992.2, 50055.1, 09301, 03439, 02212, 03435, 06776, 09294, 09291, 09050, 09299, 09153, 09329, 09298, 00903, 09052, 09295, 09293, 09297, 01590, 09300, 09302, 02582, 50293, 09112, 06856, 07359. The Trial Chamber notes that among the 34 items that are listed in Annex B as proposed associated exhibits, one item has already been admitted (*see* Motion, Annex B, item 7, referring to exhibit with Rule 70 number 50092) and two items are listed twice (*see* Motion, Annex B, items 8, 11, 18, 32, referring to exhibits with Rule 70 numbers 09301 and 03435). *See also* Reply, para. 10.

⁷ Motion, paras. 4-12. *See* Reply, para. 1.

⁸ *See* Stanišić Response, paras. 2, 4, 5, 9, 15.

are not discussed in the Prosecution's Pre-Trial Brief.⁹ With regard to the proposed associated exhibits, Stanišić opposes the admission of 21 exhibits.¹⁰ He contends that these exhibits are new evidence¹¹ and/or do not form an inseparable or indispensable part of the evidence because Savić did not witness the described events, disputes or does not confirm their accuracy, or offers limited commentary on their content.¹²

4. The Prosecution replies that there is no prejudice, lack of notice, or need for additional preparation time since the amalgamated statement is based almost entirely on Savić's testimony in the original trial and prior statements and clarifications which, although not admitted in the original trial, were used by both parties during Savić's examination.¹³ The Prosecution submits, therefore, that the admission of the Rule 111 Statement is consistent with the Trial Chamber's decisions and is in the interests of justice.¹⁴ Regarding the objections related to the scope of the Indictment and the Pre-Trial Brief and the admission of proposed associated exhibits, the Prosecution replies that Stanišić conflates evidence with material facts¹⁵ and that his objections to the exhibits are unfounded.¹⁶

II. DISCUSSION

5. The Trial Chamber recalls the applicable law governing the admission of written statements and transcripts pursuant to Rule 111 of the Rules, as well as associated exhibits, as set out in a previous decision.¹⁷ The Trial Chamber further recalls the limitations on new evidence previously set out.¹⁸

6. Savić's amalgamated statement is relevant and has probative value. In reaching this conclusion, the Trial Chamber has taken into account that the statement contains information about

⁹ Stanišić Response, paras. 10-12, 15; Annex A. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Third Amended Indictment, 10 July 2008 ("Indictment"); Prosecution Notice of Rule 70(E) Filings Pursuant to the Trial Chamber's Decision of 2 February 2017, 9 March 2017 (confidential Annexes A, B, and D and confidential and *ex parte* Annexes C and E) ("Pre-Trial Brief"), Annex A. See also Stanišić Response, para. 3.

¹⁰ See Stanišić Response, paras. 2, 13-15.

¹¹ Stanišić Response, paras. 2, 13 (*referring to* 21 proposed associated exhibits with Rule 70 numbers 09296, 09340, 09301, 06776, 09294, 09291, 09050, 09299, 09153, 09329, 09298, 09052, 09295, 09293, 09297, 09300, 09302, 50293, 09112, 06856, 07359), 15. The Trial Chamber notes that although Stanišić indicates 22 exhibits, the exhibit with Rule 70 number 09301 is listed twice. See Stanišić Response, para. 13, n. 20.

¹² Stanišić Response, paras. 14 (*referring to* proposed associated exhibits with Rule 70 numbers 03439, 09329, 09297, 02582, 07359), 15. The Trial Chamber notes that Stanišić opposes the admission of proposed associated exhibits with Rule 70 numbers 09329, 09297, and 07359 on the basis that they are new evidence.

¹³ Reply, paras. 1, 2.

¹⁴ Reply, para. 2.

¹⁵ Reply, para. 7. See Reply, paras. 8, 9.

¹⁶ See Reply, paras. 3-6.

¹⁷ Decision on Prosecution Motion for Admission of Evidence of John Wilson Pursuant to Rule 111, 1 June 2017, paras. 7, 8.

¹⁸ Decision on Prosecution Submission in Relation to the Chamber's Limitation on New Evidence, 31 May 2017; Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017.

allegations in the Indictment including, *inter alia*, about: (i) several named members of the alleged joint criminal enterprise;¹⁹ (ii) the alleged training camp in Golubić;²⁰ and (iii) Stanišić's alleged authority over the Serbian Volunteer Guard and the Scorpions.²¹ The Trial Chamber also notes that the statement contains information about political developments in the Serbian Autonomous Regions of Slavonia, Baranja, and Western Srem and of Krajina, and in particular about the Serbian Democratic Party.²²

7. Turning to Stanišić's argument that the amalgamated statement should not be admitted as it is predominantly based on new evidence, which did not form part of the original trial, the Trial Chamber considers that the challenged new evidence may be relevant to clarify the witness's prior evidence, assess the witness's credibility, or provide greater context. With respect to Stanišić's argument that certain segments of the amalgamated statement contains material facts that are not pleaded in the Indictment or the Pre-Trial Brief, the Trial Chamber considers that the challenged segments may constitute evidence in support of material facts pleaded in the Indictment or be relevant as background, context, or in the assessment of the credibility of other evidence admitted on the record.

8. In light of the foregoing, the Trial Chamber considers that the amalgamated statement is appropriate for admission pursuant to Rules 105 and 111 of the Rules.

9. Turning to the proposed associated exhibits, the Trial Chamber notes that ten of the 31 proposed associated exhibits²³ were admitted in the original trial in the same form as presented in the Motion²⁴ and are discussed in the amalgamated statement.²⁵ Without these exhibits, the statement would become incomprehensible or be of lesser probative value. The Trial Chamber finds that these exhibits form an inseparable and indispensable part of the statement, are relevant and have probative value, and are, therefore, appropriate for admission pursuant to Rules 105 and 111 of the Rules. The remaining 21 exhibits, which are new for the purposes of this Decision, are also

¹⁹ See Motion, Annex A, paras. 7-11, 13, 14, 16, 22-24, 29, 31, 61-71, 74, 75, 78-82, 85, 88-92, 95-100, 107-113, 115, 117, 122, 124, 126, 130, 131, 133-136, 138, 148, 150, 159-169, 171-173, 175-177, 179-181, 189, 190, 193-198, 203, 204, 209; Indictment, para. 12.

²⁰ See Motion, Annex A, paras. 105, 106, 136; Indictment, paras. 3-5.

²¹ See Motion, Annex A, paras. 166, 181; Indictment, paras. 4-7, 15, 16.

²² See Motion, Annex A, paras. 7-9, 22-32.

²³ See proposed associated exhibits with Rule 70 numbers 01992.1, 00106, 01992.2, 50055.1, 03439, 02212, 03435, 00903, 01590, 02582. Proposed associated exhibit with Rule 70 number 50092 has already been admitted in this case as Exhibit P00004 (see Motion, Annex B, item 7), rendering moot the Prosecution's request in this regard. See *supra* n. 6.

²⁴ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution Exhibits 15, 16, 17, 21, 2464, 20, 19, 1952, 1557, 1047.

²⁵ See Motion, Annex A, paras. 86, 87, 99, 174, 178, 181, 193, 194, 197, 202, 206, 209.

discussed in the amalgamated statement.²⁶ Having reviewed these exhibits, the Trial Chamber is satisfied that they provide clarity and greater context to the evidence, are relevant, and have probative value.

III. DISPOSITION

10. For the foregoing reasons, pursuant to Rules 55, 105(C), and 111 of the Rules, the Trial Chamber hereby:

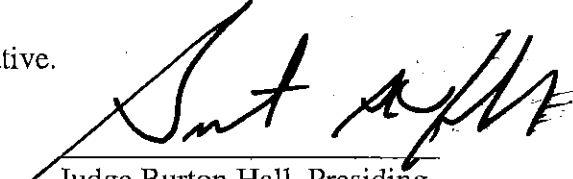
GRANTS the Motion;

DECIDES that Witness Borivoje Savić's amalgamated written statement is appropriate for admission into evidence; and

DECIDES that associated exhibits with Rule 70 numbers 09296, 09340, 01992.1, 00106, 01992.2, 50055.1, 09301, 03439, 02212, 03435, 06776, 09294, 09291, 09050, 09299, 09153, 09329, 09298, 00903, 09052, 09295, 09293, 09297, 01590, 09300, 09302, 02582, 50293, 09112, 06856, and 07359 are appropriate for admission into evidence.

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

Done this 5th day of September 2017,
At The Hague,
The Netherlands.



Judge Burton Hall, Presiding

[Seal of the Mechanism]

²⁶ Exhibits with Rule 70 numbers 09296, 09340, 09301, 06776, 09294, 09291, 09050, 09299, 09153, 09329, 09298, 09052, 09295, 09293, 09297, 09300, 09302, 50293, 09112, 06856, 07359. See Motion, Annex A, paras. 10, 69, 150, 187-193, 195, 196, 198-201, 203-205, 207, 208, 210, 211.



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