

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-15-96-T

Date: 21 September 2017

Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Olufemi Elias

**THE PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**PROSECUTION CONSOLIDATED REPLY TO DEFENCE RESPONSES TO  
URGENT PROSECUTION SUPPLEMENTAL SUBMISSION REGARDING  
TESTIMONY OF EXPERT WITNESS JAKUB BIJAK**

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**The Office of the Prosecutor:**

Mr. Douglas Stringer

**Counsel for Jovica Stanišić:**

Mr. Wayne Jordash QC

Mr. Iain Edwards

**Counsel for Franko Simatović:**

Mr. Mihajlo Bakrač

Mr. Vladimir Petrović

1. The Chamber should permit Dr. Bijak's expert testimony and admit his Expert Report<sup>1</sup> in accordance with Rule 116.<sup>2</sup>
2. The Prosecution has adhered to the Chamber's Guidelines<sup>3</sup> and Decisions<sup>4</sup> in regard to Dr. Bijak's evidence. Dr. Bijak's Expert Report was filed on 13 October 2016, the deadline set in the Chamber's Pre-Trial Work Order.<sup>5</sup> In this regard, the claim that the Prosecution has known about the limitation on its evidence since the Appeals Chamber ordered the re-trial on 15 December 2015 is baseless and ignores a plain reading of the Pre-Trial Work Order, the entirety of the Prosecution's 5 September 2016 pre-trial submissions<sup>6</sup> and the Trial Chamber's characterisation of its limitation on new evidence as an exercise of its own discretion, promulgated *proprio motu* in February 2017.<sup>7</sup>
3. Moreover, in its 28 April 2017 Submission<sup>8</sup>, the Prosecution specifically cited Dr. Bijak's evidence, stating that it had commissioned Dr. Bijak to prepare a report and that Dr. Radić was not being recalled.<sup>9</sup> In its ensuing Decision of 31 May 2017, the Trial Chamber did not adopt the strict interpretation of its 2 February Decision espoused by the Defence,<sup>10</sup> indicating it would allow greater flexibility for expert evidence.<sup>11</sup> The Prosecution thus reasonably concluded that the question of Dr. Bijak's evidence had been addressed by the Trial Chamber. Certainly the Chamber gave no contrary instruction to

<sup>1</sup> Rule70#83007 ("Expert Report"). All references herein refer to Case No.MICT-15-96-T unless otherwise noted.

<sup>2</sup> MICT/1/Rev.2 (26 September 2016) ("MICT Rules").

<sup>3</sup> Order on the Procedure for the Conduct of Trial, 6 December 2016, Annex A, ("Guidelines").

<sup>4</sup> Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017 ("2 February Decision"); Decision on Requests for Certification to Appeal Decision on Stanišić's Request for Stay of Proceedings, 1 March 2017 ("1 March Decision"); Decision on Prosecution Submission in relation to the Chamber's Limitation on New Evidence, 31 May 2017 ("31 May Decision").

<sup>5</sup> Order Establishing a Pre-Trial Work Plan, 3 June 2016 ("Pre-Trial Work Order").

<sup>6</sup> See e.g. Prosecution Notice of Rule 70(E) Filings, 5 September 2016.

<sup>7</sup> Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017, para.23. *Contra* Simatović Defence Response to Prosecution's Urgent Supplemental Submission regarding Testimony of Expert Witness Jakub Bijak, 18 September 2017 ("Simatović Response"), para.3.

<sup>8</sup> Prosecution Submission in relation to the Chamber's Limitation on New Evidence, 28 April 2017 ("28 April 2017 Submission"), para.24.

<sup>9</sup> 28 April 2017 Submission, para.24 ([t]he Chamber's clarification is required to maintain the independence of expert evidence. Before the unanticipated Decisions, the Prosecution invested considerable resources in obtaining updated reports from experts on the ICTY trial witness list, and commissioned Bijak to prepare a report replacing the evidence of Radić who is not being recalled. Since this evidence falls within the scope of the ICTY trial, the Prosecution should be permitted to tender updated expert reports and associated exhibits.).

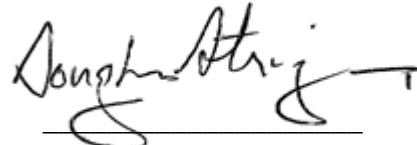
<sup>10</sup> Stanišić Defence Response to Urgent Prosecution Supplemental Submission regarding Proposed Expert Witness Jakub Bijak, 19 September 2017 ("Stanišić Response"), para.10; Stanišić Defence Response To Prosecution Submission in Relation to the Chamber's Limitation On New Evidence, 8 May 2017, paras.37-39.

<sup>11</sup> 31 May Decision, para.17; See Urgent Prosecution Supplemental Submission regarding Testimony of Expert Witness Jakub Bijak, 14 September 2017 ("Prosecution Supplemental Submission"), para.8.

the Prosecution at the time and has not subsequently directed the Prosecution to discard its Croatian demographic expert Dr. Bijak or explore retaining Dr. Radić.

4. For the reasons set forth in the Prosecution Supplemental Submission and above, the Chamber should grant the Prosecution's request for Dr. Bijak to testify pursuant to Rule 116.

Word Count: 583

A handwritten signature in black ink, appearing to read 'Douglas Stringer', written over a horizontal line.

Douglas Stringer  
Senior Trial Attorney

Dated this 21<sup>st</sup> day of September 2017  
At The Hague, The Netherlands



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