

**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-08-91-T

Date: 8 July 2011

Original: English

IT-08-91-T
012560 - 012543
08 July 2011

12560

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IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 8 July 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART PROSECUTION'S
MOTION FOR ADMISSION OF DOCUMENTS SHOWN
TO WITNESS MS001, ANDRIJA BJELOŠEVIĆ**

The Office of the Prosecutor

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TRIAL CHAMBER II ("Trial Chamber") of the 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 ("Tribunal") is seised of "Prosecution's motion for the admission of documents shown to witness MS-001, Andrija Bjelošević", filed on 2 June 2011 ("Motion").¹

I. INTRODUCTION AND BACKGROUND

1. The Prosecution requests, pursuant to Rules 73 and 89(C) of the Rules of Procedure and Evidence ("Rules"):

- the admission of 12 documents which were marked for identification during the cross-examination of Andrija Bjelošević "pending a ruling on the admission of 'fresh evidence'",² and
- the admission of one document "which was not tendered by the parties but which was identified by the witness",³

2. On 25 May 2011, the Trial Chamber ruled on an oral objection by the Defence of Mićo Stanišić ("Stanišić Defence") on the admissibility of fresh evidence stating that it will follow a decision on this matter issued by the Appeals Chamber in the *Prlić* Case, and will evaluate any such fresh evidence on a case by case basis.⁴

3. On 14 June 2011, the Stanišić Defence opposed the Motion ("Response"), stating that the Prosecution failed to meet the criteria for admission of fresh evidence.⁵ On 17 June, 2011 the Prosecution sought leave to reply and replied to the Response ("Reply").⁶

¹ The Prosecution had requested orally an extension of the word limit to 3,500 words, which the Trial Chamber granted on 1 June 2011 at T. 21689.

² Motion, para. 1.

³ Motion, para. 1.

⁴ Hearing, 25 May 2011, T. 21330, referring to *Prosecution v. Prlić et al.*, Case No. IT-04-74-AR73.14, Decision on the interlocutory appeal against the Trial Chamber's decision on presentation of documents by the Prosecution in cross-examination of Defence witnesses, 26 Feb 2009, ("*Prlić* Appeal Decision").

⁵ Stanišić response to Prosecution's motion for admission of documents shown to witness MS-001, Andrija Bjelošević, 14 Jun 2011, para. 12.

⁶ Prosecution's motion seeking leave to reply and reply to Stanišić's response to Prosecution's motion for admission of documents shown to witness MS-001, Andrija Bjelošević, 17 Jun 2011.

II. SUBMISSIONS

A. General submissions by the parties

4. The Prosecution recalls the *Prlić* Appeal Decision which deals with the issue of admissibility of fresh evidence tendered by the Prosecution during the cross-examination of Defence witnesses.⁷ The Prosecution submits that the *Prlić* Appeal Decision does not address the issue of whether the Prosecution may reinforce its case through the cross-examination of Defence witnesses, which the Prosecution claims it is allowed to do as supported by other jurisprudence.⁸

5. The Stanišić Defence responds that the *Prlić* Appeal Decision does not address this matter “because the issue in that appeal and the case is the question of admissibility of fresh evidence” and “[o]nly if an exhibit is admitted or admissible may a party ask questions about it and rely on that exhibit.”⁹

6. The Stanišić Defence submits that “it cannot seriously be argued by the Prosecution that the ‘exceptional circumstances’ criterion mandated by the *Prlić* jurisprudence is met” and that in fact the Motion “makes no mention of this element of this jurisprudence in its review of the law and there are no submissions made that address how or why the 12 documents could meet the requirement that there are exceptional circumstances, in the interest of justice, which would warrant their admission as fresh evidence.”¹⁰

7. The Prosecution argues that, on the contrary, the Motion “refers [...] to the Appeals Chamber’s ruling that when seeking to introduce fresh evidence, the Prosecution must justify its request and highlight the importance of the new documents”, and that to conform with this requirement, the Prosecution has highlighted the importance of each proposed document.¹¹

8. The Stanišić Defence also submits that the “12 documents marked for identification are not admissible as fresh evidence according to the *Prlić* Appeal Decision” and that Rule 65 *ter* 20101 “was not tendered by either party and is not admissible”.¹² The Stanišić Defence argues that the

⁷ Motion, para. 4.

⁸ Motion, para. 5, citing *Prosecution v. S. Milosević*, Case No. IT-02-54-T, Decision on Prosecution motion for reconsideration regarding evidence of Defence witnesses Mitar Balević, Vladislav Jovanović, Vukašin Andrić and Dobro Aleksovski and Decision *proprio motu* reconsidering admission of exhibits 837 and 838 regarding evidence of Defence witness Barry Lituchy, 17 May 2005, para. 11; *Prosecution v. Bagosora*, Case No. ICTR-98-41-T, Decision on request for severance of three accused, 27 Mar 2006, para. 7 *in limine*.

⁹ Response, para. 9.

¹⁰ Response, para. 11.

¹¹ Reply, para. 4.

¹² Response, para. 12.

“Prosecution submissions in relation to all 13 documents amount to a bar table request for admission of documents”, which is no longer available as the Prosecution has closed its case.¹³

B. Submissions by the parties on each document

1. P02326 MFI

9. The Prosecution tenders P02326 MFI, a half page document signed by Andrija Bjelošević on 13 November 1992 listing members of the RSMUP, who were killed or wounded.¹⁴ P02326 MFI mentions Nikola Jorgić, whose name also appears on P01300, showing that he was a member of the RSMUP as of May 1992.¹⁵ The Prosecution argues that “P02326 MFI illustrates that, instead of taking measures against Jorgić, despite widespread knowledge of his acts, he was still listed as a member of the RSMUP in November 1992”.¹⁶ The Prosecution also submits that this document was disclosed to the Defence on 11 April 2011 and “does not introduce a new topic but corroborates the Prosecution’s case”.¹⁷

10. The Stanišić Defence responds, *inter alia*, that the “Prosecution offers no explanation about when and by which means it obtained P2326 MFI, why it was disclosed to the Defence on 11 April 2011, why the Prosecution did not show it to any witness during the Prosecution case-in-chief”.¹⁸

11. The Prosecution clarifies that this document was disclosed on 2 March 2011.¹⁹ It argues that it was “Bjelošević’s contention that measures were taken against criminal groups which prompted the use of this document and which renders it relevant and probative.”²⁰

2. P02341 MFI and P02345 MFI

12. The Prosecution also tenders the following documents:

- P02341 MFI, “a criminal report against Nedžad Begović and 61 other non-Serbs [...] for having voted in the referendum on the independence of Bosnia and Herzegovina.”²¹ This document was disclosed on 22 March 2010.²²

¹³ Response, para. 12.

¹⁴ Motion, para. 10.

¹⁵ Motion, para. 10.

¹⁶ Motion, para. 10.

¹⁷ Motion, para. 11.

¹⁸ Response, para. 13.

¹⁹ Reply, para. 5.

²⁰ Reply, para. 6.

²¹ Motion, para. 13.

- P02345 MFI, a document signed by Andrija Bjelošević, “by which CSB Doboj issued criminal charges against the HDZ president, Jozo Mandić, who was 71 years old at the time, for armed rebellion.”²³ This document was disclosed on 3 May 2007.²⁴

13. The Prosecution argues that both criminal reports are similar to others tendered during the Prosecution case and confirm that “(1) non-Serbs were unlawfully detained in the Doboj Central Prison; (2) that they were charged with armed rebellion or for having voted during the referendum; and (3) that criminal reports were drafted months after the start of the detention of these detainees.”²⁵ The Prosecution further submits that these documents also show that the RSMUP “had the material capacity to investigate criminal acts but only decided to do so against alleged non-Serb perpetrators.”²⁶ Additionally, the Prosecution tenders P02345 MFI to challenge the credibility of Andrija Bjelošević.²⁷

14. The Stanišić Defence points to the fact that P02341 MFI and P02345 MFI were disclosed to the Defence on 3 May 2007 and 22 March 2010 respectively,²⁸ and that the Prosecution did not take any step to add them to its Rule 65 *ter* exhibit list and that they were not shown to any Prosecution witness during its case-in-chief.²⁹

15. The Prosecution argues that it did not have any reason to do so since “Prosecution witnesses never sought to deny the fact that criminal reports were drafted in SJB Doboj against non-Serbs for having voted in the referendum or for the possession of fire-arms.”³⁰

3. P02327 MFI

16. The Prosecution tenders P02327 MFI, being “a video of Doboj’s HDZ President, Jozo Mandić, at the site of a prisoner’s exchange in September 1992”, the transcript of which was disclosed to the Defence on 16 December 2005.³¹

17. The Prosecution submits that the video highlights its contention that “serious crimes alleged against non-Serbs were no more than a device to justifying the imprisonment of non-Serbs, who

²² Motion, para. 13.

²³ Motion, para. 12.

²⁴ Motion, para. 12.

²⁵ Motion, para. 14.

²⁶ Motion, para. 14.

²⁷ Motion, para. 15.

²⁸ Response, para. 14.

²⁹ Response, para. 14.

³⁰ Reply, para. 7.

³¹ Motion, para. 17.

could be used subsequently for the purposes of prisoners exchange” and corroborates evidence on the record relating to the mistreatment of non-Serbs in detention facilities in Doboj.³²

18. The Stanišić Defence responds that the Prosecution “offers no explanation concerning when and by which means it obtained this video, why it was not disclosed [...] along with a transcript in 2005, why it was not shown to any Prosecution witness during the Prosecution case-in-chief.”³³ It further submits that the video “appears to be a compilation of various clips” and that “the dates when this was recorded are uncertain, as is the identity of the person(s) who made the compilation and the means used to make it”.³⁴ The Defence also challenges that the video was taken in September 1992 by arguing that “on page 23 of the English transcript, a person says that he was taken away on 15 January and considering the weather shown on the video, it would appear to be later in the year, and not before spring 1993”.³⁵

19. The Prosecution replies that it had clarified in a footnote in the Motion that “[d]ue to a clerical error the wrong video was disclosed at the time”.³⁶ With regard to the date of the video, it asserts that on the video, Jozo Mandić says he was arrested on 3 May 1992 and held for 125 days in a prison in Doboj and thus “it follows that the video was recorded during the first week of September 1992”, which the Prosecution submits, has been corroborated by another Prosecution witness.³⁷

4. P02328 MFI

20. The Prosecution tenders P02328 MFI, a payroll of the Doboj Special Unit dated 18 June 1992, listing Slobodan Karagić and 49 other members of the unit, which the Prosecution obtained on 28 April 2011, after the conclusion of the witness’s evidence-in-chief.³⁸

21. The Prosecution tenders this document as corroboration of earlier prosecution evidence that known criminals were allowed to remain in the MUP as it shows that Slobodan Karagić was paid by the RSMUP for the month of May 1992.³⁹ The Prosecution also tenders this document to challenge Andrija Bjelošević’s credibility as it demonstrates that the police officers in Doboj were receiving salaries in June 1992, which was denied by the witness.⁴⁰

³² Motion, para. 18.

³³ Response, para. 15.

³⁴ Response, para. 15.

³⁵ Response, para. 15.

³⁶ Reply, para. 8. See Motion, footnote 24.

³⁷ Reply, para. 9.

³⁸ Motion, para. 19.

³⁹ Motion, para. 20.

⁴⁰ Motion, para. 20.

22. The Stanišić Defence responds that “the Prosecution offers no explanation how or why P2328 MFI was obtained only after the conclusion of the examination-in-chief Mr. Bjelošević [sic]”. The Stanišić Defence further submits that, contrary to the assertion made by the Prosecution, “this document does not show that Slobodan Karagić was paid by the RSMUP for May 1992” and that “there is no signature next to the name Slobodan Karagić, confirming payment of any money.”⁴¹

23. The Prosecution replies that an investigator conducted further inquiries to gather additional documents to address matters raised by Andrija Bjelošević during his evidence in chief,⁴² and that “the fact that there is no signature next to Slobodan Karagić’s name is not a relevant factor at the stage of admission, but a matter to be addressed during final arguments.”⁴³

5. P02330 MFI and P02332 MFI

24. The Prosecution tenders P02330 MFI, a document signed by Andrija Bjelošević and dated 21 May 1992 “requesting Banja Luka to forward a dispatch to the RSMUP headquarters”⁴⁴ and P02332 MFI, “a report sent by Bjelošević to the RSMUP headquarters on 30 May 1992”.⁴⁵ The Prosecution submits, *inter alia*, that these documents “undermine the assertion Bjelošević made that during this period, he was working for the Army and had no contact with the RSMUP.”⁴⁶

25. The Stanišić Defence responds that the Prosecution offers no explanation about when and how it obtained these documents, why they were only disclosed to the Defence on 11 April 2011, and why the Prosecution did not show either document to any witness during the Prosecution case-in-chief.⁴⁷

26. The Prosecution clarifies that these documents were disclosed on 2 March 2011 in response to a Defence Rule 66(B) request for all documents authored or provided by Andrija Bjelošević.⁴⁸ The Prosecution argues that whilst “these documents were available in its databases prior to the close of its case [...], it was Bjelošević’s assertions, that the CSB ceased to function as of 3 May and that there were no communications as of that date, which makes these documents relevant.”⁴⁹

⁴¹ Response, para. 16.

⁴² Reply, para. 10.

⁴³ Reply, para. 10.

⁴⁴ Motion, para. 21.

⁴⁵ Motion, para. 22.

⁴⁶ Motion, para. 24.

⁴⁷ Response, para. 17.

⁴⁸ Reply, para. 11.

⁴⁹ Reply, para. 12.

6. P02331 MFI

27. The Prosecution tenders P02331 MFI, a payroll of the Doboj Police Detachment listing salaries for the month of May 1992,⁵⁰ which was obtained on 28 April 2011, after the conclusion of the witness's evidence-in-chief. The Prosecution submits, *inter alia*, that the document corroborates evidence on the record that Milutin Blašković was a member of the RSMUP in 1992, which the Stanišić Defence challenged during the cross-examination of Edin Hadžović.⁵¹ The document is also tendered for credibility purposes as Andrija Bjelošević claimed that no policemen were paid in May and June 1992 in Doboj.⁵²

28. The Stanišić Defence responds that this document was disclosed after the completion of the examination-in-chief of Andrija Bjelošević and that "there is no nexus between Mr. Bjelosevic and P2331 MFI for it to be admitted into evidence through him as this document was obviously issued by the SJB Doboj".⁵³

29. The Prosecution replies that by conceding that the document was "obviously issued by the SJB Doboj", the Stanišić Defence contradicts his contention that there is no nexus between the witness and P2331 MFI, in the light of Andrija Bjelošević's position as a superior of SJB Doboj.⁵⁴

7. P02333 MFI

30. The Prosecution tenders P02333 MFI, the Doboj Onsite Investigation Logbook, which was disclosed on 5 March 2010.⁵⁵ The Prosecution asserts that during cross-examination, Andrija Bjelošević stated that the inspectors whose names appear in this logbook were members of the SJB Doboj in May and June, although they were ordinarily members of CSB Doboj,⁵⁶ and thus this logbook shows that the RSMUP had a functioning body in the town of Doboj, a matter in dispute between the parties.⁵⁷

31. The Stanišić Defence responds that the Prosecution fails to explain why, despite the fact that P02333 MFI was disclosed to the Defence on 5 March 2010, the Prosecution never sought to add

⁵⁰ Motion, para. 25.

⁵¹ Motion, para. 26.

⁵² Motion, para. 27.

⁵³ Response, para. 18.

⁵⁴ Reply, para. 13.

⁵⁵ Motion, para. 28.

⁵⁶ Motion, para. 28.

⁵⁷ Motion, para. 29.

this document to its Rule 65 *ter* exhibit list and to put it to its witness Obren Petrović.⁵⁸ It further submits that “there is no nexus between P2333 MFI and Mr. Bjelosevic”.⁵⁹

32. The Prosecution replies that Obren Petrović never sought to deny the fact that the police was conducting its regular police work in the town of Doboj and that for this reason “the Prosecution did not deem it necessary to use court time to further explore this matter”.⁶⁰

8. P02335 MFI

33. The Prosecution tenders P02335 MFI, a CSB Doboj duty operator’s report dated 18/19 April 1992, which was provided by Andrija Bjelošević after the completion of his examination-in-chief on 9 May 2011.⁶¹ According to the Prosecution, this document shows that CSB Doboj received reports of the takeover in Bosanski Šamac the day after the takeover and that Stevan Todorović was appointed as new SJB Chief.⁶²

34. The Stanišić Defence responds that P02335 MFI was disclosed to the Defence after the completion of the examination-in-chief of Andrija Bjelošević.⁶³ The Defence further submits that the submissions made by the Prosecution in relation to this document are incorrect.⁶⁴

35. The Prosecution replies that the use of the word “disclosed” by the Stanišić Defence is misleading as this document was provided by Andrija Bjelošević from his private collection upon the Prosecution’s request after the completion of his evidence-in-chief.⁶⁵

9. P02339 MFI

36. The Prosecution tenders P02339 MFI, a document obtained on 13 May 2011, which relates to the removal of SJB Doboj chief, Obren Petrović.⁶⁶ The Prosecution submits, *inter alia*, that this document, signed by Andrija Bjelošević, “supports Petrović’s assertion that he was removed partly because he was helping Muslims”.⁶⁷ The Prosecution tenders this document “both for purposes of Bjelošević’s credibility and corroboration of this testimony given by Petrović which was the subject of dispute.”⁶⁸

⁵⁸ Response, para. 19.

⁵⁹ Response, para. 19.

⁶⁰ Reply, para. 14.

⁶¹ Motion, para. 30.

⁶² Motion, para. 31.

⁶³ Response, para. 20.

⁶⁴ Response, para. 20.

⁶⁵ Reply, para. 15.

⁶⁶ Motion, para. 32.

⁶⁷ Motion, para. 33.

⁶⁸ Motion, para. 33.

37. The Stanišić Defence responds, *inter alia*, that P02339 MFI was disclosed after the completion of the examination-in-chief of Andrija Bjelošević and reiterates that the Prosecution provides no justifications to have this document admitted as fresh evidence.⁶⁹

38. The Prosecution replies that Obren Petrović stated during his testimony that he had seen this document and that it could be found.⁷⁰ The Prosecution asserts that since that time, it made efforts to locate this document, which it only obtained on Friday 13 May 2011.⁷¹ It further submits that “Counsel for Stanišić indicated that [...] he had discussed this document with Bjelošević *during proofing*.”⁷²

10. P02343 MFI

39. The Prosecution tenders P02343 MFI, a decision on the termination of employment of inspector Veljko Šolaja, signed by Andrija Bjelošević on 25 November 1992, which was obtained on 27 April 2011, after the conclusion of Bjelošević’s evidence-in-chief.⁷³

40. The Prosecution submits that this document “shows that Šolaja was charged for abuse of office, not for committing a serious crime against Muslims”⁷⁴ thus contradicting Andrija Bjelošević’s testimony that Veljko Šolaja’s employment was terminated for “certain acts towards individuals of Muslim ethnicity”.⁷⁵

41. The Stanišić Defence responds that P02343 MFI was disclosed to the Defence after the completion of the examination-in-chief of Andrija Bjelošević and that the Prosecution provides no justifications to have this document admitted as fresh evidence.⁷⁶

42. The Prosecution replies, *inter alia*, that P02343 MFI was obtained by the Prosecution following Bjelošević’s assertion that CSB Doboj inspector Veljko Šolaja was disciplined for crimes committed against non-Serbs.⁷⁷

11. Rule 65 ter 20101

43. The Prosecution tenders Rule 65 ter 20101, the Daily Events Log Book of the SJB Bosanski Šamac, which was disclosed to the Defence on 11 September 2009.⁷⁸ The Prosecution submits,

⁶⁹ Response, para. 21.

⁷⁰ Reply, para. 17.

⁷¹ Reply, para. 17.

⁷² Reply, para. 17. Emphasis provided.

⁷³ Motion, para. 34.

⁷⁴ Motion, para. 36.

⁷⁵ Motion, para. 35.

⁷⁶ Response, para. 22.

⁷⁷ Reply, para. 20.

inter alia, that “Bjelošević asserted throughout his testimony that the police station in Bosanski Šamac was ‘not functioning properly’ or that the ‘work was not at a satisfactory level’”⁷⁹ and that thus, this document, which “shows entries from February to December 1992 [...] is important in showing the functioning of the SJB Bosanski Šamac”.⁸⁰

44. The Stanišić Defence responds that this document “was not tendered by the parties and it cannot be admitted into evidence”.⁸¹ It further argues that, while it was disclosed on 11 September 2009, the Prosecution never sought to add it to its Rule 65 *ter* exhibit list.⁸²

45. The Prosecution replies that “the fact that the parties did not tender this document is not an argument barring its admission” and that both “the Prosecution and the Defence made use of this document”.⁸³

III. APPLICABLE LAW AND DISCUSSION

46. In the context of this decision, the Trial Chamber adopts the definition of fresh evidence applied in the *Prlić* Appeal Decision, according to which fresh evidence means “material that was not included in the Prosecution Rule 65 *ter* list and not admitted during the Prosecution’s case-in-chief but that is tendered by the Prosecution when cross-examining Defence witnesses” (“Fresh Evidence”).⁸⁴

47. It is settled jurisprudence that, as a general rule, the Prosecution must present the evidence necessary to prove its case during its case-in-chief.⁸⁵ However, there is no ban on the Prosecution tendering evidence during the cross-examination of defence witnesses.⁸⁶ If the Prosecution decides to tender fresh evidence during the cross-examination of defence witnesses, it has to specifically justify its request by explaining why the document was not tendered during its case-in-chief, as well as the reasons for seeking the admission of the document through that particular defence witness.⁸⁷ In this regard the Trial Chamber notes that, contrary to what was submitted by the Stanišić Defence, the *Prlić* Appeal Decision does not require the existence of “exceptional circumstances” for the

⁷⁸ Motion, para. 37.

⁷⁹ Motion, para. 38.

⁸⁰ Motion, para. 39.

⁸¹ Response, para. 23.

⁸² Response, para. 23.

⁸³ Reply, para. 21.

⁸⁴ *Prlić* Appeal Decision, para. 15.

⁸⁵ *Prlić* Appeal Decision, para. 23; *Prosecution v. Lukić and Lukić*, Case No. IT-98-32/1-AR73.1, Decision on the Prosecution’s appeal against the Trial Chamber’s order to call alibi rebuttal evidence during the Prosecution’s case in chief, 16 Oct 2008, paras 11-12 (“*Lukić* Appeal Decision”).

⁸⁶ *Prlić* Appeal Decision, para. 23.

⁸⁷ *Prlić* Appeal Decision, para. 23.

tendering of Fresh Evidence.⁸⁸ It simply states that such a standard “*may* be justified, depending on the specific circumstances of the case”.⁸⁹

48. Furthermore, the tendering of Fresh Evidence during the cross-examination of defence witnesses may serve to address specific issues arising out of the examination-in-chief, which the Prosecution could have not predicted beforehand. This is consistent with the provisions set forth in Rule 90(H)(i) and 90(H)(ii).

49. When the Prosecution tenders Fresh Evidence, the Trial Chamber may exercise its discretion to either admit or exclude it under Rules 89(C) and 89(D) of the Rules, provided it is in the interests of justice to do so.⁹⁰ In deciding on the admission of Fresh Evidence, the Trial Chamber must strike the appropriate balance between the right of the accused to a fair trial and the Prosecution’s duty to prove its case beyond a reasonable doubt. It must also specify how the prejudice caused by the admission, if any, could be redressed.⁹¹

50. Unless otherwise specified, as a general rule, the Trial Chamber will not, at the time of admission of Fresh Evidence, make a determination of whether that evidence will be considered solely for credibility purposes or also for the truth of its content.

51. Measures to redress undue prejudice include, but are not limited to, the allocation of additional time for re-examination, adjourning the session to allow time for the Defence to study the new documents or to conduct new investigation, granting the Defence the possibility of amending its Rule 65 *ter* lists to add new documents or witnesses directly relevant to the Fresh Evidence, and recalling previous witnesses.

52. The Trial Chamber now moves to consider the admissibility of each tendered document *seriatim*.

1. P02326 MFI

53. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used it during the cross-examination of Andrija Bjelošević to address a specific issue arising from his evidence-in-chief, mainly whether the CSB Doboj took disciplinary measures against Bosnian Serb employees of the RSMUP.⁹² Furthermore, the Trial Chamber notes that this document is

⁸⁸ Response, para. 11.

⁸⁹ *Prlić* Appeal Decision, para. 24. Emphasis added.

⁹⁰ *Prlić* Appeal Decision, para. 23.

⁹¹ *Prosecution v. Delić*, Case No. IT-04-83-AR73.1, Decision on Rasim Delić’s interlocutory appeal against Trial Chamber’s oral decision on admission of exhibit 1316 and 1317, 15 Apr 2008, para. 23.

⁹² Andrija Bjelošević, 20 Apr 2011, T. 19924.

signed by Andrija Bjelošević and that it was on 28 March 2011 that the Prosecution first received notice that Andrija Bjelošević would testify as a Defence witness.⁹³ For this reason, the Trial Chamber is persuaded that the tendering of this document at this stage of the proceedings, under these specific circumstances and pursuant to Rules 90(H)(i) and (ii), is justified.

54. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Furthermore, this document was disclosed over a month before it was used in court. The Trial Chamber is persuaded that no undue prejudice arises from the admission of this document and admits it into evidence.

2. P02341 MFI and P02345 MFI

55. With regard to P02341 MFI, the Trial Chamber is satisfied that it is relevant and probative. However, the Prosecution has not put forward any strong argument justifying the tendering of this document at this point in time. The Trial Chamber further notes that Andrija Bjelošević did not comment much on the document and limited himself to saying that he “would have never done anything like this”.⁹⁴ The Trial Chamber is therefore not persuaded of the usefulness of placing it onto the record, particularly when, as the Prosecution submits, similar reports have been tendered through other witnesses during its case-in-chief and does not admit this document into evidence.

56. With regard to P02345 MFI, the Trial Chamber is satisfied of its relevance and probative value. This document is signed by Andrija Bjelošević, who extensively discussed it during cross-examination.⁹⁵ It was only on 28 March 2011, that the Prosecution received first notice of the fact that Andrija Bjelošević would testify as a Defence witness.⁹⁶ The Trial Chamber is therefore persuaded that the tendering of this document is, at this stage of the proceedings and under these specific circumstances, justified. Furthermore, this document was disclosed to the Defence on 3 May 2007. The Trial Chamber finds that no undue prejudice arises from its admission and admits it into evidence.

3. P02327 MFI

57. The Trial Chamber is persuaded by the Prosecution’s arguments with regard to the date of the extract of the video discussed by the witness and is also satisfied of its relevance and probative value.⁹⁷ The relevant portions of this video assist the Trial Chamber in the understanding of the

⁹³ The Stanišić Defence filed its Rule 65 *ter* (G) submission on 28 March 2011.

⁹⁴ Andrija Bjelošević, 23 May 2011, T. 21159.

⁹⁵ Andrija Bjelošević, 20 May 2011, T. 21020-21025.

⁹⁶ The Stanišić Defence filed its Rule 65 *ter* (G) submission on 28 March 2011.

⁹⁷ Pages 19 and 20 of P02327 MFI and video clip extract 0:53:43 to 0:58:35.

evidence of Andrija Bjelošević with regard to Jozo Mandić, in connection to exhibit P02345 MFI, a criminal report signed by the witness, the importance of which is discussed in paragraph 59 above. For this reason, the Trial Chamber is persuaded that the tendering of this document is, under these specific circumstances, justified.

58. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Furthermore, this document was disclosed to the Defence in December 2005. The Trial Chamber is therefore, satisfied that no undue prejudice arises from the admission of this document and admits it into evidence.

4. P02328 MFI

59. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used P02328 MFI during the cross-examination of Andrija Bjelošević to address a specific issue arising from his testimony-in-chief; whether police officers in Doboj were receiving salaries in June 1992.⁹⁸ Andrija Bjelošević also discussed in-chief exhibit P01340, a SJB report "on cars stolen in Doboj since the beginning of war", in connection to which the witness testified that proceedings were instituted against Slobodan Karagić with regard to one of the vehicles mentioned therein.⁹⁹ For this reason, the Trial Chamber is persuaded that the tendering of P02328 MFI is, under these specific circumstances and pursuant to Rules 90(H)(i) and (ii), justified.

60. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. While the Prosecution disclosed the document only after the examination-in-chief of the witness on 28 April 2011, the Defence benefitted from having had more than three weeks before the Prosecution first used it in court. Moreover, the Defence had the opportunity to further explore the contents of this document with the witness in re-direct. The Trial Chamber is of the view that, for all these reasons, no undue prejudice arises from the admission of this document and admits it into evidence.

5. P02330 MFI and P02332 MFI

61. The Trial Chamber is satisfied that these documents are relevant and probative. Both documents are signed by Andrija Bjelošević,¹⁰⁰ and were put to him during his cross-examination to address a few specific issues arising from his testimony-in-chief: whether during the months of May and June 1992 there were communications between CSB Doboj and the RSMUP headquarters,¹⁰¹

⁹⁸ Andrija Bjelošević, 14 Apr 2011, T. 19599.

⁹⁹ Andrija Bjelošević, 18 Apr 2011, T. 19741.

¹⁰⁰ Andrija Bjelošević, 20 May 2011, T. 21020-21025 and 23 May 2011, T. 21090.

¹⁰¹ See for example Andrija Bjelošević, 14 Apr 2011, T. 19597, T. 19615 and 15 Apr 2011, T. 19651.

and whether the witness was working for the Army and how this impacted on his duties under CSB Doboj.¹⁰² Again, the Trial Chamber notes that the Prosecution first received notice of the fact that Andrija Bjelošević would testify as a Defence witness on 28 March 2011.¹⁰³ The Trial Chamber is, therefore, persuaded that the tendering of this document is justified.

62. The Trial Chamber notes that these documents do not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Furthermore, the documents were disclosed to the Defence on 2 March 2011, over a month before they were used in court. The Trial Chamber is therefore persuaded that no undue prejudice arises from the admission of these documents and admit them into evidence.

6. P02331 MFI

63. With regard to P02331 MFI, the Prosecution has not put forward any strong argument justifying the tendering of this document at this point in time, through this particular witness. The Trial Chamber notes that the document was only disclosed to the Defence after Andrija Bjelošević's examination-in-chief. The reason provided by the Prosecution to justify such late disclosure is that further investigation was carried out "[i]n order to check assertions made by Bjelošević during his evidence in chief".¹⁰⁴ However, the Trial Chamber does not find any mention of Milutin Blasković during the examination-in-chief of the witness. On the contrary, the contested issue underlying the tendering of the document at this stage was raised in April 2010, when Edin Hadžović testified in court.

64. The Trial Chamber further notes that Andrija Bjelošević did not comment much on the document and limited himself to say that he knew Milutin Blasković, a chief of the police detachment who retired sometime in 1991.¹⁰⁵ For all these reasons, the Trial Chamber finds that the tendering of this document at this point in time, through this witness, is not justified and will deny the Prosecution's request in this regard.

7. P02333 MFI

65. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used it during the cross-examination of Andrija Bjelošević to address a specific issue arising from his examination-in-chief; whether during the months of May and June 1992 the CSB Doboj was

¹⁰² Andrija Bjelošević, 14 Apr 2011, T. 19610.

¹⁰³ The Stanišić Defence filed its Rule 65 *ter* (G) submission on 28 March 2011.

¹⁰⁴ Reply, para. 2.

¹⁰⁵ Andrija Bjelošević, 23 May 2011, T. 21089.

operative.¹⁰⁶ For this reason, the Trial Chamber is persuaded that the tendering of this document was, under these specific circumstances and pursuant to Rules 90(H)(i) and (ii), justified.

66. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Furthermore, this document was disclosed to the Defence in March 2010. The Trial Chamber is therefore, persuaded that no undue prejudice arises from the admission of this document and admits it into evidence.

8. P02335 MFI

67. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used it during the cross-examination of Andrija Bjelošević to address a specific issue arising from his examination-in-chief, mainly whether CSB Doboj was aware of the events occurring in Bosanski Samać in April 1992 and the appointment of Todorović as SJB chief.¹⁰⁷ Furthermore, P02335 is one of the set of documents Andrija Bjelošević, while on the stand, volunteered to produce from his private collection. For these reasons, the Trial Chamber is persuaded that the tendering of this document at this stage of the proceedings is, under these specific circumstances and pursuant to Rules 90(H)(i) and (ii), justified.

68. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. The document was distributed to all parties on 9 May 2011, and the document was first put to the witness on 23 May 2011. Moreover, the Defence benefited from the opportunity to further explore the contents of this document with the witness in re-direct. For all these reasons, the Trial Chamber is satisfied that no undue prejudice arises from the admission of this document and admits it into evidence.

9. P02339 MFI

69. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used it during the cross-examination of Andrija Bjelošević to address the specific issue of the removal of Obren Petrović from his position as chief of SJB Doboj.¹⁰⁸ On the one hand, the Trial Chamber notes that Obren Petrović made reference to this document during his testimony back in May 2010, and thus a legitimate question arises as to why the Prosecution only manage to locate it on 13 May 2011.¹⁰⁹ On the other hand, again, the Trial Chamber recalls that it was only on

¹⁰⁶ Andrija Bjelošević, 14 Apr 2011, T. 19642.

¹⁰⁷ See for example, Andrija Bjelošević, 14 Apr 2011, T. 19596 and 18 Apr 2011, T. 19786.

¹⁰⁸ Andrija Bjelošević, 23 May 2011, T. 21118.

¹⁰⁹ Obren Petrović, 10 May 2010, T. 9897.

28 March 2011,¹¹⁰ that the Prosecution first received notice of the fact that Andrija Bjelošević would testify as a Defence witness. Considering that this document is signed by Andrija Bjelošević, the Trial Chamber is satisfied that the tendering of this document at this stage of the proceedings is justified.

70. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Considering further that the Stanišić Defence discussed this document with Andrija Bjelošević in proofing prior to his testimony, the Trial Chamber is of the view that, no undue prejudice arises from its admission and admits it into evidence.

10. P02343 MFI

71. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used it during the cross-examination of Andrija Bjelošević to address a specific issue arising from his examination-in-chief; whether disciplinary proceedings were carried out against Veljko Šolaja, CSB Doboj inspector at the relevant time of the indictment, for mistreatment of Muslims.¹¹¹ For this reason, the Trial Chamber is persuaded that the tendering of this document, under these specific circumstances and pursuant to Rules 90(H)(i) and (ii), is justified.

72. Furthermore, the Trial Chamber notes that this document does not raise any new issues. On the contrary it complements a document tendered by the Defence as 1D530 MFI, which is a cover letter referring to the report at hand. For this reason, the Trial Chamber is of the view that no undue prejudice arises from the admission of this document and admits it into evidence.

73. The Trial Chamber recalls that exhibit 1D530 MFI was marked for identification pending "the discovery of the report which comprises the remainder of the document".¹¹² Therefore, the Trial Chamber will also admit 1D530 MFI into evidence.

11. Rule 65 ter 20101

74. The Trial Chamber is satisfied that this document is relevant and probative. The Prosecution used this document during the cross-examination of Andrija Bjelošević to address his statement during examination-in-chief, mainly that "[a]fter the inspectors from [...] Doboj Security Services

¹¹⁰ The Stanišić Defence filed its Rule 65 *ter* (G) submission on 28 March 2011.

¹¹¹ Andrija Bjelošević, 20 Apr 2011, T. 19924.

¹¹² Andrija Bjelošević, 20 Apr 2011, T. 19928.

Centre inspected the public security station in Samac, they found a number of irregularities and concluded that the work was not at a satisfactory level.”¹¹³

75. The Trial Chamber notes that this document does not raise any issues which had not been already explored by the Prosecution in its case-in-chief. Furthermore, this document was disclosed to the Defence in September 2009. The Trial Chamber is therefore satisfied that no undue prejudice arises from the admission of this document and admits it into evidence.

IV. DISPOSITION

76. Pursuant to Rules 54, 89, 90(H)(i) and (ii) and 126 *bis*, the Trial Chamber:

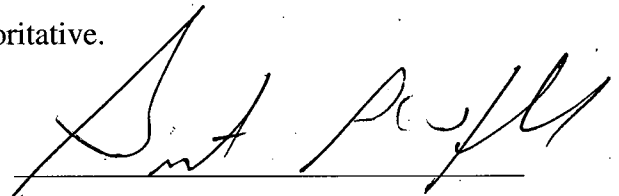
GRANTS the Prosecution leave to reply;

GRANTS the Motion **IN PART**;

ADMITS into evidence documents P02326 MFI, P02327 MFI, P02328 MFI, P02330 MFI, P02332 MFI, P02333 MFI, P02335 MFI, P02339 MFI, P02343 MFI, 1D530, P02345 MFI and Rule 65 *ter* 20101; and

INSTRUCTS the Registrar to assign an exhibit number to document Rule 65 *ter* 20101 and to mark not admitted documents P02331 MFI and P02341 MFI.

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



Judge Burton Hall
Presiding

Dated this eighth day of July 2011

At The Hague

The Netherlands

[Seal of the Tribunal]

¹¹³ Andrija Bjelošević, 19 Apr 2011, T. 19869.