



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-98-29/1-PT  
Date: 21 December 2006  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding Judge  
Judge Krister Thelin  
Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr. Hans Holthuis

**Decision of:** 21 December 2006

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

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**DECISION ON THE PROSECUTION MOTION TO AMEND  
ITS RULE 65 *TER* EXHIBIT LIST**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Mr. Stefan Waespi  
Ms. Carolyn Edgerton  
Mr. John Docherty

**Counsel for the Accused:**

Mr. Branislav Tapušković  
Ms. Branislava Isailović

**TRIAL CHAMBER III** 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”);

**BEING SEISED OF** the “Prosecution Motion for Leave to File an Updated Rule 65 *ter* Exhibit List, with Confidential Annex A” filed partially confidentially by the Prosecution on 8 December 2006 (“Motion”) in which the Prosecution seeks leave to amend and supplement its original exhibit list by adding 1162 exhibits and deleting 285 exhibits;

**NOTING** that the Defence did not file a response to the Motion;<sup>1</sup>

**CONSIDERING** that pursuant to Articles 20(1) and 21(4)(b) of the Statute of the Tribunal an accused is entitled to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence;

**CONSIDERING** that the Trial Chamber must therefore be satisfied that amendments to the exhibit list at this stage of the proceedings provide an accused sufficient notice and do not adversely affect his ability to prepare for trial;<sup>2</sup>

**CONSIDERING** that the Trial Chamber may also take into account additional criteria, including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused<sup>3</sup> and whether good cause for amending the exhibit list is shown;<sup>4</sup>

**CONSIDERING** further that Rule 89 (C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that a Trial Chamber may admit any relevant evidence which it deems to have probative value;

**NOTING** that the Prosecution submits that it has already disclosed the majority of the proposed additional exhibits to the Defence well in advance of the commencement of trial, with the exception of approximately 25 documents which, pursuant to Rule 70 of the Rules, will be disclosed to the Defence as soon as official permission is obtained from the provider;

**CONSIDERING** that the Prosecution has demonstrated the relevance and probative value of the proposed additional exhibits for the charges against the Accused, citing specifically the relevance to

<sup>1</sup> According to the Scheduling Order, dated 11 December 2006, the Defence was required to file its response to the Motion by no later than 15 December 2006.

<sup>2</sup> See, for example, *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution’s Motion to Amend Its Rule 65 *ter* Exhibit List, 15 December 2005, p. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Leave to Amend the Rule 65 *ter* Exhibit List, 6 December 2006 (“*Popović* Decision”), p. 8; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on Prosecution’s Motion to Amend Witness List and for Protective Measures, 17 February 2006, para. 3; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution Motion to Amend its Rule 65 *ter* List, 6 June 2006, paras 3-4.

<sup>3</sup> *Prosecutor v. Orić*, Case No. IT-03-68-T, Decision on Prosecution’s Confidential Motion For Leave to Add Exhibits to its Exhibit List, 13 October 2004, p. 3; *Popović* Decision, p. 7.

<sup>4</sup> *Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Prosecution’s Application for Leave to Vary its Exhibit List Filed Pursuant to Rule 65*ter* (E) (iii), 14 February 2005, p. 3; *Popović* Decision, p. 7.

issues such as notice, crime-base, command and control, the widespread and systematic nature of attacks and other military issues;

**CONSIDERING** that the Prosecution has shown good cause for amending the exhibit list in this case, namely that the proposed material was only recently obtained as a result of newly-opened archives in Bosnia and Herzegovina, recently-conducted interviews with Prosecution witnesses and a thorough re-examination of the Prosecution's evidence;

**FINDING** therefore that (a) the rights of the Accused will not be prejudiced as a result of the amendment of the exhibit list; (b) the proposed additional exhibits are *prima facie* relevant and of probative value to the charges against the Accused; and (c) the Prosecution has shown good cause for the amendment of its exhibit list;

**FOR THE FOREGOING REASONS and PURSUANT TO** Rules 54 and 73*bis* of the Rules

**HEREBY GRANTS** the Motion **IN PART**,

**GRANTS** leave to the Prosecution to amend its exhibit list to include the new exhibits identified in Confidential Annex A attached to the Motion;

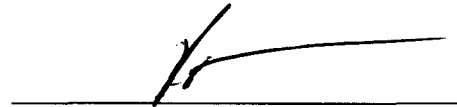
**DENIES** the Motion insofar as it seeks to add material not already disclosed to the Defence, except when that material has not yet been disclosed for reasons relating to Rule 70 of the Rules.

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

Dated this twenty-first day of December 2006

At The Hague

The Netherlands

A handwritten signature in black ink, consisting of a series of fluid, connected strokes, positioned above a horizontal line.

**Patrick Robinson**

**Presiding Judge**

**[Seal of the Tribunal]**