



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T

Date: 26 June 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Date: 26 June 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION FOR
DEFENCE COMPLIANCE WITH RULE 65 TER (G)**

The Office of the Prosecutor:

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

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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”);

BEING SEISED of the urgent and confidential “Prosecution’s Motion for Defence Compliance with Rule 65*ter*(G) of the Rules of Procedure and Evidence”, filed on 11 June 2007 (“Motion”);

NOTING that the Defence filed its list of witnesses and its list of exhibits pursuant to Rule 65*ter* of the Rules of Procedure and Evidence (“Rules”) on 21 May 2007, together with the Rule 65*ter* summaries for its witnesses;

NOTING that the Prosecution, in its Motion, is requesting that the Trial Chamber orders the Defence to provide additional information in relation to its witnesses, in particular that the Defence provide the Prosecution with biographical information of the witnesses and that the Defence provide detailed Rule 65*ter* summaries describing the facts to which the witnesses will testify with sufficient detail to allow the Prosecution to prepare for cross-examination;

NOTING that the Defence, in its response, requests that the Trial Chamber reject the Motion and submits that it has complied with Rule 65*ter* (G) of the Rules because it has provided for each witness the witness’s name or other information that permits the identification of that witness;¹

NOTING that the Prosecution, during the Pre-Defence Conference of 24 May 2007, first raised what it calls “the insufficiency of the 65*ter* summaries”, arguing that the summaries provided by the Defence are merely lists of topics and, therefore, are not in compliance with Rule 65*ter* (G) of the Rules and impede the Prosecution’s ability to prepare for cross-examination of the Defence witnesses;²

NOTING that, in its Response, the Defence submits that it has provided summaries of the facts on which the Defence witnesses will testify and the principle of equality is respected;

NOTING that, in its Response, the Defence further argues that an analogy cannot be drawn between its Rule 65*ter* summaries and those in other cases where Defence counsel has been ordered by Trial Chambers to re-submit more detailed Rule 65*ter* summaries because neither the Trial Chamber nor the Defence know the exact nature of those other cases or the content of those Rule 65*ter* summaries submitted by the other Defence counsel;

¹ Conclusion en Réponse de Prosecution Motion for Defence Compliance with Rule 65*ter* (G) of the Rules of Procedure and Evidence, 25 juin 2007 (“Response”).

² Pre-Defence Conference, 24 May 2007, T. 5670-5673.

NOTING further that the Defence states that it is only in written statements, as opposed to Rule 65*ter* summaries, that one may find the exact words of a witness and that the Rules require only the Prosecution to submit written statements of the witnesses they intend to call;

NOTING that the Prosecution again raised the matter of the sufficiency of the Defence witness summaries during the trial hearings of 30 May 2007³ and 5 June 2007⁴, at which times the Trial Chamber did not hand down a general ruling on the matter, but ruled on the basis of the specific objection in relation to which the matter came up;

NOTING that during the hearing of 20 June 2007, the Defence stated that it was not able to provide more detailed Rule 65*ter* summaries because it had not spoken with the witnesses for quite some time and that only after proofing the witnesses could it provide further information on the expected testimony of the witnesses;

NOTING that at the hearing of 20 June 2007, the Prosecution stated that it would be satisfied if it were to receive further information on the content of a witness's expected testimony after the Defence had proofed the witness;⁵

NOTING that there appears to be no consistent practice within the Tribunal regarding a minimum amount of information that is to be included in Rule 65*ter* summaries;

CONSIDERING that a party should be able to properly prepare for cross-examination based on the other party's Rule 65*ter* summaries;

CONSIDERING that the Trial Chamber thus far has allowed the Defence Rule 65*ter* summaries in their current form;⁶

CONSIDERING that the insufficient level of detail of the Defence Rule 65*ter* summaries is impeding the Prosecution's preparations for hearing the witnesses' testimony and is starting to impede the expediency of the trial;

CONSIDERING that difficulties arise for the Judges in preparing to hear the witnesses as a result of the level of detail of the Defence Rule 65*ter* summaries;

³ Trial Hearing, 30 May 2007, T. 5872-5873.

⁴ Trial Hearing, 5 June 2007, T. 6178-6181.

⁵ Trial Hearing, 20 June 2007, T. 6909-6910.

⁶ Trial Hearing, 30 May 2007, T. 5873.

CONSIDERING, however, that it would unduly burdensome to order the Defence to provide more detailed summaries at a time before the Defence has spoken with the witnesses in the course of preparations for the witnesses to testify;

CONSIDERING, therefore, that, at a minimum, the Defence should provide the biographical data of each witness, that is, the name of the witness, correctly spelled, the name of the witness's father and the date of birth of the witness;

CONSIDERING that the Defence should also provide further information on the expected testimony of each witness as soon as possible after having spoken with the witness, so as to enable the Prosecution to prepare for cross-examination;

CONSIDERING that this further information should include, at least, information on the occupation of the witness during the relevant period, the rank of the witness and unit in which the witness was deployed, where applicable, locations the witness will discuss and the specific events the witness will discuss;

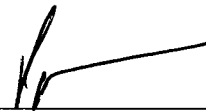
FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 65*ter* of the Rules,

ORDERS, Judge Robinson dissenting, the Defence to provide:

1. biographical information for the witnesses on its Rule 65*ter* witness list, as specified above and no later than 2 July 2007;
2. further information on the expected testimony of each witness as soon as possible after having spoken with the witness and before the witness testifies.

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



Judge Patrick Robinson
Presiding

Dated this twenty-sixth day of June 2007

At The Hague

The Netherlands

[Seal of the Tribunal]