



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-04-74-T
Date: 3 December 2007
Original: ENGLISH
French

IN THE TRIAL CHAMBER

Before: Judge Jean-Claude Antonetti, Presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 3 December 2007

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

DECISION ON MOTION TO AMEND WITNESS AND EXHIBIT LISTS

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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”);

SEIZED of the “Prosecution Motion to Amend its Rule 65 *ter* Witness List and for Admission of Evidence Pursuant to Rules 92 *bis* (A) and 92 *quater* (Mehmet Saiti)” filed on 23 October 2007 by the Office of the Prosecutor (“Prosecution”) wherein the Prosecution requests the Chamber: 1) pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), to authorise it to add Mehmet Saiti (“Witness”) and his statement, marked as Exhibit P 10235, to the witness and exhibit lists respectively filed on 19 January 2006 (“Rule 65 *ter* Lists”), and 2) pursuant to Rule 92 *quater* of the Rules, to admit Exhibit P 10235 (“Statement”) since the Witness died in 2002;

NOTING the oral decision of 5 November 2007 whereby the Chamber granted the Defence an extension of two weeks to file its response to the Motion;¹

NOTING the “Joint Defence Response to Prosecution Motion to Amend its Rule 65 *ter* Witness List and for Admission of Evidence Pursuant to Rules 92 *bis* and 92 *quater* (Mehmet Saiti)” filed jointly on 19 November 2007 (“Response”) by Counsel for the six Accused (“Defence”) wherein the Defence, primarily, objects to the amendment of the Rule 65 *ter* Lists and, in the alternative, if the Chamber authorises the amendment of these lists, objects to the admission of the Statement under Rule 92 *quater* of the Rules;

NOTING the “Prosecution Motion for Leave to Reply to Joint Defence Response to Prosecution Motion to Amend its 65 *ter* Witness List and for Admission of Evidence Pursuant to Rules 92 *bis* (A) and 92 *quater* (Mehmet Saiti)” (“Motion for Leave to Reply”) filed on 22 November 2007 by the Prosecution wherein the Prosecution requests the Chamber to authorise it to file a reply to the Response;

NOTING the “Prosecution Reply to Joint Defence Response to Prosecution Motion to Amend its 65 *ter* Witness List and for Admission of Evidence pursuant to Rules 92 *bis* (A) and 92 *quater* (Mehmet Saiti)” (“Reply”) filed on 22 November 2007 by the

¹ Court transcript in French (“CTF”), pp. 23974 and 23975.

Prosecution wherein the Prosecution responds to the submissions of the Defence in the Response;

CONSIDERING that in support of its Motion, the Prosecution submits in particular that the Witness, apparently the last surviving patient in the Koštana Hospital in 1993, died on 17 November 2002;²

CONSIDERING that, according to the Prosecution, the statement taken on 17 February 2001 was appended to the supporting material for purposes of confirmation of the indictment pursuant to Rule 47 of the Rules and that, consequently, it was disclosed to the Defence shortly after the initial appearance of the Accused in this case;³

CONSIDERING that the Prosecution submits that the name of the Witness is not on the Rule 65 *ter* Witness List since, at the time the list was being assembled, the Prosecution was primarily considering witnesses it intended to call and that, since the Witness was deceased, some in the Prosecution team did not include him in the Witness List;⁴

CONSIDERING that the Prosecution argues that it would be reasonable and in the interests of justice to grant the Motion;⁵

CONSIDERING that the Prosecution also submits that the Statement is relevant in this case to paragraphs 158 and 184 of the Amended Indictment of 16 November 2005 (“Indictment”) and that it is corroborated by the evidence of Witnesses CE and CF provided pursuant to Rule 92 *ter* of the Rules and by the evidence of Salko Bjičić provided pursuant to Rule 92 *bis* of the Rules;⁶

CONSIDERING that the Statement does not, according to the Prosecution, go to the acts and conduct of the Accused;⁷

CONSIDERING that the Prosecution further argues that the Statement met all the conditions for admission pursuant to Rules 92 *ter* and 92 *quater* of the Rules;⁸

² Motion, paras. 4 and 5.

³ Motion, para. 5.

⁴ Motion, para. 6.

⁵ *Ibid.*

⁶ Motion, paras. 9, 10 and 14.

⁷ Motion, para. 15.

⁸ Motion, paras. 16 to 18.

CONSIDERING that in its Response, the Defence submits that, as required by Rule 65 *ter* (E)(ii)(e) of the Rules, the list of witnesses must contain both the witnesses whom the Prosecution intends to call and the statements it wishes to tender pursuant to Rule 92 *bis* of the Rules and that, consequently, the Prosecution has not justified its failure to include the Witness and the Statement in the Rule 65 *ter* Lists;⁹

CONSIDERING that the Defence further asserts that the Prosecution has had two years since it filed the Rule 65 *ter* Lists to supplement them and that it is only at this very advanced stage in the proceedings that it decided to request to add the Witness and his Statement which leaves very little time to the Defence to carry out investigations on the Statement;¹⁰

CONSIDERING that, according to the Defence, it would be counter to the interests of justice to authorise the Prosecution to add the Witness and the Statement to the Rule 65 *ter* Lists in this last stage of the Prosecution case when the Prosecution has already been in possession of the Statement for six years;

CONSIDERING that, alternatively and should the Chamber decide to authorise a late amendment to the Rule 65 *ter* Lists, the Defence argues that the Statement does not meet the conditions of admissibility set out in Rule 92 *quater* of the Rules in so far as it is not reliable and lacks probative value;¹¹

CONSIDERING that the Defence argues that the Statement is largely based on hearsay and that its content contradicts other evidence already admitted in this case;¹²

CONSIDERING that in support of its Motion for Leave to Reply the Prosecution submits that the Defence misinterprets a decision of the Appeals Chambers which, according to the Defence, is applicable to this case and that the Prosecution should, therefore, have the opportunity to respond to it;¹³

CONSIDERING that, in its Reply, the Prosecution develops this argument;

⁹ Response, paras. 7 and 8.

¹⁰ Response, para. 8.

¹¹ Response, paras. 15 and 16.

¹² Response, paras. 17 and 18.

¹³ Motion for Leave to Reply, para. 2.

CONSIDERING that the Chamber recalls that since the Judges of the Chamber are professional judges they are capable of making an independent interpretation of the jurisprudential references advanced by the parties in support of their filings;

CONSIDERING that, consequently, the Prosecution argument according to which the alleged misinterpretation by the Defence of a decision of the Appeals Chamber gives the Defence the right to respond to it, does not constitute a compelling circumstance to justify the filing of a reply as required by the guidelines on conduct of the present proceedings;¹⁴

CONSIDERING that the Chamber is of the opinion that it is, consequently, appropriate to dismiss the Motion for Leave to Reply;

CONSIDERING that the Chamber further recalls that in order to grant a request to add exhibits to the list of exhibits filed by the Prosecution pursuant to Rule 65 *ter* of the Rules, the Chamber must ensure that the rights of the defence are respected by ensuring that any addition of exhibits is disclosed sufficiently in advance and does not adversely affect the preparation of the Defence case;¹⁵

CONSIDERING that, pursuant to Article 20 of the Statute, the Chamber must ensure that the trial is fair and expeditious and that the rights of the accused are fully respected and that, pursuant to Article 21 of the Statute, the accused has the right to be tried without undue delay and to have adequate time and facilities for the presentation of his defence;

CONSIDERING that the amendment of the exhibit list at this stage of the proceedings could prejudice the rights of the Accused as indicated above;

CONSIDERING that the Chamber further notes that the Prosecution has had the Statement in its possession since 17 February 2001 and that it knew of the death of the Witness at least by the date its Rule 65 *ter* Lists were filed, that is, on 19 January 2006;

¹⁴ “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings”, 28 April 2006, para. 9 (p).

¹⁵ *See*, for example, *The 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; *The 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. 7; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, “Decision on the Prosecution Motion to Amend Its Rule 65 *ter* Exhibit List”, 21 December 2006 (“Milošević Decision”), p. 2.

CONSIDERING that the Prosecution requested to add the Witness and his Statement to the Rule 65 *ter* Lists only on 23 October 2007;

CONSIDERING that the Chamber is of the opinion that the Prosecution has failed to show due diligence and that, consequently, authorising it to amend the Rule 65 *ter* Lists at this stage would be unreasonable and prejudicial to the interests of justice;

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 (C) of the Rules;

DISMISSES the motion to amend the Rule 65 *ter* Lists; **AND**

DECLARES the motion to admit the Statement moot.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this third day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]