



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-03-69-PT
Date: 18 June 2008
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 18 June 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION TO AMEND
ITS RULE 65 *TER* EXHIBIT LIST WITH ANNEX
(CATEGORY 7)**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz
Mr. Gregory Townsend
Mr. John Docherty

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović and Mr. Vladimir Domazet for Franko Simatović

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 “Prosecution Motion to Amend its Rule 65 *ter* Exhibit List with Annex”, filed confidentially on 9 May 2008 (“Motion”), whereby the Prosecution requests leave to add eleven documents to its exhibit list;¹

NOTING that these eleven documents were included in the seventh category of documents that the Prosecution sought to have added to its exhibit list in its motion of 26 February 2008;²

NOTING that on 8 May 2008 the Trial Chamber denied, without prejudice, the Prosecution’s request to add the documents included in Category 7 to its exhibit list, finding that: (i) the Prosecution had failed to show good cause for requesting the addition of these documents at such a late stage in the proceedings and to demonstrate that these documents were of importance for its case; and (ii) the Trial Chamber was unable, based on the Prosecution’s motion of 26 February 2008, to identify in the Prosecution’s proposed exhibit list the documents that were included in Category 7 and was therefore not in a position to examine the relevance, length and nature of these documents; and noting that Category 7 included a very significant number of documents.³

NOTING that, in its response to the Motion,⁴ the Defence for the Accused Stanišić (“Stanišić Defence”) opposes the Prosecution’s request given that the deadline set by the Trial Chamber for the filing of the complete Prosecution exhibit list has passed⁵ and that “[n]o justifiable reasons have been provided [by the Prosecution] as to why the time limit has been exceeded”;⁶

NOTING that the Defence for the Accused Simatović (“Simatović Defence”) did not respond to the Motion;

NOTING that on 29 May 2008 the Prosecution requested leave to reply and replied to the Stanišić’s response, pointing out that “a work plan is not intended to be an inflexible document” and

¹ On 13 May 2008, the Prosecution filed confidentially a “Corrigendum to Prosecution Motion to Amend its Rule 65 *ter* Exhibit List” (“Corrigendum”).

² Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex, filed confidentially on 26 February 2008. Category 7 included 267 documents.

³ Decision on Prosecution Motion for Leave to amend its Rule 65 *ter* Exhibit List, 8 May 2008, para. 44.

⁴ Defence Reply to “Prosecution Motion to Amend its Rule 65 *ter* Exhibit List with Annex”, confidential, 23 May 2008.

⁵ *Ibid.*, para. 3. The Stanišić Defence refers to the Trial Chamber’s order of 19 January 2007 which set the deadline of 2 April 2007.

⁶ *Id.*

submitting that denying the addition of documents to the exhibit list is “clearly not [...] the sole remedy for non-compliance with the work plan”;⁷

NOTING further that, on 16 May 2008, the Prosecution filed confidentially a revised Rule 65 *ter* Exhibit List in compliance with the Trial Chamber’s Decision of 8 May 2008 (“Revised Rule 65 *ter* Exhibit List”)⁸ and that, in the Motion, the Prosecution provides the Trial Chamber with the Rule 65 *ter* numbers of the eleven documents, thereby facilitating their identification in this new list;⁹

CONSIDERING that in its decision of 8 May 2008 the Trial Chamber set out the law that is applicable to variations of Rule 65 *ter* exhibit lists and that the law as stated in that decision applies in the present decision;¹⁰

CONSIDERING that, as already found in the decision of 7 May 2007, the work plan established on 19 January 2007 was not intended to be an inflexible document;¹¹

CONSIDERING, moreover, that the eleven documents have been in the possession of the Prosecution for several months, some of them since March 2007,¹² and that the Prosecution’s submission that it only recently discovered that these eleven documents are relevant for its case against the Accused, after it had “carefully reviewed [its vast collection of exhibits] in preparation for the trial”, is insufficient to show good cause for requesting the late addition of these documents to its exhibit list by submitting that;¹³

⁷ Prosecution Request for Leave to Reply and Reply on the Prosecution Motion to Amend its Rule 65 *ter* Exhibit List, 29 May 2008, para 8, referring to the Trial Chamber’s Decision on Prosecution Motion for Adjustment of Work Plan, 7 May 2007.

⁸ Prosecution’s Submission of its Rule 65 *ter* Exhibit List in Compliance with the Trial Chamber’s Decision of 8 May 2008 with Confidential Annex, partly confidential, 16 May 2008.

⁹ The relevant 65 *ter* numbers are 4493, 4494, 4627, 4628, 4637 (in the Corrigendum, the Prosecution indicates that, in the Motion, it has erroneously referred to entry 4638 instead of 4637), 4678, 4657, 4705, 4718, 4719 and 4733.

¹⁰ Decision on Prosecution Motion for Leave to amend its Rule 65 *ter* Exhibit List, 8 May 2008, paras 5-7.

¹¹ Decision on Prosecution Motion for Adjustment of Work Plan, 7 May 2007, para. 8.

¹² The Prosecution became aware of the document appearing as entry 4493 in October 2007 (Motion, para. 6); the documents appearing as entries 4627, 4628, 4637 and 4678 were handed to the Prosecution in March 2007 (Motion, para. 8); the video appearing as entry 4657 was disclosed to the Defence on 23 November 2007 (Corrigendum, para. 4); the document appearing as entry 4705 was handed to the Prosecution in April 2007 (Motion, para. 10); the Prosecution was directed to the video appearing as entry 4718 when it met with a witness in September 2007 (Motion, para. 11); the document appearing as entry 4719 and the letter appearing as entry 4733 formed part of the vast collection of exhibits that are in possession of the OTP (Motion, paras 12, 13). As regards the photograph appearing as entry 4494, the Trial Chamber notes that, although the Prosecution became aware of it during the summer of 2007, permission to use it was granted only recently (Motion, para. 7).

¹³ Motion, para. 13. See also para. 9 (“In preparation for the trial, the Prosecution again carefully reviewed the collection. It was only then that it became apparent that the video also contains footage of the Accused Stanišić [...]”); para. 11 (“The Prosecution then carefully reviewed its collection of exhibits and discovered that this video contains footage of the Accused Stanišić [...]”); para. 12 (“[The document appearing as 65 *ter* 4719] formed part of the vast collection of exhibits that are in possession of the OTP which was again carefully reviewed by the Prosecution in preparation for the trial”).

CONSIDERING that, although the date for the start of the case was postponed several times and the proceedings were adjourned for a minimum of three months on 16 May 2008,¹⁴ the present case was initially scheduled to start on 27 February 2008¹⁵ and the Prosecution was under the obligation, pursuant to Rule 65 *ter*(E)(iii) of the Rules, to file its list of exhibits no later than six weeks before this date;

CONSIDERING, however, that the documents are of a limited number and consist of only a few pages,¹⁶ and that, in light of the description of these documents provided in the Revised Rule 65 *ter* Exhibit List, the documents are of sufficient importance for the Prosecution case against the Accused Stanišić and Simatović to justify the late addition;¹⁷

NOTING that the Stanišić Defence and the Simatović Defence should be given sufficient time to examine these important documents;

CONSIDERING that the Trial Chamber has an overriding objective under Article 20(1) of the Statute to “ensure that a trial is fair and expeditious and that proceedings are conducted [...] with full respect of the rights of the accused”;

CONSIDERING in addition that the trial of the Accused Stanišić may not commence before a re-assessment of the Accused Stanišić’s health condition is undertaken;¹⁸

CONSIDERING therefore that, upon the commencement of the trial for both Accused, the Trial Chamber will ensure, in its management of the case, that the Defence is not prejudiced by the timing of the presentation and use of the eleven documents at trial;

NOTING that, apart from one document, the eleven documents were disclosed to the Defence both in B/C/S and in English;¹⁹

¹⁴ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008, para. 22.

¹⁵ Scheduling Order and Termination of Provisional Release, 6 February 2008.

¹⁶ The document appearing as entry 4493 consists of 6 pages (Motion, para. 6); the document appearing as entry 4494 is a photograph (Motion, para. 7); the documents appearing as entries 4627, 4628, 4637 and 4678 contain a total number of seven pages (Motion, para. 8); the Prosecution intends to show a 2-minute clip of the video appearing as entry 4657 (Motion, para. 9); the document appearing as entry 4705 consists of 3 pages (Motion, para. 10); the Prosecution intends to show a 2-minute clip of the video appearing as entry 4718 (Motion, para. 11); the document appearing as entry 4719 is a two-page document (Motion, para. 12); the letter appearing as entry 4733 consists of one page (Motion, para. 13).

¹⁷ Motion, paras 6-13.

¹⁸ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008, para. 22.

¹⁹ The Prosecution indicates that the English translation of the transcript of a video is still outstanding, Motion, para. 9. However, it specifies that it intends to show “a 2-minute clip of this video merely to prove what can be *seen* on the video, and not in order to rely on what is *said* therein” (emphasis in original).

FOR THE FOREGOING REASONS, the Trial Chamber **GRANTS** the Prosecution's request for leave to reply, **GRANTS** the Motion, and **ORDERS** the Prosecution to provide the Stanišić Defence and the Simatović Defence with an English translation of the transcript of a video appearing as entry 4657 as soon as such translation is available to the Prosecution.

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



Judge Patrick Robinson
Presiding

Dated this eighteenth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]