

IT-03-69-PT
D15258-D15251
03 JULY 2008

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AT

**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-03-69-PT
Date: 3 July 2008
Original: English

IN TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Decision of: 3 July 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR LEAVE
TO ADD MILITARY INSIGNIA PATCH BOOK TO ITS
RULE 65 *TER* EXHIBIT LIST WITH ANNEXES A AND B**

The Office of the Prosecutor:

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

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

1. **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”) is seised of the “Prosecution Motion for Leave to Add Military Insignia Patch Book to its Rule 65*ter* Exhibit List with Annexes A and B” filed 30 May 2008 (“Prosecution Motion”). In that Motion, the Prosecution requested that it be allowed to add to its exhibit list, a booklet containing photographs of 85 military insignia and patches allegedly worn by Serb military, police and paramilitary personnel during the Indictment period. As an alternative, the Prosecution requested that it be permitted, should the forgoing application be denied, to add 15 documents comprising photographs of 17 individual patches and insignia to its exhibit list.

Procedural History

2. On 26 February 2008, the Prosecution filed its “Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List with Confidential Annex” (“26 February Motion”) in which it requested permission to add a number of documents, grouped into nine categories, to its exhibit list. In its 8 May 2008 “Decision on Prosecution Motion for Leave to Amend Its Rule 65*ter* Exhibit List” (“8 May 2008 Decision”), the Trial Chamber granted the Prosecution’s 26 February Motion in part only, denying without prejudice, the Prosecution’s request to add those documents classified as Category 7 and Category 8 exhibits. With regard to the former category, the Trial Chamber determined that the Prosecution had failed to show good cause as to why the documents should have been added to its exhibit list and to demonstrate that these documents were of importance for its case.¹ Moreover, the Trial Chamber was unable, based on the Prosecution’s 26 February Motion, 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.² Finally, the Trial Chamber noted that Category 7 included a very significant number of documents.³

3. Following the 8 May 2008 Decision, the Prosecution filed five motions: the first filed confidentially on 9 May 2008; the remaining four being filed on 30 May 2008. In three out of the four 30 May 2008 motions,⁴ the Prosecution specifically requested that it be allowed to add a number of the above-mentioned Category 7 documents to its Rule 65*ter* exhibit list. In the case of

¹ Decision on Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 8 May 2008, para. 44.

² *Ibid.*

³ *Ibid.* paras 44 and 45.

⁴ Second Prosecution Motion for Leave to Amend Its Rule 65*ter* Exhibit List (Documents Tendered Pursuant to Rule 92*bis/ter/quarter* with Confidential Annex, filed confidentially on 30 May 2008; Third Prosecution Motion for Leave to Amend Its Rule 65*ter* Exhibit List (Exhibits That Form Part of a Witness Statement) with Annex, filed confidentially on 30 May 2008; Fourth Prosecution Motion for Leave to Amend Its Rule 65*ter* Exhibit List (Documents Relevant to the Evidence of Expert Witness Theunens) with Confidential Annex; Partially Confidential, 30 May 2008.

the remaining 30 May 2008 motion – the subject of the present Decision - the Prosecution requested permission to add the aforementioned booklet of military insignia and patches to its 2 April 2007 Rule 65*ter* exhibit list.⁵ This was followed on 2 June 2008 by the “Prosecution Submission of Public Annex C to Motion for Leave to Add Military Insignia Patch Book to its Rule 65*ter* Exhibit List” (“Annex C Filing”).

4. The Defence for Jovica Stanišić (“Stanišić Defence”) confidentially filed its “Defence Response to the Four Prosecution Motions All Dated 30 May 2008 and the Related Submission Dated 2 June 2008” on 13 June 2008 (“Stanišić Response”).

5. While the Simatović Defence filed a “Comprehensive Defence to Second, Third and Fourth Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List” on 12 June 2008, that Response addressed three of the four 30 May 2008 motions and did not deal with the motion specifically considered in the present Decision.

6. On 18 June 2008, the Prosecution filed its “Prosecution Request for Leave to Reply to Defence Responses to Prosecution Motions for Leave to Amend its 65*ter* Exhibit List” (“Prosecution Reply”).

Arguments of the Parties

(a) Prosecution Motion

7. The Prosecution firstly noted that of the 85 military patches and insignia, 37 already appear on the Prosecution’s exhibit list filed 25 February 2008 – twenty of those having been included on the exhibit list filed on 2 April 2007. The Prosecution further noted that 37 of the patches had also been disclosed to the Defence between 2004 and 22 February 2008.⁶ The Prosecution also undertook to disclose the remaining patches to the Defence⁷ and in its Annex C Filing disclosed electronic copies of the booklet to the Defence for both Accused, with the further undertaking that hard copies would be served on the Defence on the very same day.

8. Noting that these 37 patches already in the Defences’ possession “are the most important for the purposes of the Indictment”, and that the booklet as a whole would “only become relevant if and when witnesses testify in relation to specific patches”, the Prosecution argued that as a result, the inclusion of the military insignia and patch booklet would not unduly burden either of the Accused

⁵ Prosecution List of Exhibits Pursuant to Rule 65*ter*(E)(iii) of 2 April 2007 (partially amended by order of Trial Chamber III in its “Decision on Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List”, 8 May 2008.)

⁶ Prosecution Motion for Leave to Add Military Insignia and Patch Book to Its Rule 65*ter* Exhibit List with Annexes A and B, 30 May 2008, para. 5 (“Prosecution Motion”).

in the preparation of their respective Defences, especially in light of the adjournment ordered by the Appeals Chamber in its 16 May 2008 “Decision on Defence Appeal of the Decision on Future Course of Proceedings” (“16 May Appeals Chamber Decision”).

9. In concluding its submissions on this issue, the Prosecution argued that the military insignia and patches booklet is *prima facie* relevant to the case against both Accused. The Prosecution also submitted that the booklet would facilitate the presentation of witness testimony during trial, particularly by allowing for clear distinctions to be drawn among the many military patches and insignia used by various groups and worn by members of those groups to whom prospective witnesses’ testimony might relate.⁸

10. As an alternative, the Prosecution requested that should the Trial Chamber deny the foregoing application on the premise that the inclusion of the booklet would be prejudicial to either or both of the Accused, the Prosecution be allowed to add, *in lieu* of the booklet, fifteen documents depicting seventeen military patches and insignia which had previously been included among the Category 7 documents in the Prosecution’s 26 February Motion.⁹ Emphasising that the 26 February Motion for the addition of these particular documents had been refused without prejudice, the Prosecution submitted that fourteen of the fifteen documents had been disclosed to the Defence on 22 February 2008 – the fifteenth having been disclosed from November 2004. Having so noted, the Prosecution argued that the previous disclosure of these documents “demonstrates that the Prosecution informed the Defence in a timely manner of its intention to use those materials at trial”, further submitting that in light of the above-mentioned adjournment, their inclusion on the revised exhibit list would not occasion undue prejudice to either of the Accused.¹⁰

(b) Stanišić Response

11. The Stanišić Response dealt globally with all four of the Prosecution’s 30 May 2008 motions. Citing Articles 20(1) and 21(4) of the Statute of the Tribunal, the Stanišić Defence emphasised the Accused’s right to adequate time and facilities for the preparation of his Defence as a precursor to arguing that “the adjournment of the trial phase does not mean that the Defence has sufficient time to investigate and prepare for the proposed exhibits”.¹¹

⁷ *Ibid.*

⁸ Prosecution Motion para. 6.

⁹ *Ibid.* para.7.

¹⁰ *Ibid.* para. 8.

¹¹ Defence Response to the Four Prosecution Motions All dated 30 May 2008 and the Related Submission Dated 2 June 2008, 13 June 2008, para. 6 (“Stanišić Defence Response”).

12. In support of this submission, the Defence for Stanišić cited the 16 May Appeals Chamber Decision and argued that the Appeals Chamber “clearly envisioned” that the minimum three-month adjournment period should allow for the improvement of the Accused Stanišić’s health condition. The Stanišić Defence thereby argued that the Defence’s difficulty in obtaining instructions from its client due to his current state of health rendered the Defence unable to properly investigate and prepare its case in respect of the exhibits, further arguing that this problem is compounded by the large amount of material which the Prosecution seeks to have admitted.¹² Having also submitted that “[t]he addition of these exhibits would once again see a reorganisation of the factual case of the Prosecution”, the Defence pleaded undue prejudice arising from its being compelled to re-start its investigations to a “large extent”.¹³

13. The Stanišić Defence also argued that the addition of the booklet would contravene the 19 January 2007 Order of the Trial Chamber¹⁴ requiring the Prosecution to file its completed witness and exhibit lists no later than 2 April 2007.

14. With particular reference to the current Prosecution Motion, the Stanišić Defence pointed to the fact that the booklet of military insignia and patches contained various comments about the patches and insignia which, the Defence submitted, could “lead witnesses at trial” or, influence the testimony of Prosecution witnesses.¹⁵ Noting that “it is not for the Prosecution to classify the insignia and patches”, the Defence by way of example, pointed to page 5 of the booklet in which “JNA” appears above the patch on that page.¹⁶

(c) Prosecution Reply

15. The Prosecution requested leave pursuant to Rule 126*bis* to reply to the Defences’ Responses. Leave is hereby granted.

16. The Prosecution replied collectively to the Stanišić Response, dealing with all four 30 May 2008 motions and to the “Comprehensive Defence to Second, Third and Fourth Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List” filed by the Simatović Defence, which, as previously noted, only treated with three of the four 30 May 2008 motions to the exclusion of the current Prosecution Motion. In that regard the Prosecution contested the Defence assertion that the amendment of the Prosecution exhibit list would unduly prejudice to the Defence, noting that the addition of the exhibits enumerated in the 30 May 2008 motions, would not alter the charges and

¹² *Ibid.*

¹³ *Ibid.* paras 3 and 8.

¹⁴ Order Establishing Work Plan, 19 January 2007.

¹⁵ Stanišić Defence Response, para. 11.

¹⁶ *Ibid.*

material facts of the case.¹⁷ The Prosecution further submitted, regarding the Stanišić Defence's submissions on the 19 January 2007 Trial Chamber Order, that that Order was not to be treated as an inflexible instrument, as was evidenced by the Trial Chamber's 8 May 2008 Decision to add several hundred documents to the Prosecution's 65^{ter} exhibit list.¹⁸

17. With particular regard to the booklet of military insignia and patches, the Prosecution re-emphasised that while the booklet does contain some new patches and insignia, the most relevant ones had already been added to the exhibit list and had been disclosed to the Defence at a "much earlier" juncture.¹⁹ Regarding the Stanišić Defence's assertion that certain text inserted in the booklet with respect to a number of the patches could possibly influence Prosecution witnesses at trial, the Prosecution replied that the Defence did not dispute that the patch singled out as an example in its submissions, was a JNA patch and that "more generally [...] the labels other than the JNA notation on page 5 of the patch book are merely translations of the words that appear on the patches". The Prosecution thereby argued that the provision of pure translations of the patches' text could in no way unfairly prejudice the Defence, nor lead any of the Prosecution's witnesses at trial.²⁰

18. In concluding, the Prosecution noted that the addition of the booklet would not unduly prejudice the Defence and would serve the interests of justice.²¹

Discussion

19. The Trial Chamber refers to its 8 May 2008 Decision in which it set out the applicable law regarding applications for the amendment of the Prosecution's exhibit list and hereby adopts that statement of law for the purposes of the present Decision.

20. Having reviewed the Prosecution's submissions, the Trial Chamber finds that they fail to show good cause for the Prosecution's request that the booklet of military insignia and patches be added to its exhibit list at such a late stage of the proceedings.

21. The Trial Chamber nevertheless finds that the booklet of military insignia and patches, given its potential for facilitating the identification of the various Serb police, military and paramilitary groups and their members, as well as its potential for enabling clear distinctions to be drawn among the multiplicity of such groups, is *prima facie* relevant and of sufficient importance to

¹⁷ Prosecution Request for Leave to Reply and Reply to Defence Responses to Prosecution Motions for Leave to Amend Its 65^{ter} Exhibit List, 18 June 2008, para. 6.

¹⁸ *Ibid.* para. 12.

¹⁹ *Ibid.* para. 10.

²⁰ *Ibid.* para. 11.

the proceedings against both Accused to allow for its addition at the current stage of proceedings. Consequently, the Trial Chamber finds that it would serve the interests of justice to allow for the addition of the booklet to the Prosecution's Rule 65*ter* exhibit list. As such, the Trial Chamber need give no consideration to the alternative suggested by the Prosecution, as outlined in paragraph 10 above.

22. The Trial Chamber also takes note of the Defence's submissions regarding the 19 January 2007 Order of the Trial Chamber and reiterates the finding in the "Decision on Prosecution Motion for Adjustment of Work Plan" of 7 May 2007 that the said Order was not intended to constitute an inflexible work plan.²²

23. As regards the submissions by the Stanišić Defence that the addition of this booklet might prejudice the Defence's ability to properly prepare its case with regard to the timeframe which would be available for it to do so, the Trial Chamber notes that of the 85 patches and insignia compiled in the booklet, 20 had already been included on the Prosecution's 2 April 2007 exhibit list - the Defence therefore had advanced notice of their importance to the Prosecution's case prior to the current Prosecution Motion. As regards the remaining 65 patches and insignia - 17 of which had been disclosed to the Defence on 22 February 2008 and 48 only as recently as 2 June 2008 by way of the Prosecution's Annex C Filing - the Trial Chamber finds that any potential prejudice posed to the Defence by the late disclosure of these exhibits, would be averted by ensuring that the Defence is provided with sufficient time within which to examine those particular items in the booklet and prepare its case in respect of them.

24. The Trial Chamber is therefore mindful of its 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 for the rights of the accused". Furthermore, the Trial Chamber takes into consideration that the Accused should be afforded adequate time within which to examine this booklet with a view to preparing their respective Defences. The Trial Chamber also takes note of the fact that the trial of the Accused may not commence until such time as a re-assessment of the Accused Stanišić's health condition is undertaken. In light of the foregoing the Trial Chamber will therefore ensure in its management of the trial proceedings, that the Defence will not be prejudiced by the timing and use of the booklet of military insignia and patches at trial.

25. Finally, the Trial Chamber takes note of the Defence's submissions regarding the possible prejudice posed to the Defence by certain text included in the booklet, insofar as the Defence has

²¹ *Ibid.* paras 14 and 15.

²² Decision on Prosecution Motion for Adjustment of Work Plan, 7 May 2007, para. 8.

asserted that it might unduly influence or lead the Prosecution's witnesses at trial. The Trial Chamber finds merit in the Stanišić Defence's submissions and orders that the Prosecution redact the text appearing on the following pages of the booklet: 2, 3, 4, 5, 10, 14, 15, 16, 17, 18, 21, 22, 25, 29, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 89, 90, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109, 111, 112, 113, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126. The Trial Chamber also orders that the following text, appearing on page 1 of the booklet, be redacted: "[...] this overview includes: JNA; VJ; (local) Serb TO; VRS; SVK; Police/ Militia; Paramilitary/volunteer formations".

Disposition

26. For the foregoing reasons the Trial Chamber hereby:

- (i) **GRANTS** the Prosecution's request for leave to reply;
- (ii) **GRANTS** the Prosecution Motion for the addition of the booklet of military insignia and patches to its Rule 65*ter* exhibit list;
- (iii) **ORDERS** that the Prosecution redact all text appearing on the pages of the booklet of military insignia and patches as cited in paragraph 25 above; and
- (iv) **ORDERS** that the Prosecution serve the Defence with the redacted copies of the booklet within two weeks from the date of this Decision.

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



Judge Patrick Robinson
Presiding

Dated this third day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]