



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: 7 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: 7 July 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SECOND PROSECUTION MOTION TO
AMEND ITS RULE 65 *TER* EXHIBIT LIST (DOCUMENTS
TENDERED PURSUANT TO RULE 92 *BIS/TER/QUATER*)**

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 “Second Prosecution Motion 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 (“Motion”), whereby the Prosecution requests leave to add 87 documents, photographs, videos and charts (“documents”) to its exhibit list;

NOTING that these 87 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;¹

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;²

NOTING that, in its response to the Motion,³ the Defence for the Accused Simatović (“Simatović Defence”) opposes the Prosecution’s request and submits that the Prosecution fails to show the relevance of the 87 documents and “merely repeats its old request” that these documents be added to its exhibit list;⁴

NOTING that the Defence for the Accused Stanišić (“Stanišić Defence”) responded to the Motion on 13 June 2008, arguing that it would not have sufficient time to effectively investigate the 87 documents before the trial would recommence, as the Accused Stanišić’s health condition prevents him from being able to effectively instruct his counsel and participate in his proceedings;⁵

¹ 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.

² Decision on Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 8 May 2008, para. 44.

³ Comprehensive Response of Simatović Defence to Second, Third and Fourth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, confidential, 12 June 2008.

⁴ *Ibid.*, para. 5.

⁵ Defence Response to the Four Prosecution Motions All Dated 30 May 2008 and the Related Submission Dated 2 June 2008, confidential, 13 June 2008 paras 6-8. The response addressed three other motions that are subject of separate decisions of the Trial Chamber.

NOTING that, as a further objection to the Prosecution's request, the Stanišić Defence submits that the Prosecution is very late in requesting the addition of these documents to its list, as the deadline set by the Trial Chamber for the filing of the complete Prosecution witness and exhibit list has passed;⁶

NOTING that on 18 June 2008 the Prosecution requested leave to reply and replied to both the Stanišić Defence Response and the Simatović Defence Response, pointing out that the 87 documents "were tendered into evidence with the respective motions pursuant to Rule 92 *bis*, Rule 92 *ter* and Rule 92 *quater* in May [and] June 2007",⁷ and submitting that the addition of these documents on the Rule 65 *ter* exhibit list would not be prejudicial to the Defence, as the "adjournment period provides the Defence with three months in addition to an already sufficient amount of time to review the documents";⁸

NOTING, furthermore, that the Prosecution in its Reply submits that the 87 documents are "clearly relevant as they form part of the previous testimony of witnesses" and that their relevance is "demonstrated in the annexes attached to the Prosecution motions", which give a brief description of the documents;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 the Pre-Trial Judge, dated 7 May 2007, the work plan established on 19 January 2007 was not intended to be an inflexible document;¹¹

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 2008,¹² the present case was initially scheduled to start on 27 February 2008¹³ 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;

⁶ *Ibid.*, para. 10. The Stanišić Defence refers to the Trial Chamber's order of 19 January 2007 which set the deadline of 2 April 2007.

⁷ Prosecution Request for Leave to Reply and Reply to Defence Responses to Prosecution Motions for Leave to Amend Its 65 *ter* Exhibit List, filed 19 June 2008, paras 5 and 7.

⁸ Prosecution Request for Leave to Reply and Reply to Defence Responses to Prosecution Motions for Leave to Amend Its 65 *ter* Exhibit List, filed 19 June 2008, paras 5, 6. The Prosecution is referring to its various Motions regarding the admission of written evidence of several witnesses, filed on 21 May 2007 and 18 June 2007.

⁹ *Ibid.*, para. 7.

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.

CONSIDERING that the 87 documents have been in the possession of the Prosecution for several months, at least since May or June 2007¹⁴ and that, in the Motion, the Prosecution fails to give good cause as to why it did not request the addition of these documents at an earlier stage in the proceedings;

CONSIDERING, however, that the documents were provided to the Defence together with the Prosecution's motions pursuant to Rule 92 *bis*, 92 *ter*, or 92 *quater* in May or June 2007 and thus have been in the possession of the Defence for over a year;

CONSIDERING that the description of the documents and the explanation of how they relate to the evidence of the witnesses whose statements or testimony was tendered pursuant to Rule 92 *bis*, 92 *ter* or 92 *quater* shows sufficient importance of the documents to allow the addition of the documents onto the Rule 65 *ter* exhibit list at this late stage of the proceedings;

CONSIDERING furthermore that the Defence for both Accused have been on notice of the Prosecution's likely intention to include the 87 documents in their case against the Accused since May or June 2007 and that, therefore, the Defence will not suffer any prejudice from the addition onto the Rule 65 *ter* exhibit list of said documents;

NOTING that, apart from some of the transcripts requested by the Prosecution for a number of videos which have not yet been received, the relevant exhibits were disclosed to the Defence both in B/C/S and English;¹⁵

¹² Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008, para. 22.


¹³ Scheduling Order and Termination of Provisional Release, 6 February 2008.

¹⁴ The exhibits appearing as entries 4500, 4565, 4519, 4520, 4536, 4546, 4683, 4686, 4698, 4709, 4543, 4607, 4704, 4728, 4794, Motion, paras 10, 14, 18-20, 25, 27; and 22 exhibits were admitted and used as part of the witnesses' testimony in the *Slobodan Milošević* trial, Motion, para. 21; the document appearing as entry 4630 was admitted in the *Martić* trial, Motion, para. 32. Other exhibits appearing as entries 4535 and 4707 were used with witnesses during interviews, Motion, para. 17 and 26.

¹⁵ Motion, para. 36.

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 the transcripts of the videos, insofar as they have not yet been so provided, as soon as such transcripts and translations are available to the Prosecution.

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



Judge Patrick Robinson
Presiding

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

[Seal of the Tribunal]