



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: 15 January 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Decision of: 15 January 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE STOJIC DEFENCE MOTION TO ADD 5 EXHIBITS TO
ITS RULE 65 *TER* EXHIBIT LIST AND SUPPLEMENTARY SUMMARY
FOR THE TESTIMONY OF WITNESS DAVOR MARIJAN**

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 Stojic
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 “Bruno Stojić’s Motion to Add Exhibits to the Rule 65 *ter* (G) Exhibit List with Confidential Annexes and Supplementary Summary for the Testimony of Witness Davor Marijan”, filed partly confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 24 December 2008 (“Motion”), in which the Stojić Defence requests that the Chamber authorise, on the one hand, the addition of five exhibits¹ (“Proposed Exhibits”) to its list of exhibits pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List”) and on the other hand to take official notice of the supplementary summary for the testimony of Witness Davor Marijan filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“65 *ter* Supplementary Summary”) with five attached confidential annexes;

NOTING the decision rendered by the Chamber on 11 December 2008 whereby the Chamber decided, *inter alia*, that witness Davor Marijan would testify as an expert witness before the Chamber from 19 to 22 January 2009² (“Decision of 11 December 2008”),

CONSIDERING that the other parties did not file a response to the Motion,

CONSIDERING that the Stojić Defence first argues that in addition to the subjects covered in the expert report titled “Department of Defence of the Croatian Community/Croatian Republic of Herceg-Bosna” (“Expert Report”), it will also examine Expert Witness Davor Marijan regarding the terms “Ustasha” and “Partisan”; that for that purpose, it files a 65 *ter* Supplementary Summary to the testimony of witness Davor Marijan³,

¹ 2D 02001; 2D 02002; 2D 02003; 2D 02004; 2D 02005.

² Decision on Submission of the Expert Report of Davor Marijan pursuant to Rule 94 *bis* (A) and (B) and on Motions for Additional Time to Cross-Examine Davor Marijan, 11 December 2008.

³ Motion, para. 3.

CONSIDERING that the Stojić Defence next states that the Proposed Exhibits have substantial probative value and that they are relevant in the context of Defence evidence for the Accused Stojić,⁴

CONSIDERING that, according to the Stojić Defence, the Proposed Exhibits satisfy the requirements of Guideline 8 of the decision rendered by the Chamber on 24 April 2008,⁵

CONSIDERING that the Stojić Defence intends to present the Proposed Exhibits through Witness Davor Marijan⁶,

CONSIDERING that the Stojić Defence finally submits that it was unable to add the Proposed Exhibits to the 65 *ter* List while it was being compiled since they became necessary only recently,⁷

CONSIDERING that the Chamber recalls that in order to grant a motion to add exhibits to the 65 *ter* List, the exhibits must be disclosed to the other parties to the trial sufficiently in advance so as not to hinder their preparations for cross-examination,

CONSIDERING that the Chamber also recalls the Decision of 24 April 2008, particularly Guideline 8 stipulating that in order for a motion to add exhibits to a 65 *ter* List to be granted, the Parties in question must file a motion with the Chamber to add the exhibit(s) to the 65 *ter* (G) list prior to the appearance of the witness to whom the exhibits will be shown, providing the reasons why the exhibit or exhibits are essential to the case and why the exhibit or exhibits were not on the list filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that when dealing with a motion to add exhibits to a 65 *ter* list, the Chamber will always carry out a *prima facie* examination of the reliability, relevance and probative value of the documents before it,

⁴ Motion, para. 1.

⁵ Decision Adopting guidelines for the Presentation of Defence Evidence, 24 April 2008 (“Decision of 24 April 2008”); Motion, para. 4.

⁶ Motion, p. 4.

⁷ Motion, p. 5.

CONSIDERING firstly that as regards the motion of the Stojić Defence to add the Proposed Exhibits to its 65 *ter* list, the Chamber is not satisfied by the reason given by the Stojić Defence justifying why the Proposed Exhibits are not on its 65 *ter* List,

CONSIDERING that it does not in fact suffice to indicate to the Chamber that the need to present an exhibit arose late, rather, it is up to the moving party to demonstrate the objective reasons why it was not feasible for it to include them on the 65 *ter* List at the time it was filed, such as, for example, the fact that despite due diligence, the exhibits were not in its possession when the 65 *ter* List was filed, which the Stojić Defence has failed to do,

CONSIDERING superabundantly that the Chamber finds that in the Motion the Stojić Defence has failed to demonstrate the *prima facie* relevance of the Proposed Exhibits,

CONSIDERING as regards Proposed Exhibits 2D 02001, 2D 02002 and 2D 02003, that the Chamber does not see how relate to the allegations contained in the second amended indictment of 11 June 2008 and that consequently, it considers them *prima facie* lacking in relevance,

CONSIDERING the request for the 65 *ter* Supplementary Summary for the testimony of Davor Marijan, the Chamber finds that the subject matter relating to the terms “Ustasha” and “Partisan” falls outside the sphere of expertise of Expert Witness Marijan Davor,

CONSIDERING that, pursuant to the Decision of 11 December 2008, the Chamber authorised Davor Marijan to testify as an expert only on the subject matter raised in his Expert Report, namely the aspects pertaining to the creation, organisation and activities of the Defence Department of the Croatian Community of Herceg-Bosna,

CONSIDERING moreover that the Chamber entertains serious doubts as to the relevance of the subject matter in question, which relevance has moreover not been demonstrated in the Stojić Defence Motion,

CONSIDERING therefore that the Chamber will not allow the examination of Expert Witness Davor Marijan on subjects relating to the terms “Ustasha” and “Partisan”,

CONSIDERING that, consequently, the Chamber decides to deny the Motion in its entirety,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 65 *ter* and 89 (C) of the Rules

DENIES the Motion

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]