



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: 21 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: 21 January 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION TO AMEND ITS 65 *TER* LIST
(SLOBODAN BOŽIĆ)**

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 “Bruno Stojić’s Motion to Add Exhibits to the Rule 65 *ter* (G) List with Annex A and Confidential Annexes B and C”, to which three annexes are attached,¹ filed partly confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 15 January 2009 (“Motion”), in which the Stojić Defence requests the leave of the Chamber to add one exhibit relating to Witness Davor Marijan and two exhibits relating to Witness Slobodan Božić to its list drawn up pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”; “65 *ter* List”),

NOTING the “Prosecution Response to Bruno Stojić’s Motion to Add Exhibits to the Rule 65 *ter* List with Annex A and Confidential Annexes B and C, dated 14 January 2009” filed by the Office of the Prosecutor (“Prosecution”) on 16 January 2009 whereby the Prosecution does not object to the Motion,

CONSIDERING firstly that the Chamber recalls that by the oral decision of 15 January 2009² it has already ruled in part on the Motion regarding the exhibit pertaining to Davor Marijan; that in this decision, it rejected in part the Motion as it concerns the request to add the document in Annex A to the Motion to the 65 *ter* List and sought a response by 19 January 2009 from the Prosecution and the other Defence teams with regard to the two documents in Annexes B and C pertaining to Witness Slobodan Božić,

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

CONSIDERING that in regards to the exhibits pertaining to Witness Slobodan Božić, the Chamber notes that the Stojić Defence did not number the document contained in confidential Annex C; that the Chamber therefore decides to number it as 2D 01495, while reminding the parties that they must number the exhibits that they wish to add to their 65 *ter* list,

¹ Annex A and Confidential Annexes B (containing document P 035 02) and C,

² Transcript in French, pp. 35533 to 35535 (“Decision of 15 January 2009”).

CONSIDERING that the Chamber hereby decides to rule on the Motion in that it concerns the request to add two documents pertaining to Witness Slobodan Božić to the 65 *ter* List, that is documents P 03502 and 2D 01495,

CONSIDERING that in support of the Motion, the Stojić Defence argues in particular that document P 03502 is an UNPROFOR report that deals with the issue of humanitarian convoys and the Makarska agreement, an event in which the witness allegedly participated,³

CONSIDERING that the Stojić Defence argues that this document is essential to the Stojić Defence case,⁴

CONSIDERING that, moreover, the Stojić Defence submits that it discovered document 2D 01495 only recently; that this document, signed by Colonel Prce, deals with several aspects of the organisation of the military mobilisation in the Croatian Community of Herceg-Bosna (“HZ H-B”) and that it falls within the framework in the testimony of Slobodan Božić that will deal with the organisation and work of the Defence Department, and that the witness will rely on this document to support his testimony,⁵

CONSIDERING that the Stojić Defence argues that document 2D 01495 is therefore an essential part of the testimony of Slobodan Božić,⁶

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 Parties sufficiently in advance in view of their presentation to a witness so as not to hinder their preparations for cross-examination,

CONSIDERING that the Chamber also recalls the “Decision Adopting Guidelines for the Presentation of Defence Evidence” rendered on 24 April 2008, particularly Guideline 8 stipulating that in order for a motion to add exhibits to a 65 *ter* List be granted, the Parties in question must file a motion with the Chamber to add the exhibits(s) to the 65 *ter* List (G) prior to the appearance of the witness to whom it intends to put the exhibits, providing the reasons why the exhibit or exhibits are

³ Motion, para. 4.

⁴ Motion, para. 4.

⁵ Motion, para. 5.

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,

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,

CONSIDERING that the Chamber notes that Exhibit P 03502 was on the Prosecution's 65 *ter* List and that, consequently, the parties were aware of it prior to the commencement of trial,

CONSIDERING further that the Chamber holds that this document is *prima facie* relevant, reliable and has a certain probative value to the extent that it is an official UNPROFOR document dealing with issues referred to in the amended indictment of 11 June 2008,

CONSIDERING that the Chamber consequently holds that it is in the interests of justice to allow its addition to the Stojić Defence 65 *ter* List,

CONSIDERING that the Chamber furthermore finds that document 2D_01495 is *prima facie* reliable to the extent that it bears an HVO letterhead and a signature; that it is relevant to the issue of the responsibility of the Accused Stojić as it deals with certain aspects of the organisation of the HZ H-B armed forces,

CONSIDERING that while the document was disclosed only on 15 January 2009, the Chamber holds that its late addition will not hinder the preparation of cross-examination by the other parties, to the extent that it deals with issues that were abundantly raised during the trial,

CONSIDERING that the Chamber consequently decides that it is in the interests of justice to allow the addition of this document to the Stojić Defence 65 *ter* List,

CONSIDERING however that with a view to facilitating a better reading of the document, the Chamber invites the Stojić Defence to revise the English translation of document 2D 01495 and to do so at the latest when filing an application for the admission of the said document,

⁶ Motion, para. 5.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 *ter* of the Rules,

PARTIALLY GRANTS the Motion,

ALLOWS the addition of Exhibits P 03502 and 2D 01495 to the Stojić Defence 65 *ter* List,

INVITES the Stojić Defence to provide a new English translation of Exhibit 2D 01495 and to do so at the latest when filing an application for its admission

AND

RECALLS that by the Decision of 15 January 2009, the Chamber already denied the Motion in all other respects.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]