



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-08-91-PT
Date: 9 July 2009
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Ole Bjørn Støle
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Order of: 9 July 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ & STOJAN ŽUPLJANIN

PUBLIC

**ORDER TO THE DEFENCE TO SUPPLEMENT THE PRE-
TRIAL BRIEFS PURSUANT TO RULE 65ter (F)**

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused:

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić for Stojan Župljanin

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”);

NOTING the “Pre-Trial Brief of the Defence of Mićo Stanišić” and the “Pre-Trial Brief of the Defence of Stojan Župljanin” (“Defence Pre-Trial Briefs”), both filed on 29 June 2009;

NOTING that the Defence for Mićo Stanišić submits that it does not take issue with the submissions contained in the Prosecution’s Pre-Trial Brief in relation to the legal definition of murder, torture, and cruel treatment as a violation of the laws and customs of war pursuant to Article 3 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (“Statute”);¹ or of murder as a crime against humanity pursuant to Article 5(a) of the Statute;² or of “instigating” pursuant to Article 7 (1) of the Statute;³

NOTING that the Defence for Stojan Župljanin submits that it does not take issue with the submissions contained in the Prosecution’s Pre-Trial Brief in relation to the legal definition of ordering, planning or instigating pursuant to Article 7 (1) of the Statute;⁴

NOTING that the Defence for Mićo Stanišić and the Defence for Stojan Župljanin submit that, except for the agreed facts, the Defendants contest the truth and accuracy of all factual allegations made by the Prosecution in the Indictment and the Prosecution’s Pre-Trial Brief, including adjudicated facts previously admitted by the Pre-Trial Chamber, as well as the Prosecution’s pending Motions for adjudicated facts; and that they also contest the admissibility, authenticity, probative value and weight which may be attached to any of the exhibits the Prosecution intends to proffer; and that they further reject the legal assessments of those factual allegations made by the Prosecution concerning all charges; all of which the Defendants contest without elucidating on how they intend to counter the Prosecution’s allegations in the course of cross-examination of Prosecution witnesses or during the presentation of the defence case;⁵

NOTING that, in addition to the Župljanin Brief challenging the lawfulness of the concept of joint criminal enterprise,⁶ the Defence Pre-Trial Briefs challenge the modes of liability under Article 7 (1) and (3) as well as under a joint criminal enterprise without indicating any basis for this position;

¹ Stanišić Brief, 29 June 2009, para. 17.

² Stanišić Brief, para. 20.

³ Stanišić Brief, para. 26.

⁴ Župljanin Brief, para. 22.

⁵ Stanišić Brief, paras. 9,10 and 12; and Župljanin Brief, paras. 17, 18 and 20.

⁶ Župljanin Brief, paras. 46-72.

RECALLING that pursuant to Rule 65ter (F) of the Rules of Procedure and Evidence (“Rules”), the Defence is required, *before* the opening of the trial, to disclose the general nature of its case, to identify with some specificity the disputed issues which have to be litigated at trial and to set forth the reasons for its objections, and that the Defence is therefore required to address, in its Pre-Trial Brief, “the factual and legal issues” and to set out *the nature of the Accused’s defence* in general terms; *the matters with which the accused takes issue* in the Prosecutor’s pre-trial brief; and in the case of each such matter, *the reason why the accused takes issue with it*;

RECALLING that the purpose of Rule 65ter (F) is to give the Trial Chamber and all other parties to the proceedings sufficient notice of the nature and approach of the challenge that will be raised during the conduct of the Prosecution’s case so as to enable the Trial Chamber, in the interests of Justice and to facilitate expeditiousness of the trial, to better control the proceedings and focus the trial on the disputed issues;⁷

CONSIDERING that the sweeping denial of any responsibility for all of the crimes charged in the Indictment as stated in the Defence Pre-Trial Briefs is a mere reiteration of the plea of “not guilty” entered at the respective initial appearances of the Accused and is inadequate in stating the general nature of the defence which the Accused intend to present as required by Rule 65ter (F) (i);⁸

CONSIDERING that, after narrating the law on Articles 3 and 5, and outlining the burden which the Prosecution has to meet on each of the crimes charged, the Defence Pre-Trial Briefs go no further and thereby neglect to identify and state with any specificity the aspects of the Prosecution’s Pre-Trial Brief with which the Accused take issue as required by Rule 65ter (F) (ii);

CONSIDERING that the Defence Pre-Trial Briefs deny all factual allegations and legal assessments of the factual allegations in the Indictment and the Prosecution Pre-Trial Brief without providing any substantive or tangible reasons for their denial relative to any of the specific factual circumstances of the individual crimes narrated in the Prosecution Pre-Trial Brief as required by Rule 65ter (F) (iii);

CONSIDERING that, having perused the Defence Pre-Trial Briefs with studied concern, the Trial Chamber finds that they do not fulfil the requirements of Rule 65ter (F), and as such are deficient in a manner that is not conducive to the conduct of a fair and expeditious trial;

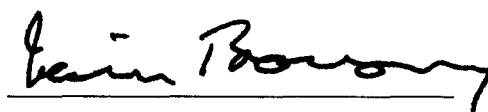
⁷ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, “Decision on Prosecution’s Response and Motion for clarification on Defence Pre-Trial Brief”, 15 May 2008, para. 5.

⁸ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79, Initial Appearance, 17 March 2005, T. 18-21; *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2, Initial Appearance, 23 June 2008, T. 3-5. Stanišić Brief, paras. 13, 17, 19-22, 25, 26, 28, 29 and 36; and Župljanin Brief, paras. 16, 27, 33, 73.

CONSIDERING that in the interests of the proper administration of justice, it would be appropriate for these deficiencies identified by the Trial Chamber to be cured before the case proceeds to trial in order to fulfil all the requirements of the pre-trial phase pursuant to Rule 65ter;

PROPRIO MOTU and PURSUANT to Article 20 of the Statute and Rules 54, 65ter (B), (D) and (F) and 126bis;

HEREBY ORDERS the Defence for Mićo Stanišić and the Defence for Stojan Župljanin each to file a supplement to the Defence Pre-Trial Briefs, so as to comply fully with the requirements of Rule 65ter (F), no later than 31 July 2009.



Judge Iain Bonomy

Presiding

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

Dated this ninth day of July 2009

At The Hague

The Netherlands

[Seal of the Tribunal]