



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-08-91-T
Date: 4 December 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 4 December 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING PROSECUTION'S MOTION
FOR RECONSIDERATION OF THE TRIAL
CHAMBER'S DECISION ON DOCUMENTS RELATED
TO DOROTHEA HANSON (ST158)**

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 and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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 “Prosecution’s motion for reconsideration of the Trial Chamber’s decision on documents related to witness ST158, with annex A”, filed confidentially on 18 November 2009 (“Motion”), in which the Prosecution requests the Trial Chamber to permit it to add to its exhibit list five documents that were previously the subject of a Prosecution Notice, filed on 8 October 2009, whereby the Prosecution requested the Trial Chamber to “take note of the addition” of seven documents to its exhibit list pertaining to expert witness Dorothea Hanson;¹

NOTING that the Defence of Mićo Stanišić and the Defence of Stojan Župljanin (jointly the “Defence”) responded orally to the Motion on 4 December 2009, after the expiry of the time limit set by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”) but indicated that they have no objection to the addition of the documents;²

RECALLING the Trial Chamber’s procedural guideline that “a party seek[ing] to admit into evidence material that is not on its exhibit list [...] must, prior to requesting admission into evidence, seek the leave of the Trial Chamber by way of a written motion to add the material in question to the exhibit list”;³

RECALLING that the Trial Chamber has the inherent discretion to grant leave to a party to amend its Rule 65 *ter* list provided that it is in interest of justice to do so;⁴

RECALLING that a party must show good cause for its request and that the proposed documents are *prima facie* relevant and of sufficient importance to justify their inclusion on the exhibit list;⁵

RECALLING that the Trial Chamber, in determining requests for amendment of a party’s exhibit list, may take into consideration the complexity of the case, on-going investigations and issues related to the translation of documents and other materials;⁶

¹ Motion, para. 15; Notice in relation to 65 *ter* numbers of additional documents, filed on 8 Oct 2009 (“Notice”).

² Deadline of 1 December 2009; Hearing, 4 Dec 2009, T. 4199.

³ Revised procedural guidelines, 2 Oct 2009, para. 6.

⁴ Decision granting Prosecution’s motion for leave to amend Rule 65 *ter* list to add documents related to witness ST092, 20 Oct 2009, para. 7; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.1, Decision on appeals against decision admitting material related to Borovčanin’s questioning, 14 Dec 2007 (“First Popović Decision”), para. 37.

⁵ First Popović Decision, para. 37; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution second motion to amend Rule 65 *ter* exhibit list, 11 Sep 2008 (“Lukić Decision”), para. 10.

⁶ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s motion for leave to amend Rule 65 *ter* witness list and Rule 65 *ter* exhibit list, confidential, 6 Dec 2006 (“Second Popović Decision”), p. 7; *Lukić Decision*, para. 10.

RECALLING that on 28 October 2009, the Trial Chamber orally denied the Notice, which it decided, in the interest of judicial economy, to treat as a motion, finding that the Prosecution had neither extended any argument to demonstrate good cause for the addition of the seven documents to its exhibit list, nor indicated the relevance and importance of the documents;⁷

RECALLING that on the same date, the Trial Chamber stated that it would reconsider its oral decision upon a properly reasoned motion;⁸

NOTING that the Prosecution acknowledges that the Notice provided insufficient information to enable the Trial Chamber to determine the relevance and importance of the seven documents and that it files its Motion requesting that the Trial Chamber re-consider its decision in relation to five of these documents;⁹

NOTING the Prosecution submission that it is in the interest of justice to allow the Prosecution to add the five documents to its exhibit list for Dorothea Hanson's testimony;¹⁰

NOTING the Prosecution submission that the five documents were part of Dorothea Hanson's expert report submitted in a Rule 92 *bis* package on 17 August 2009 and were also disclosed to the Defence prior to that date;¹¹

NOTING the Prosecution submission that, in accordance with the Trial Chamber's ruling that the evidence of expert witnesses is not to be presented pursuant to Rule 92 *bis* or Rule 92 *ter*, but pursuant to Rule 94 *bis*, the Prosecution now wishes to use a number of documents with the witness during the course of her examination-in-chief;¹²

NOTING the Prosecution submission that all of the documents to be used in this way clarify and substantiate Dorothea Hanson's report and are highly probative of issues in this case and that those documents include the five documents that are the subject of the Motion;¹³

CONSIDERING that the five documents are relevant and probative and that they are of sufficient importance to the Prosecution's case to justify their late addition to the Prosecution's exhibit list;

⁷ Hearing, 28 Oct 2009, T. 2169-2171.

⁸ Hearing, 28 Oct 2009, T. 2171.

⁹ Motion, para. 3.

¹⁰ Motion, para. 7.

¹¹ Motion, para. 8.

¹² Motion, para. 8. See also Pre-trial conference, 4 Sep 2009, T. 103-104.

¹³ Motion, para. 8.

CONSIDERING that the Defence do not object to the inclusion of the documents on the exhibit list and that sufficient notice has been given to the Defence in view of the fact that disclosure of these documents took place at the latest in February 2008;¹⁴

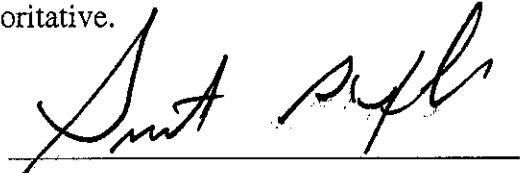
CONSIDERING that the Prosecution's Rule 65 *ter* exhibit list was required to be filed by 8 June 2009, prior to the Trial Chamber's ruling that all expert witnesses were to be called pursuant to Rule 94 *bis* and prior to the procedural guidelines being issued;

CONSIDERING that the Prosecution has demonstrated good cause for its request and that it is in the interest of justice to grant the late inclusion of the five documents on the Prosecution's exhibit list;

PURSUANT TO Article 20(1) and Article 21(4)(b) of the Statute and Rule 65 *ter* of the Rules;

GRANTS the Motion.

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



Judge Burton Hall
Presiding

Dated this fourth day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ Notice, para. 3.