



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: 26 January 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 26 January 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**WRITTEN REASONS FOR
ORAL DECISIONS GRANTING PROSECUTION'S
THIRD MOTION FOR LEAVE TO AMEND ITS RULE
65 TER EXHIBIT LIST TO ADD DOCUMENTS
RELATED TO CHRISTIAN NIELSEN (ST092) AND
REOPENING EXAMINATION IN CHIEF**

The Office of the Prosecutor

Ms. Joanna Korner
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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 third motion for leave to amend its Rule 65 *ter* exhibit list to add documents related to witness ST-92, with annex A”, filed on 22 January 2010 (“Third Motion”), in which the Prosecution seeks leave to add a document entitled “Letter from Jose Cutileiro to Radovan Karadžić (“Proposed Document”) to its exhibit list;¹

HAVING GRANTED the Motion orally on 26 January 2010 and, after having heard the parties, *proprio motu* permitted the Prosecution to reopen its examination-in-chief of the witness in relation to the Proposed Document with written reasons to follow (“Oral Ruling”);

HEREBY RENDERS its written reasons for its Oral Ruling as follow:

RECALLING the Trial Chamber’s procedural guideline that sets out 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”;²

RECALLING that the Trial Chamber has the inherent discretion to grant leave to a party to amend its Rule 65 *ter* exhibit list provided that it is in the interest of justice to do so;³

RECALLING that a party must show good cause for its request and that the proposed document is *prima facie* relevant and of sufficient importance to justify its late inclusion on the exhibit list;⁴

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;⁵

¹ Prosecution’s third motion for leave to amend its Rule 65 *ter* exhibit list to add documents related to witness ST-92, with annex A”, filed 22 Jan 2010 (“Motion”). The Proposed Document has been provisionally numbered Rule 65 *ter* 3474, see Motion, para. 6 and Annex A.

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

³ 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.

⁴ 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.

⁵ *Prosecutor v. 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, p. 7; *Lukić* Decision, para. 10.

RECALLING that, following an earlier Prosecution motion to amend its Rule 65 *ter* exhibit list (“Second Motion”),⁶ the Trial Chamber granted the Prosecution leave to add to its Rule 65 *ter* exhibit list 16 documents (“Related Documents”);

NOTING the Prosecution’s submission that “[the Related Documents] were necessary to enable the Trial Chamber to determine the relevance or otherwise of the Lisbon Agreement and Cutileiro Plan to the formation of the RS MUP [Republika Srpska’s Ministry of Interior]” and that “a number of those documents consisted of correspondence between Ambassador Cutileiro, Momčilo Krajišnik and Radovan Karadžić”,⁷ of which the Proposed Document forms an integral part;⁸

NOTING that the Prosecution’s further submission that “[the Proposed Document] is a letter dated 12 June 1992 from Ambassador Cutileiro to Radovan Karadžić in which Ambassador Cutileiro very clearly and firmly sets out the precise nature and binding force of the negotiations concerning the proposed constitutional arrangements for Bosnia and Hercegovina” and that “this document is crucial for the Trial Chamber’s ability to determine whether the parties to the Cutileiro/Carrington negotiations ever reached a final, binding agreement”;⁹

NOTING the Prosecution’s submission that the Proposed Document was not included in the Second Motion because “it was subject to Rule 70 restrictions” and that “these restrictions have recently been lifted”;¹⁰

NOTING the Prosecution allegation that the formation of the RS MUP was a unilateral action, planned and executed by various members of the joint criminal enterprise, including both the Accused;¹¹

CONSIDERING therefore that the Proposed Document relates to the circumstances surrounding the formation of the RS MUP and as such, is *prima facie* relevant to the case;

CONSIDERING that neither the Defence of Mićo Stanišić nor the Defence of Stojan Župljanin (together “Defence”) raised any objection to the addition of the Proposed Document to the Prosecution’s exhibit list;¹²

⁶ Prosecution’s second motion for leave to amend its Rule 65 *ter* exhibit list to add documents related to witness ST-92, with annex A, 1 Dec 2009.

⁷ Motion, para. 5.

⁸ Motion, para. 6.

⁹ *Ibid.*

¹⁰ Motion, para. 3.

¹¹ Second Motion, paras 5-6.

¹² Hearing of 25 Jan 2010, T. 5416-5417.

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 Proposed Document onto the Prosecution's Rule 65 *ter* exhibit list;

NOTING the Prosecution's submission in the Second Motion that witness ST092 is competent to elucidate on the subject of the creation of the RS MUP;¹³

RECALLING that Christian Nielsen (ST092) has been accepted by the Trial Chamber as an expert witness pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence ("Rules") and has already given his evidence-in-chief;

NOTING that, at the time of the Oral Ruling this witness was testifying under cross-examination;

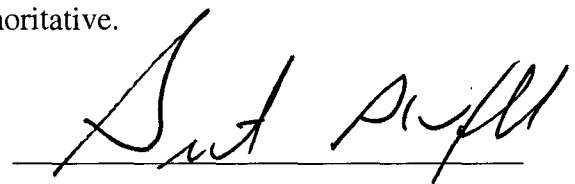
CONSIDERING that it is in the interests of justice and judicial economy to permit the Prosecution to reopen its examination-in-chief of this witness to address the Proposed Document and for the Defence to cross-examine thereon;

FOR THE FOREGOING REASONS and PURSUANT TO Article 20(1) and Article 21(4)(b) of the Statute and Rules 54 and 65 *ter* of the Rules, the Trial Chamber thereby

GRANTED the Motion; and

ALLOWED the Prosecution to re-open its examination-in-chief to put the Proposed Document to Christian Nielsen (ST092).

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



Judge Burton Hall

Presiding

Dated this twenty-sixth day of January 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

¹³ Second Motion, para. 11. See also Corrigendum to confidential appendices 3 and 4 to the Prosecution's pre-trial brief of 8 June 2009 with confidential annexes, Appendix 4, p. 42.