



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: 24 March 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 24 March 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION DENYING PROSECUTION MOTION FOR
LEAVE TO AMEND ITS RULE 65 *TER* EXHIBIT LIST
WITH REGARD TO DOCUMENTS RELATED TO
WITNESSES ST185, ST187 AND ST126**

The Office of the Prosecutor

Mr. Thomas Hannis
Ms. Joanna Korner

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 motion for leave to amend its Rule 65 *ter* exhibit list with regard to documents related to witnesses ST-185, ST-187 and ST-126”, filed on 18 March 2010 (“Motion”), in which the Prosecution seeks to add to its Rule 65 *ter* exhibit list two documents and reinstate one document that was previously withdrawn (“Proposed Documents”);

NOTING the oral objections to the Motion raised by both the Defence for Mićo Stanišić and the Defence for Stojan Župljanin during the hearing on 22 March 2010;¹

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 must satisfy the Trial Chamber that the proposed documents are *prima facie* relevant and of sufficient importance to justify their late inclusion on the exhibit list;⁴

NOTING the Prosecution’s submission that it discovered Proposed Rule 65 *ter* exhibit 3574 (“Proposed Document 3574”) in its internal databases and disclosed it to the Defence in January 2010;⁵

NOTING the Prosecution’s submission that it only discovered Proposed Rule 65 *ter* exhibit 3575 (“Proposed Document 3575”) in the Prosecution’s internal database during the second week of March 2010 and that its inability to locate the document prior to that date was due to the fact that

¹ Hearing, 22 Mar 2010, T. 7980-7981.

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 Motion, para. 4.

“[p]revious searches had not allowed the Prosecution to locate this document as the term ‘CSB Banja Luka’ is written in an abbreviated for (sic): ‘CSB B.LUKA’”;⁶

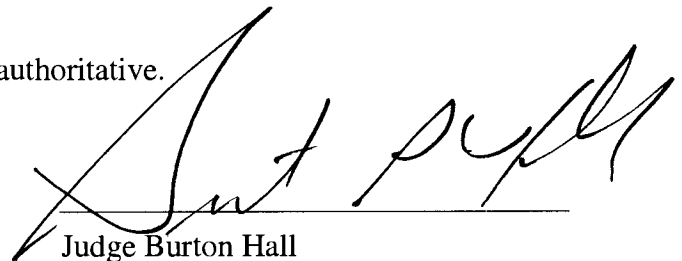
NOTING the Prosecution’s submission that Proposed Rule 65 *ter* exhibit 1609 (“Proposed Document 1609”) was withdrawn from its exhibit list by motion on 21 May 2008⁷, that it is “related to” a document that is on its current Rule 65 *ter* exhibit list and, if admitted, is meant “to provide the Trial Chamber with a better understanding of the document currently on the 65*ter* list”;⁸

CONSIDERING that notwithstanding the Prosecution’s contention that the Defence would not be prejudiced by the inclusion of the Proposed Documents, it has not established to the satisfaction of the Trial Chamber that there is good cause for its request or that the Proposed Documents are of sufficient importance to justify their late inclusion;

PURSUANT TO Article 20, paragraph 1, and Article 21(4)(b) of the Statute and Rules 54 and 65 *ter* of the Rules

DENIES the Motion.

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



Judge Burton Hall
Presiding

Dated this twenty-fourth day of March 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ Motion, para. 5.

⁷ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Prosecution’s motion seeking leave to amend its Rule 65*ter* exhibit list, with confidential annexes, 21 May 2008.

⁸ Motion, para. 6.