



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: 17 September 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 17 September 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON PROSECUTION'S MOTIONS TO ADD
THE MLADIĆ NOTEBOOKS TO ITS RULE 65 *TER*
EXHIBIT LIST**

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. Dragan Krgović and Mr. Igor Pantelić 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”);

RECALLING that the Trial Chamber by oral decision rendered today granted in part the “Prosecution’s motion for leave to amend its 65^{ter} exhibit list with Annex A (Mladić Notebooks)” filed on 18 May 2010 (“Original Motion”), and stated that written reasons would follow;¹

RECALLING that by the Original Motion, the Prosecution sought to add to its exhibit list “eighteen recently-received military notebooks containing the handwritten wartime notes of VRS Main Staff Commander General Ratko Mladić” (“Eighteen Original Notebooks”);

NOTING the joint Defence response objecting to the Original Motion filed on 1 June 2010;²

RECALLING the Trial Chamber’s “Order requiring the Prosecution to select the relevant portions of the Mladić Notebooks and to provide English translations thereof”, issued on 29 June 2010 (“Order”) directing the Prosecution “to identify and provide the translated portions of the Notebooks that are relevant to the present case and which it seeks to add to its exhibit list”³ and “to provide information and material supporting the *prima facie* authenticity of the portions of the Notebooks it seeks to add to its exhibit list”;

NOTING the “Prosecution’s response to Order of 29 June 2010 requiring the Prosecution to select the relevant portions of the Mladić notebooks and to provide English translations thereof and Supplementary motion to add the balance of the Mladić notebooks to its 65^{ter} exhibit list”, filed with public Annexes A-E and confidential Annex F on 12 July 2010 (“Response and Supplementary Motion”) by which the Prosecution seeks, *inter alia*, to add an additional four notebooks which were not included in the Original Motion (the “Additional Notebooks”), and to which the Defence jointly responded on 22 July 2010 (“Joint Response”);⁴

NOTING the Prosecution submission that the Additional Notebooks were seized on 4 December 2008 by the Serbian MUP authorities, “handed to the OTP on 27 March 2009” and

¹ Hearing, 17 Sep 2010.

² Stanišić and Župljanin joint response to Prosecution’s motion for leave to amend its 65^{ter} exhibit list, with Annex A (Mladić Notebooks), 1 Jun 2010.

³ *Ibid.*

⁴ Joint response to Prosecution’s response to Order of 29 June 2010 requiring the Prosecution to select the relevant portions of the Mladić notebooks and to provide English translations thereof and supplementary motion to add the balance of the Mladić notebooks to its 65^{ter} exhibit list, 22 Jul 2010.

authenticated by General Manojlo Milovanović on 8 July 2009, but that “regrettably the information [...] was not passed onto the OTP team engaged in this case”⁵

NOTING the Prosecution submission that it “erroneously assumed” that the Eighteen Original Notebooks “completed the set of General Mladić’s Notebooks in the possession of the OTP and apologises for this error”;⁶

NOTING the Prosecution submission that the Four Additional Notebooks were disclosed to the Defence on 1 July 2010 and it seeks leave to add them to its Rule 65 *ter* exhibit list along with the Eighteen Original Notebooks;⁷

NOTING the Prosecution submission that the Four Additional Notebooks relate to the period covered by the indictment in this case and that it would assist the Trial Chamber to have the entire collection while making factual findings regarding authenticity;⁸

NOTING the Prosecution submission that, if required, it will file “a declaration by the OTP investigator to confirm the chain of custody” of the Four Additional Notebooks and that the declaration of its investigator, Erin Gallagher, setting out the chain of custody of the 18 Notebooks subject of the Original Motion has been provided in Annex D;⁹

NOTING the Prosecution submission, in the Response and Supplementary Motion, that “it seeks to add the entire set of the Mladić Notebooks to its 65*ter* exhibit list” on the grounds that the evidence in this case is as yet incomplete and there is a likelihood of the other portions becoming relevant at a later stage in the proceedings, but nevertheless, as requested by the Trial Chamber, it has identified and now notifies the Trial Chamber of the specific portions it considers “*prima facie* relevant to its case at this stage”¹⁰,

NOTING the Prosecution submission that all entries from 1992 are relevant at this stage, of which it further “identified approximately 90 individual entries [...] which relate to either indictment municipalities, MUP activities, meetings with JCE members, Presidency meetings, or are entries which corroborate witness testimony”;¹¹

⁵ *Id.*, para. 4.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Id.*, paras 10-11.

⁹ *Id.*, paras 14-15 and Annex D.

¹⁰ Response to Order, paras 1, 5, 11 and Annexes B-C.

¹¹ *Id.*, para. 8.

NOTING the Prosecution submission that the entries from 1992 are contained in eight individual Notebooks, comprised of six of the Eighteen Original Notebooks and two of the Additional Notebooks, which cover specific entries from September and October 1992¹² (collectively, “Eight 1992 Notebooks”);

NOTING the Prosecution submission that five entries from 1993 are relevant at this stage of the proceeds, as they pertain to meetings held in relation to events in municipalities covered by the indictment during the relevant time period¹³ (collectively, “Selected 1993 Entries”);

NOTING the Prosecution submission that although the entries from 1991 and from 1994 to 1996 may not appear relevant at this stage of the proceedings, extracts outside 1992 and the Selected 1993 Entries may assist the Trial Chamber by providing context for events both pre- and post-indictment, given that “the issue of re-subordination is a live and ongoing one”, specifically in relation to the anticipated testimony of the Prosecution’s witness Ewan Brown;¹⁴

NOTING the Defence joint submission that at this point in time, they take “no position in relation to the Prosecution request to add the Mladić Notebooks to its 65ter list” but nonetheless reserve the right to respond once they receive full disclosure of video, audio and other material associated with the Notebooks, which has not yet been disclosed by the Prosecution;¹⁵

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 interests of justice to do so;¹⁶

RECALLING that a party 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;¹⁷

¹² *Id.*, paras 3, 10.

¹³ *Id.*, para. 7 and Annex C. The entries from 1993 are dated 6 February, 13 April, 27 May, 29 September and 19 December.

¹⁴ *Id.*, paras 5, 12-13. The Prosecution adds that some portions of the Notebooks from 1991, 1994 and 1995, as indicated in Annex A, were not yet translated, but expected imminently, at the time of this filing.

¹⁵ Joint Response, paras 1-2.

¹⁶ 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 (“*Popović* Decision”), para. 37.

¹⁷ *Popović* Decision, para. 37; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on fourteenth Prosecution motion to amend its Rule 65 *ter* exhibit list, 16 Apr 2010 (“*Stanišić & Simatović* Decision”), para. 15; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution’s motion to admit documents into evidence and add two documents to the Prosecution’s Rule 65 *ter* exhibit list, 25 Nov 2008, para. 9; *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.

RECALLING that a Trial Chamber must carefully balance any amendment to the Rule 65 *ter* lists with an adequate protection of the rights of the accused¹⁸ and consider the extent to which the new material create an additional burden on the Defence;¹⁹

RECALLING that, in the Order, the Trial Chamber determined that the Prosecution had demonstrated good cause for its request and had acted with due diligence in making its request;²⁰

CONSIDERING that the Trial Chamber is satisfied that the Prosecution has identified with sufficient specificity the portions of the Notebooks which are both *prima facie* relevant and of sufficient importance to justify their late inclusion in the case as they pertain to events from the indictment;

CONSIDERING that the Trial Chamber is satisfied that by accepting onto the Rule 65 *ter* exhibit list only the portions of the Notebooks which are both *prima facie* relevant and of sufficient importance to justify their late inclusion in the case, the rights of the Accused have been safeguarded, in that the burden on the Defence to review additional evidence at this stage of the proceedings has been substantially reduced;

CONSIDERING that, having reviewed the statement of General Manojlo Milovanović and the declaration of Erin Gallagher, the Trial Chamber is of the opinion that the certified statement provided by General Manojlo Milovanović is sufficient to establish the *prima facie* authenticity of the Notebooks;

CONSIDERING that the Trial Chamber is satisfied that it is in the interest of justice to add the identified portions of the Notebooks, namely the Eight 1992 Notebooks and the Selected 1993 Entries, to the Prosecution's Rule 65 *ter* exhibit list, without prejudice to any future reasoned application for admission of additional portions;

NOTING the Prosecution submission that General Manojlo Milovanović has reviewed of all the Notebooks authenticating the handwriting as that of Ratko Mladić, and that his statement has been duly certified pursuant to Rule 92 *bis*(B), and has been provided in Annex E, along with the chart containing the full list of ERN numbers assigned to the Notebooks,²¹

¹⁸ *Popović* Decision, para. 37; *Lukić* Decision, para. 12; *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 exhibit list, confidential, 6 Dec 2006, p. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-81-T, Decision on motion to amend witness and exhibit list, 16 Jan 2008, p. 5; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on the Prosecution's request to add two witnesses to its witness list and to substitute one witness for another, 1 Nov 2007, para. 7.

¹⁹ *Stanišić & Simatović* Decision, para. 15.

²⁰ Order, p. 4.

²¹ *Id.*, para. 16 and Annex E.

NOTING the Defence joint submission that they continue to challenge the authenticity of the Notebooks;²²

CONSIDERING that the addition of General Manojlo Milovanović to the witness list is in the interests of justice and will also protect the rights of the Accused by providing the Defence an opportunity to challenge the authenticity of the Notebooks;

CONSIDERING that the Trial Chamber is of the opinion that the nature of the evidence anticipated to be given by General Manojlo Milovanović is such that there is an overriding public interest in it being presented orally, unless, by the time that the witness is due to be called, similar evidence has already been provided to the Tribunal orally and in public in other proceedings, in which case the Trial Chamber may be willing to review the situation;

PURSUANT TO Rules 54, 65 *ter* and 73 *bis*(F) of the Rules, the Trial Chamber:

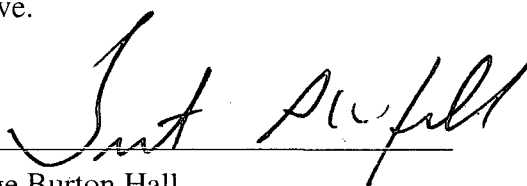
GRANTS the Original Motion and the Supplementary Motion **IN PART**;

GRANTS the Prosecution leave to add the Eight 1992 Notebooks and the Selected 1993 Portions to its Rule 65 *ter* exhibit list;

GRANTS the Prosecution leave to add General Manojlo Milovanović to its witness list; and

VARIES the number of witnesses the Prosecution may call from 217 to 218.²³

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



Judge Burton Hall
Presiding

Dated this seventeenth day of September 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

²² *Id.*, para. 3.

²³ This number is calculated before the formal addition of witnesses to the witness list of witnesses permitted to be called pursuant to the Trial Chamber's Decision granting in part Prosecution's motion to amend its Rule 65*ter* witness list as a result of the Trial Chamber's 1 April 2010 decision concerning judicial notice of adjudicated facts, filed on 14 July 2010.