



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-04-75-PT
Date: 21 August 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 21 August 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR LEAVE TO AMEND
THE PROSECUTION RULE 65 *ter* EXHIBIT LIST**

The Office of the Prosecutor:
Mr. Douglas Stringer

Counsel for Goran Hadžić:
Mr. Zoran Živanović
Mr. Christopher Gosnell

1. **THIS 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”) is seised of the “Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” filed by the Prosecution with a confidential annex on 13 July 2012 (“Motion”). Hadžić filed his “Response to Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” on 26 July 2012 (“Response”). The Prosecution filed the “Prosecution Motion to Reply to Defence Response to Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, with Proposed Reply” on 31 July 2012 (“Reply”).

2. The Motion relates to the “Prosecution Notice of Rule 65 *ter* (E) Filings”, filed by the Prosecution on 20 June 2012,¹ which included, *inter alia*, the Prosecution exhibit list (“Exhibit List”) filed pursuant to Rule 65 *ter* (E)(iii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).

A. Submissions

3. In the Motion, the Prosecution seeks leave to amend the Exhibit List by substituting 17 documents and adding 15 new documents.² The Prosecution submits that the documents consist of: (a) material provided by expert witnesses³ and (b) previously disclosed Rule 92 *bis* witness statements supplemented by attestations of the Registry of the Tribunal and witness declarations.⁴ The Prosecution submits that the attestations were obtained after the filing of the Exhibit List.⁵ The Prosecution submits that it has met the legal test to amend the Exhibit List. The Prosecution submits that the documents it seeks to substitute or add to the Exhibit List comprise the following:

- (a) the expert report of Višnja Bilić that was disclosed to Hadžić on 10 July 2012, her cover letter to the expert report, and 15 documents relied on in the report;
- (b) one document provided by the Government of Croatia in response to a request for assistance relevant to the evidence of expert witnesses Višnja Bilić and Davor Strinović;
- (c) four documents cited in the report of expert witness Christian Nielsen; and

¹ Public, with confidential Annexes A, B, C, and E, and confidential and *ex parte* Annexes D and F.

² Motion, paras 1, 16.

³ Motion, para. 1.

⁴ Motion, para. 15.

⁵ Motion, para. 1.

(d) nine Rule 92 *bis* attestations for witnesses whose statements are already included on the Prosecution's Rule 65 *ter* witness list.⁶

4. Hadžić does not oppose the Prosecution's request to amend the Exhibit List as specified in the Motion, with the exception of two documents which, according to Hadžić, appear not to have been previously disclosed.⁷ The documents are designated with Rule 65 *ter* numbers 05855 and 05856 respectively, and relate to witness Christian Nielsen.⁸

5. In the Reply, the Prosecution submits that the two documents to which Hadžić objects were disclosed to him on 18 November 2011, by way of inclusion in the "Mrkšić and Šljivančanin disclosure log" and an associated spreadsheet that included reference to the two documents with the same descriptions as those contained in confidential Annex A to the Motion.⁹ The Prosecution provides notice of its intention to disclose the English language translations of the two documents to Hadžić.¹⁰

B. Applicable Law

6. Rule 65 *ter* (E)(iii) of the Rules provides, *inter alia*, that the Prosecution shall file, within a time-limit set by the Pre-Trial Judge and not less than six weeks before the Pre-Trial Conference, "the list of exhibits the Prosecutor intends to offer", serving on the defence copies of the listed exhibits. In the exercise of its inherent discretion in managing the trial proceedings, and if satisfied that this is in the interests of justice, a Trial Chamber may grant a Prosecution request to amend the filed exhibit list.¹¹ In doing so, a Trial Chamber must be satisfied that, taking into account the specific circumstances of the case, good cause is shown for amending the original list and that the newly offered material is relevant and of sufficient importance to justify the late addition. Moreover, a Trial Chamber must carefully balance any amendment to the original list with an adequate protection of the rights of the accused.¹²

⁶ Motion, para. 5.

⁷ Response, para. 1.

⁸ Response, para. 1; Motion, confidential Annex A, p. 3.

⁹ Reply, paras 5-6.

¹⁰ Reply, para. 7.

¹¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Prosecution's Motion for Leave to File a Supplemental Rule 65 *ter* Exhibit List, 18 March 2010 ("Karadžić Decision"), para. 7; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning, 14 December 2007 ("Popović Appeal Decision"), para. 37.

¹² *Karadžić Decision*, para. 8; *Popović Appeal Decision*, para. 37.

C. Discussion

7. The Chamber notes that the deadline for the filing of the Exhibit List in this case was 19 June 2012.¹³ The Chamber notes that Hadžić does not oppose the Prosecution's request to amend the Exhibit List as specified in the Motion with the exception of two documents, based on his understanding that those documents were not disclosed previously. However, it is apparent from the Reply that Bosnian/Croatian/Serbian versions of the documents were made available to Hadžić in November 2011 and the Prosecution will disclose the English language translations of those two documents to Hadžić. The Chamber is satisfied that, taking into account the specific circumstances of the case, good cause has been shown for amending the Exhibit List. The substitutions in relation to existing documents and the additional documents sought to be included are relevant and of sufficient importance to justify their addition. The Chamber is satisfied that no undue prejudice to Hadžić will incur as a result of the addition of the documents.

D. Disposition

8. Accordingly and for all the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 65 *ter*, and 126 *bis* of the Rules, hereby:

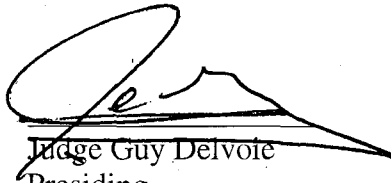
GRANTS the Prosecution leave to file the Reply;

GRANTS the Motion; and

ORDERS the Prosecution, if it has not done so already, to disclose to Hadžić within seven days of the issuance of this decision, the English language translations of the documents designated with Rule 65 *ter* numbers 05855 and 05856.

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

Done this twenty-first day of August 2012,
At The Hague,
The Netherlands.



Judge Guy Delvot
Presiding

[Seal of the Tribunal]

¹³ Order on Pre-Trial Work Plan, 16 December 2011, Annex A, p. 1.