

**UNITED
NATIONS**



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-T
Date: 25 November 2014
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 25 November 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON FOURTH DEFENCE MOTION FOR LEAVE TO AMEND ITS
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 hereby seised of the “Fourth Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List”, filed with a confidential annex on 29 September 2014 (“Motion”). The Prosecution filed the “Prosecution Response to Fourth Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” with a confidential annex on 13 October 2014 (“Response”). The Defence did not file a reply.

A. Procedural History and Submissions

2. On 13 May 2014, the Defence filed the “Defence Notice of Rule 65 *ter* (G) Filings” which included, *inter alia*, the Defence exhibit list filed pursuant to Rule 65 *ter* (G)(ii) of the Rules of Procedure and Evidence (“Rules”). On 27 May 2014, the Defence filed the “Notice of Compliance with Trial Chamber Order to Assign Witnesses to Documents in 65 *ter* Exhibit List” (“Exhibit List”). The Trial Chamber has subsequently allowed a number of additions to the Exhibit List.¹

3. In the Motion, the Defence requests leave, pursuant to Rules 54, 65 *ter* and 73(A) of the Rules, to add 29 documents to its Rule 65 *ter* Exhibit List.² The Defence seeks to add: (i) 22 documents regarding cases brought before the Beli Manastir Criminal Court and the Subotica District Court in the 1990s; (ii) a document recently received from DGH-030; (iii) a document related to DGH-026; and (iv) five documents disclosed to the Defence by the Prosecution relating to witness DGH-016.³ The Defence submits that the documents from the Beli Manastir Criminal Court and Subotica District Court are relevant, as they reflect non-discriminatory investigative and prosecutorial practices in the SBWS and RSK.⁴ The Defence argues that good cause warrants the addition of these documents, as they were identified during the Defence’s “ongoing review” of materials in preparation for the testimony of DGH-016, DGH-019, and DGH-028.⁵ The Defence adds that DGH-019 and DGH-028 “are not expected to testify before mid-October”.⁶ The Defence asserts that the documents from the Beli Manastir Criminal Court were among “1,500 pages of material and over 800 documents” disclosed to the Defence by the Serbian Government in February

¹ Oral Decision, 3 July 2014, T. 9265-9266; Oral Decision, 3 July 2014, T. 9267-9269; Decision on Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 28 August 2014 (“Decision of 28 August 2014”); Oral Decision, 22 September 2014, T. 11672-11677; Oral Decision, 22 September 2014, T. 11686; Oral Decision, 7 October 2014, T. 11888-11891 (“Oral Decision of 7 October 2014”); Oral Decision, 9 October 2014, T. 12077-12078 (admitting the document into evidence); Decision on Defence Motion for Admission of Evidence of DGH-101 Pursuant to Rule 92 *ter*, 10 October 2014; Oral Decision, 13 October 2014, T. 12282-12283 (“Oral Decision of 13 October 2014”); Oral Decision, 14 October 2014, T. 12390; Oral Decision, 15 October 2014, T. 12435-12436.

² Motion, para. 1.

³ Motion, paras 1, 5-6, confidential Annex A.

⁴ Motion, para. 3.

⁵ Motion, paras 1, 4.

⁶ Motion, para. 4.

2014, and that their relevance could not be fully reviewed before the deadline for filing the Exhibit List in May 2014.⁷ The Defence further submits that the documents from the Subotica District Court “were part of a disclosure received in July 2014 of nearly 800 pages and 280 documents.”⁸

4. With respect to the document with Rule 65 *ter* number 1D03753, which is a record of DGH-030’s hospitalization in December 1991, the Defence argues that good cause merits its inclusion in the Exhibit List because DGH-030 only recently relayed the document to the Defence.⁹ The Defence submits that appending the document to the Exhibit List will not prejudice the Prosecution, as the witness is not scheduled to testify until “late October 2014”.¹⁰ The Defence also requests leave to add the document with Rule 65 *ter* number 1D03754, which is a correspondence from the Serbian government regarding “the permissible scope of DGH-026’s testimony.”¹¹

5. On 7 October 2014, the Trial Chamber allowed the addition of the five documents related to DGH-016 to the Exhibit List.¹²

6. In the Response, the Prosecution objects to the addition of the remaining proposed documents.¹³ In relation to six documents – Rule 65 *ter* numbers 1D01864, 1D01895, 1D01901, 1D03753, 1D03617, and 1D03621.1 – the Prosecution submits that no English translation has been provided.¹⁴ In relation to the remaining 18 documents,¹⁵ the Prosecution submits that the Defence has failed to act with due diligence because these documents, which were identified and produced during the Defence’s ongoing review of materials, should have been added to the Defence’s original Exhibit List in light of the copious amount of time the Defence had for the preparation of its case.¹⁶ Furthermore, the Prosecution argues that due to the Defence’s delayed request, the Prosecution has been given late notice of these documents and has been deprived of the opportunity to address the documents with Hadžić during his testimony.¹⁷ The Prosecution objects to the addition of the document with Rule 65 *ter* number 1D03754 on the ground of lack of relevance, asserting that the

⁷ Motion, para. 4.

⁸ Motion, para. 4. The Defence submits that, upon identifying the relevance of the documents from the Subotica District Court, it sent them to the Conference and Language Support Services Section of the Registry for expedited translation.

⁹ Motion, para. 5.

¹⁰ Motion, para. 5.

¹¹ Motion, para. 6.

¹² Rule 65 *ter* numbers 1D03766, 1D03767, 1D03768, 1D03769, and 1D03770. See Oral Decision of 7 October 2014.

¹³ Response, para. 1.

¹⁴ Response, paras 1, 3, confidential Annex A.

¹⁵ Rule 65 *ter* numbers 1D01764, 1D01777, 1D01785, 1D01812, 1D01819, 1D01862, 1D01863, 1D01867, 1D01872, 1D01889, 1D01890, 1D01903, 1D02008, 1D02011, 1D02070, 1D02090, 1D02129, and 1D03754.

¹⁶ Response, paras 1, 4, confidential Annex A.

¹⁷ Response, para. 4.

Defence has failed to provide information regarding the document's pertinence to the case at hand.¹⁸

B. Applicable Law

7. Rule 65 *ter* (G)(ii) of the Rules provides, *inter alia*, that the Defence shall file "a list of exhibits the defence intends to offer in its case", serving on the Prosecution copies of the listed exhibits. The primary purpose of such an exhibit list is to give notice to the Prosecution of the documents to be used during the Defence case, which will allow the Prosecution to prepare its case accordingly and to ensure an efficient presentation of evidence during trial.¹⁹ 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 Defence request to amend the filed exhibit list.²⁰ 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.²¹

C. Discussion

8. At the outset, the Trial Chamber notes that an English translation has now been provided for the documents with Rule 65 *ter* numbers 1D01864, 1D01895, 1D01901, 1D03753, and 1D03617. The document with Rule 65 *ter* number 1D03621.1 still does not have an English translation attached. The Trial Chamber will therefore not permit addition of this document to the Exhibit List. In this context, the Trial Chamber notes that the Defence should have clearly indicated in the Motion if an English translation had not been provided for any of the documents and the date by which a translation would be provided, in accordance with the Trial Chamber's Decision of 28 August 2014.²²

9. Having considered the submissions of the parties and taking into account the specific circumstances of this case, the Trial Chamber is satisfied that, excluding the untranslated document noted above, good cause has been shown for amending the Exhibit List to include the documents

¹⁸ Response, para. 5.

¹⁹ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Decision on Third, Fourth and Fifth Motions by the Accused for Admission of Documents from the Bar Table, 22 March 2012 ("*Tolimir* Decision"), para. 3; *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Decision on Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List, 12 March 2008, para. 3.

²⁰ *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 December 2007 ("*Popović* Appeal Decision"), para. 37; *Prosecutor v. Hadžić*, Case No. IT-04-75-T, Decision on Third Prosecution Motion for Leave to Amend Prosecution Rule 65 *ter* Exhibit List, 23 October 2012 ("*Hadžić* Decision"), para. 5; *Tolimir* Decision, para. 4.

²¹ *Popović* Appeal Decision, para. 37; *Hadžić* Decision, para. 5; *Tolimir* Decision, para. 4.

²² Decision of 28 August 2014, para. 11. See Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 12.

from the Beli Manastir Criminal Court and the Subotica District Court. The Trial Chamber notes the Defence submission that it received the documents from the Subotica District Court only in July 2014. The Trial Chamber further notes the Defence submission as to the high volume of the Beli Manastir Criminal Court documents it received in February 2014, and that it was unable to ascertain their relevance by the deadline for filing the Exhibit List in May 2014. The Trial Chamber is not convinced that the Defence failed to act with due diligence in seeking to add these documents. Moreover, the Trial Chamber is satisfied that these documents are relevant and of sufficient importance to warrant their addition at this stage of the trial and that their addition will not unduly prejudice the Prosecution, which will have sufficient time to analyse them before the testimony of DGH-019 and DGH-028. Furthermore, amendments to a party's Rule 65 *ter* Exhibit List imply that the added documents could not be used during prior testimony. The fact that the Prosecution was unable to question Hadžić about the proposed additions cannot justify, on its own, denying the Defence's request to amend its Rule 65 *ter* Exhibit List. The Trial Chamber notes, however, that if the circumstances so require a party can request to recall a witness.²³

10. In regard to the document with Rule 65 *ter* number 1D03754, the Trial Chamber finds that, at this stage of the proceedings, it is of sufficient relevance and importance to justify its late addition to the Exhibit List. The Trial Chamber is satisfied that its addition will not result in undue prejudice to the Prosecution, as it will have enough time to analyse it before DGH-026's testimony.

²³ See Oral Decision of 13 October 2014, T. 12283.

D. Disposition

11. Accordingly, the Trial Chamber, pursuant to Rules 54 and 65 *ter* of the Rules hereby:

(a) **DISMISSES** the Motion, without prejudice, with respect to the document with Rule 65 *ter* number 1D03621.1; and

(b) **GRANTS** the Motion, in all other respects.

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

Done this twenty-fifth day of November 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]