

**UNITED
NATIONS**

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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: 14 April 2015
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 14 April 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO REPLACE TRANSLATIONS OF
DEFENCE EXHIBITS (D27, D184, D185)**

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 “Motion to Replace Translations of Defence Exhibit (D27, D184, D185)” filed by the Defence on 20 January 2015 (“Motion”). The “Prosecution Response to Motion to Replace Translations of Defence Exhibit (D27, D184, D185)” was filed on 29 January 2015 (“Response”). The Defence filed its “Reply to Prosecution Response to Motion to Replace Translations of Defence Exhibit (D27, D184, D185)” on 5 February 2015, and its “Corrigendum to Reply to Prosecution Response to Motion to Replace Translations of Defence Exhibit (D27, D184, D185)” on 6 February 2015.

A. Submissions

2. In the Motion, the Defence seeks to replace the English draft translations of exhibits D184 and D185 with the official CLSS translations available in eCourt under document identification numbers 1D12-0811–1D12-0812 and 1D11-5577–1D11-5579, respectively.¹ The Defence further seeks to replace the incomplete translation of exhibit D27 with the revised and complete CLSS translation uploaded onto eCourt with document identification number 1D12-0799–1D12-0808.²

3. The Prosecution does not object to the replacement of the draft translation of exhibit D185.³ However, it opposes the newly proposed translations for exhibits D27 and D184.⁴ The Prosecution argues that any request for an amendment of an admitted exhibit should be accompanied by reasons for the proposed substitution.⁵ In this case, it asserts, the Defence provides no basis for the requested replacements.⁶

4. The Prosecution notes that exhibit D27 was admitted on 5 February 2013, nearly two years before the filing of the Motion, and that its 5 pages consisted of a set of documents related to a member of Arkan’s unit in 1991.⁷ The newly proposed translation for D27 is 10 pages long and contains several other documents which were not discussed with or shown to the witnesses through whom they were tendered. The Prosecution avers that this additional material should have been used during DGH-024’s and Reynaud Theunens’s cross-examination.⁸

¹ Motion, para. 1.

² Motion, para. 1.

³ Response, paras 6-7.

⁴ Response, paras 3-5.

⁵ Response, para. 2.

⁶ Response, para. 2.

⁷ Response, para. 4.

⁸ Response, para. 4.

5. With regard to exhibit D184, a newspaper article, the Prosecution submits that only a short paragraph of it was shown to witness Vojislav Vukčević whereas the Defence now seeks to tender three additional articles from the same newspaper. These new articles were neither put to Vojislav Vukčević nor was notice given to the Chamber and the Prosecution that the Defence would seek to tender them.⁹ According to the Prosecution, the proposed new version of exhibit D184 contains significantly more material than the original version.¹⁰

6. The Defence seeks leave to file a reply to the Response.¹¹ The Defence submits that, on a number of occasions, the Prosecution sought the replacement of translations of documents with revised and corrected translations months after they had been tendered.¹² On these occasions, the Defence asserts, the Prosecution failed to provide any basis for the substitution other than to identify the error or omission to be corrected.¹³ The Defence further asserts that in the past, and thus contrary to its opposition to the Motion, the Prosecution has not only opposed Defence motions to provide fuller translations of documents, but has also demanded that the Defence provide corrected or expanded translations.¹⁴

7. The Defence indicates that the substitute translation of exhibit D27 is the “exact and complete English counterpart” of the Prosecution’s document Rule 65 *ter* number 00235. In the Defence’s view, this document was presented by the Prosecution as an inseparable and single document. In addition, it submits, there are indicia showing that the documents under this exhibit are attachments to the decision concerning a disability of a person, which is found in the first two pages of this exhibit.¹⁵

8. The Defence further argues that there is no basis for the Prosecution’s suggestion that each and every page of a document should be individually presented to a witness in order for the whole document to be admitted. Moreover, at the time of the admission, the Prosecution did not object to the admission of the whole document, despite the absence of the full translation.¹⁶ The Defence submits that, while it acknowledges that there was a long delay in noticing the deficiency in the translation, the practice and principle of having a full and accurate translation should prevail. The Prosecution will not suffer any prejudice as it planned to tender this document itself.¹⁷

⁹ Response, para. 5.

¹⁰ Response, para. 5.

¹¹ Reply, para. 1.

¹² Reply, paras 2-3.

¹³ Reply, para. 3.

¹⁴ Reply, para. 4.

¹⁵ Reply, para. 5.

¹⁶ Response, para. 6.

¹⁷ Reply, para. 7.

9. With regard to Exhibit D184, the Defence specifies that the article admitted as exhibit D184 consists of three text boxes within a main text, and that the existing translation, as available in eCourt, corresponds to only a portion of that main text and one of the boxes.¹⁸ The Defence avers that contrary to the Prosecution's argument that additional content has been proposed, the newly presented translation merely completes the translation of the article that was previously admitted.¹⁹

B. Discussion

10. Exhibit D185 is the "Conclusion of the meeting of the Municipal Assembly of Beli Manastir" adopted on 2 July 1991 and published in the Official Gazette of the Beli Manastir Municipality. The current translation of the exhibit is a Defence draft translation. The Defence now seeks to have it replaced with the official CLSS translation available on eCourt with document ID 1D11-5577-1D11-5579. The Prosecution does not object. The Chamber considers it necessary to replace the English translation of exhibit D185 currently in eCourt with the official CLSS translation.

11. Exhibit D27 is a compilation of documents relating to a former member of Arkan's unit which confirm that he was wounded while fighting in Tenja on 2 August 1991. The current translation in eCourt does not include a translation for all of the documents contained in the compilation. The Chamber notes that all of the documents currently in the compilation were part of the document that the Prosecution intended to tender under its Rule 65 *ter* number 00235.²⁰ The Chamber recalls that several pages of the document were shown to witness GH-024 in court. On that occasion, the Prosecution had the opportunity to make any objections in relation to its admission.²¹

12. In the Response, the Prosecution makes no argument that there is anything in the additional translations which would have substantively affected any of the evidence already on the record. Taking further into account that this was a compilation of documents that was intended to be used at trial by the Prosecution, the Chamber finds that there will be no prejudice to the Prosecution should the additional translations be included on the record. The Chamber further finds that it will benefit from a complete and accurate record. It therefore considers it necessary to replace the English translation of exhibit D27 currently in eCourt with the newly offered translation.

¹⁸ Reply, para. 9.

¹⁹ Reply, paras 8-9.

²⁰ See Confidential Annex E to the Prosecution Notice of Rule 65 *ter* (E) filings, filed on 20 June 2012, listing BCS ERNs BG00-2080-BG00-2090 under Rule 65 *ter* number 00235.

²¹ GH-024, 5 February 2013, T. 2913-2915 (closed session).

13. Exhibit D184 is a newspaper article from *Politika* entitled “Borovo Selo under siege by special forces”. The article consists of the main text and three text boxes. On 8 September 2014, the Defence showed the article to witness Vojislav Vukčević and referred him specifically to one of the three boxes.²² The document was admitted and, again, the Prosecution decided not to make any objections in relation to its admission. The existing English translation of the document in eCourt translates only the beginning of the article and the box shown to Vukčević. The Chamber considers the article and the three boxes within it to be a single document. It finds it necessary to have the full translation on the record and thus the existing English translation of exhibit D184 in eCourt should be replaced with the newly offered translation.

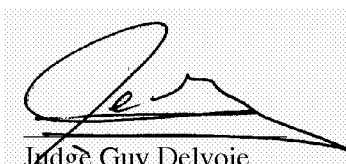
C. Disposition

14. Accordingly, the Chamber, pursuant to Rules 54, 89, and 126 *bis* of the Rules, hereby

- (a) **GRANTS** the Defence leave to file the Reply;
- (b) **GRANTS** the Motion and **ORDERS** as follows:
 - (i) Document ID 1D12-0799 shall replace the current English translation of exhibit D27;
 - (ii) Document ID 1D12-0811 shall replace the current English translation of exhibit D184;
 - (iii) Document ID 1D11-5577 shall replace the current English translation of exhibit D185;
- (c) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

Done this fourteenth day of April 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

²² Vojislav Vukčević, 8 September 2014, T. 11060-11061.