



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: 9 March 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: 9 March 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON THIRD 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 “Third Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” filed with two confidential annexes on 8 September 2014 (“Motion”). The Prosecution filed the “Prosecution Response to Third Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” with a confidential annex on 22 September 2014 (“Response”) and the “Corrigendum to Prosecution Response to Third Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” with a confidential annex on 24 September 2014 (“Corrigendum”). The Defence filed the “Reply to Prosecution Response to Third Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” on 30 September 2014 (“Reply”).

A. Submissions

2. The Defence requests leave, pursuant to Rules 54, 65 *ter*, and 73 (A) of the Rules, to add 89 documents to its Rule 65 *ter* exhibit list (“Exhibit List”).¹ These documents fall into three categories: (a) documents arising from pre-testimonial interviews; (b) documents received from the Serbian Military Archives (“Military Archives Documents”); and (c) documents that merit addition in the interests of justice (“Miscellaneous Documents”).²

3. The Defence submits that good cause warrants adding 21 documents identified during pre-testimonial interviews with DGH-016, DGH-028, DGH-053, DGH-065, DGH-079, DGH-101, and DGH-113.³ It asserts that the Trial Chamber has previously allowed documents identified or acquired during pre-testimonial interviews to be added to the Exhibit List and seeks the addition of these 21 documents on this basis.⁴

4. With respect to the Military Archives Documents, the Defence avers that it discovered that the Serbian Ministry of the Interior might possess relevant documents during trial preparation.⁵ It submits that access to the Military Archives was requested on 9 June 2014 and granted on 24 July 2014.⁶ The Defence asserts that the 431 pages it received in BCS were promptly sent to the Conference and Language Support Services Section of the Registry (“CLSS”) for translation.⁷ At the time the Motion was filed, seven documents had been translated and progress was being made

¹ Motion, para. 1.

² Motion, para. 1, confidential Annex, pp 1-7.

³ Motion, paras 4-10, confidential Annex, p.1.

⁴ Motion, para. 3.

⁵ Motion, para. 11.

⁶ Motion, para. 11.

⁷ Motion, para. 11.

on the remaining documents.⁸ In order to expedite matters given the bulk and relevance of the materials, the Defence requests leave to add the documents to the Exhibit List while translation is pending.⁹

5. The Miscellaneous Documents whose addition the Defence submits is in the interests of justice include: (a) the English translation of a document whose addition to the Exhibit List was previously denied for lack of a translation; (b) a document inadvertently omitted from its first motion to amend the Exhibit List; and (c) a document recently received from 92 *bis* witness DGH-079.¹⁰

6. The Prosecution submits that, as five of the documents the Defence seeks to add to the Exhibit List were admitted on 22 September 2014, the Response will be limited to the remaining documents.¹¹ With respect to the documents arising from pre-testimonial interviews, the Prosecution contends that it is not in the interests of justice to add the documents that DGH-016 identified or produced to the Exhibit List.¹² It argues that the Defence, who met with DGH-016 eight times before the start of its case and had “copious time to prepare”, failed to act with due diligence.¹³ The Prosecution contends that if the Motion is granted, it will have received insufficient notice of the documents and will also have been “deprived of the opportunity” to question Hadžić about the materials.¹⁴ The Prosecution also objects to two of these documents because no BCS originals of these newspaper articles have been provided - only the English translations.¹⁵ The Prosecution does not object to the remaining documents arising from pre-testimonial interviews,¹⁶ nor does it object to the Military Archives Documents or the Miscellaneous Documents for which English translations have been provided.¹⁷ However, for the Military Archives Documents¹⁸ and Miscellaneous Document¹⁹ that lack English translations, it takes no position and reserves the right to object once the English translations are uploaded to e-court.²⁰

⁸ Motion, para. 11.

⁹ Motion, para. 11.

¹⁰ Motion, paras 12-14.

¹¹ Response, para. 1.

¹² Response, para. 1 *referring to* Rule 65 *ter* numbers 1D02595, 1D03642, 1D03644, 1D03645, and 1D03650. See also Response, fn. *referring to* Rule 65 *ter* number 1D03646 “to the extent that the Defence’s failure to include [it] was an oversight”.

¹³ Response, para. 3.

¹⁴ Response, para. 3.

¹⁵ Response, para. 3 *referring to* Rule 65 *ter* numbers 1D03644 and 1D03650.

¹⁶ See Response, para. 3.

¹⁷ Response, para. 4.

¹⁸ Response, para. 4, confidential Annex, pp 3-13.

¹⁹ Response, para. 4 *referring to* Rule 65 *ter* number 1D03724, confidential Annex, p. 14.

²⁰ Response para. 4.

7. In the Corrigendum, the Prosecution submits that the confidential annex to the Response erroneously indicated that it did not object to Rule 65 *ter* numbers 1D03727 and 1D03749.²¹ It contends that Rule 65 *ter* number 1D03727 was intended for use during DGH-053's testimony on 4 and 8 September 2014.²² Since the document was removed from the Defence's updated list for DGH-053 and no leave to add the document to its 65 *ter* list was sought during DGH-053's testimony, the Prosecution takes the position that the issue is moot.²³ With respect to Rule 65 *ter* number 1D03749, also intended for use with DGH-053, the Prosecution submits that it has previously objected to this document on the grounds that it contains no date, no named author, no signature, no verification and thus has "no probative value".²⁴ However, as the document was not used with DGH-053, the Prosecution considers that the issue is also moot.²⁵

8. In the Reply, the Defence argues that Rule 65 *ter* numbers 1D03727 and 1D03749 may be admitted through other witnesses and are therefore not "moot".²⁶ It further submits that in any event, the Prosecution's admissibility arguments do not apply to the amendment of the Exhibit List.²⁷ With regard to the documents identified or produced by DGH-016, the Defence contends that to accept the Prosecution's arguments would be to deny all additions to the 65 *ter* Exhibit List after the filing deadline.²⁸ It submits that the Prosecution will have sufficient time to review the documents before they are used with witnesses.²⁹ With regard to Rule 65 *ter* numbers 1D03644 and 1D03650, the Defence attributes the absence of BCS translations to the Prosecution's failure to include said translations when placing the documents on EDS.³⁰ It asserts that if BCS originals exist, the Prosecution should disclose them.³¹ Finally, the Defence submits that the translation requests for the Military Archives Documents are still pending with CLSS and will be uploaded as soon as possible.³²

9. Once English translations of all 89 documents were available, the Trial Chamber invited the Prosecution to file submissions, no later than 30 January 2015, on those documents which it had previously reserved its position.³³ No submissions were filed.

²¹ Corrigendum, para. 2.

²² Corrigendum, para. 2.

²³ Corrigendum, para. 2.

²⁴ Corrigendum, para. 2.

²⁵ Corrigendum, para. 2.

²⁶ Reply, para. 3.

²⁷ Reply, para. 3.

²⁸ Reply, para. 4.

²⁹ Reply, para. 4.

³⁰ Reply, para. 5.

³¹ Reply, para. 5.

³² Reply, para. 6.

³³ Email from the Trial Chamber to the parties, 22 January 2015.

B. Applicable Law

10. 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 the Prosecution with 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.³⁴ In the exercise of its inherent discretion to manage trial proceedings, if satisfied that it is in the interests of justice, a trial chamber may grant a Defence request to amend the filed exhibit list.³⁵ In doing so, a trial chamber must be satisfied that, taking into account the specific circumstances of the case, the Defence has shown good cause for amending the original list and that the newly offered material is relevant and of sufficient importance to justify the late addition.³⁶ A trial chamber need not assess an exhibit’s authenticity, relevance, and probative value in the same way as it would when determining its admission at trial,³⁷ however, leave should not be allowed to add exhibits that are obviously irrelevant.³⁸

C. Discussion

11. As a preliminary matter, the Trial Chamber notes that it has already granted leave to add several of these documents to the Exhibit List.³⁹ It also notes that Rule 65 *ter* number 1D03680 has already been admitted into evidence as Exhibit P01688 and therefore sees no reason to add it to the Exhibit List. The following discussion will therefore be limited to four documents arising from pre-

³⁴ *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. Bošković 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 (“*Bošković and Tarčulovski* Decision”), para. 3.

³⁵ *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.

³⁶ *Popović* Appeal Decision, para. 37, *Hadžić* Decision, para. 5; *Tolimir* Decision, para. 4.

³⁷ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution’s Motion for Leave to Amend its Exhibit List, 19 October 2011 (“*Karadžić* Decision”), para. 10; *Bošković and Tarčulovski* Decision, para. 3; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List, 17 October 2007, p. 4.

³⁸ *Tolimir* Decision, para. 4; *Karadžić* Decision, para. 10; *Bošković and Tarčulovski* Decision, para. 3.

³⁹ Oral Decision of 22 September 2014 (adding Rule 65 *ter* number 1D3736 to the Exhibit List); Oral Decision of 22 September 2014 (adding Rule 65 *ter* numbers 1D3735, 1D3728, 1D3729, and 1D3730 to the Exhibit List); Oral Decision of 7 October 2014 (adding Rule 65 *ter* number 1D3646 to the Exhibit List); Oral Decision of 9 October 2014 (adding Rule 65 *ter* number 1D3645 to the Exhibit List and admitting it into evidence); Decision on Defence Motion for Admission of Evidence of DGH-101 Pursuant to Rule 92 *ter*, 10 October 2014, paras 12, 14 (adding Rule 65 *ter* numbers 1D03739, 1D03740, 1D03741, 1D03742, and 1D03743 to the Exhibit List); Oral Decision of 13 October 2014 (adding Rule 65 *ter* numbers 1D2595, 1D3642, 1D3644, and 1D3650 to the Exhibit List); Oral Decision of 14 October 2014 (adding Rule 65 *ter* number 1D03448 to the Exhibit List); Decision on Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter*, 2 December 2014, paras 21-22 (adding Rule 65 *ter* number 1D03738 to the Exhibit List).

testimonial interviews, 64 Military Archives Documents and two Miscellaneous Documents that have not yet been added to the Exhibit List.

12. The Trial Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of opposition from the Prosecution, good cause has been shown for amending the Exhibit List to include the 64 Military Archives Documents and two Miscellaneous Documents. These documents are relevant and of sufficient importance to justify adding them at this stage of the trial. Further, no undue prejudice to the Prosecution will arise as a result of their addition.

13. Turning to the four documents arising from pre-testimonial interviews, the Trial Chamber notes that the Prosecution has been on notice of the documents since at least 8 September 2014 and that hearings have been suspended since 20 October 2014 and will not resume before 16 March 2015. After considering the submissions of the parties and taking into account the specific circumstances of this case, the Trial Chamber is satisfied that good cause has been shown for amending the Exhibit List to include Rule 65 *ter* numbers 1D03727, 1D03749, 1D03748, and 1D03737. These documents are relevant and of sufficient importance to warrant their addition at this stage of the trial. The Trial Chamber is satisfied that adding the documents will not unduly prejudice the Prosecution, as the Prosecution will have sufficient time to analyse them before the testimony of the relevant witnesses.


D. Disposition

14. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, and 126 *bis* of the Rules hereby:

- (a) **GRANTS** the Defence leave to file the Reply;
- (b) **DISMISSES** the Motion with respect to Rule 65 *ter* numbers 1D02595, 1D03448, 1D03642, 1D03644, 1D03645, 1D03646, 1D03650, 1D03680, 1D03728, 1D03729, 1D03730, 1D03735, 1D03736, 1D03738, 1D03739, 1D03740, 1D03741, 1D03742, and 1D03743; and
- (c) **GRANTS** the Motion, in all other respects.

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

Done this ninth day of March 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]