

IT-09-92-T
D 63852 - D 63869
18 July 2013

63852 9/10



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-09-92-T
Date: 18 July 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orié, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 18 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION EIGHTH MOTION TO
AMEND RULE 65 *TER* EXHIBIT LIST**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 26 April 2013, the Prosecution filed a motion (“Motion”) seeking leave to add 29 items to its Rule 65 *ter* exhibit list of 10 February 2012 (“Exhibit List”).¹ On 2 May 2013, the Prosecution filed an addendum to the Motion seeking leave to add six additional exhibits to its Exhibit List (“Addendum”).² The Defence did not file a response to the Motion nor to the Addendum. On 9 July 2013, the Chamber admitted the documents with Rule 65 *ter* numbers 28871, 28873, 28874, and 28875, which were tendered as part of the Addendum, into evidence, thereby retroactively granting the permission to add them to the Exhibit List.³ In light of this the Chamber considers the request moot in so far as those documents are concerned, and will not further consider the request in this respect.

II. SUBMISSIONS

2. In its Motion and Addendum, the Prosecution seeks leave to supplement its Exhibit List by adding proof-of-death documents, including identification reports, autopsy reports, death certificates, and one video exhibit on the exhumation at Ivan Polje (“Proposed Exhibits”).⁴ The Prosecution submits that the Proposed Exhibits are *prima facie* “relevant and important”, as they help to establish the death of victims related to Scheduled Incidents B1.1, B1.2, B1.4, B2.1, B5.1, and B13.1.⁵ Furthermore, the Prosecution submits that it had good cause for not seeking to add the Proposed Exhibits at an earlier stage and that it had exercised due diligence in identifying the Proposed Exhibits.⁶ The Prosecution received 29 of the Proposed Exhibits on 8 April 2013, including the two documents proffered in the Addendum, in response to its Request for Assistance (“RFA”) to the Bosnian authorities in October 2012.⁷ The Prosecution anticipates that it may seek to add additional documents to the Exhibit List if it receives new documents in response to other parts of the RFA.⁸ The Prosecution also seeks leave to add a video with Rule 65 *ter* number 28857 which it received from the Bosnian authorities on 6 February 2013.⁹ Further, the Prosecution seeks leave to add an identification report with Rule 65 *ter* number 28845 to the Exhibit List, as it was

¹ Prosecution Eighth Motion to Amend Rule 65 *ter* Exhibit List, 26 April 2013 (Public with Confidential Annex A), paras 1, 16.

² Addendum to Prosecution Eighth Motion to Amend Rule 65 *ter* Exhibit List, 3 May 2013 (Public with Confidential Annex A).

³ T. 14090.

⁴ Motion, paras 1, 16; Addendum, paras 2, 5.

⁵ Motion, paras 3, 5-6; Addendum, para. 3.

⁶ Motion, paras 8-12.

⁷ Motion, paras 2, 9.

⁸ Motion, para. 10.

⁹ Motion, para. 11.

omitted from the Exhibit List due to an oversight by the Prosecution.¹⁰ Finally, the Prosecution argues that the late addition of the Proposed Exhibits to the Exhibit List will not prejudice the Defence in any way, considering that it does not intend to use the Proposed Exhibits with any witness in the current component of the case, the short length of the Proposed Exhibits, and the fact that all of the Proposed Exhibits have been previously disclosed to the Defence.¹¹

III. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing amendments to the Rule 65 *ter* exhibit list as set out in a previous decision.¹²

IV. DISCUSSION

4. The Chamber notes that the Prosecution seeks leave to add the Proposed Exhibits to its Exhibit List at the present stage of the proceedings because it had only received them, with the exception of the video with Rule 65 *ter* number 28857 and the document with Rule 65 *ter* number 28845, in April 2013 in response to an RFA.¹³ The Chamber therefore considers that the Prosecution has demonstrated good cause for the addition of these documents to its Exhibit List at this stage. The Prosecution has not shown good cause for the addition of the video with Rule 65 *ter* number 28857 and the document with Rule 65 *ter* number 28845 to its Exhibit List at such an advanced stage of the proceedings. The Chamber further notes that the Proposed Exhibits have been disclosed to the Defence and that the Defence did not file a response to the Motion or the Addendum.

5. The Chamber finds the Proposed Exhibits to be *prima facie* relevant and of probative value as they help establish the death of the alleged victims relevant to Scheduled Incidents B1.1, B1.2, B1.4, B2.1, B5.1, and B13.1. With regard to the question of prejudice, the Chamber notes that the Proposed Exhibits do not raise substantial new issues, they are of limited length, do not appear to be of a complex nature, and are not expected to be used in the immediate future. For the reasons listed above, the Chamber finds that the addition of the Proposed Exhibits to the Exhibit List at this stage of the proceedings will not unduly burden the Defence in the preparation of its case. In light of this, and taking into account the Prosecution's obligation to present the available evidence to prove its

¹⁰ Motion, para. 12.

¹¹ Motion, paras 12, 14-15; Addendum, para. 4.

¹² Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

¹³ The Prosecution received the video bearing Rule 65 *ter* number 28857 on 6 February 2013. The Prosecution received 29 of the documents on 8 April 2013, including the two exhibits proffered in the Addendum. The document with Rule 65 *ter* number 28845 is not included on the Exhibit List due to an oversight on the Prosecution's part in the management of a large volume of proof of death documentation.

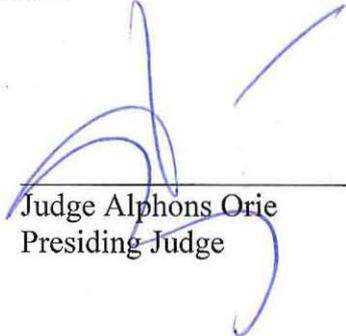
65869

case, the Chamber finds that it is in the interests of justice to grant the addition of the Proposed Exhibits to the Exhibit List.

V. DISPOSITION

6. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4) of the Tribunal's Statute and Rules 54 and 65 *ter* (E) (iii) of the Tribunal's Rules of Procedure and Evidence, the Chamber **GRANTS** the Motion to add to the Exhibit List the 31 documents bearing provisional Rule 65 *ter* numbers 28819-28846, 28857, 28870, and 28872.

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



Judge Alphons Orie
Presiding Judge

Dated this Eighteenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]