



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T
Date: 14 February 2007
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Decision of: 14 February 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON PROSECUTION'S SECOND MOTION
FOR LEAVE TO AMEND ITS RULE 65 *ter* EXHIBIT
LIST**

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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”);

BEING SEISED of the “Prosecution’s Second Motion for Leave to Amend its 65 *ter* Exhibit List, with Annex A” filed by the Prosecution on 9 January 2007 (“Motion”) in which the Prosecution seeks leave to amend and supplement its original exhibit list by adding two exhibits: a videotape and an order from the Main Staff of the Bosnian Serb Army (VRS) to the Sarajevo Romanija Corps (SRK);

NOTING that the Defence did not file a response to the Motion;¹

NOTING the arguments of the Prosecution as set forth in the motion:

- (i) The proposed additional exhibits are highly relevant and probative to the charges against the Accused since the videotape goes to prove the widespread, systematic and unlawful character of the attacks on civilians carried out in Sarajevo in the Indictment period and the order goes to prove command, control, and notice of the SRK on the use of air bombs during the Indictment period.²
- (ii) Both proposed additional exhibits were disclosed to the Defence well in advance of trial and are both relatively brief. Therefore, the Accused will not be prejudiced as he had sufficient time to review the proposed additional exhibits and prepare his case.³
- (iii) The proposed additional exhibits were identified by the Prosecution during the ongoing review and analysis of the Prosecution’s evidentiary material collection, and were found to be relevant and important after the Prosecution’s initial Rule 65 *ter* filing. The proposed additional exhibits were known prior to the Motion, but overlooked. The Prosecution submits that in the context of the volume of the material involved, the number of exhibits that may have been overlooked is *de minimis* and their admission will not prejudice the Defence.⁴
- (iv) The Accused suffers no prejudice by the addition of the proposed exhibits at this stage of the trial proceedings and it is in the interests of justice for the Trial Chamber to have all relevant materials admitted in order to decide the case fairly for all parties.⁵

CONSIDERING that pursuant to Articles 20(1) and 21(4)(b) of the Statute of the Tribunal an accused is entitled to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence;

¹ According to Rule 126 *bis* of the Rules of Procedure and Evidence, the Defence was required to file its response to the Motion by no later than 23 January 2007.

² Motion, paras. 5-6.

³ Motion, para. 8.

⁴ Motion, para. 9 and n. 1.

⁵ Motion, para. 10.

CONSIDERING that the Trial Chamber must therefore be satisfied that amendments to the exhibit list at this stage of the proceedings provide an accused sufficient notice and do not adversely affect his ability to prepare for trial;⁶

CONSIDERING that the Trial Chamber may also take into account additional criteria, including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused⁷ and whether good cause for amending the exhibit list is shown;⁸

CONSIDERING that the Trial Chamber is satisfied that the Prosecution has demonstrated the *prima facie* relevance and probative value of the proposed additional exhibits for the charges against the Accused and that the Prosecution has shown good cause for amending the exhibit list in this case;

CONSIDERING that the rights of the Accused will not be prejudiced as a result of the amendment of the exhibit list, as this material was disclosed to the Defence some time ago and because the addition to the list is of a minimal amount, which would not unduly burden the Defence in their preparation of the case;

FOR THE FOREGOING REASONS and PURSUANT TO Rules 54 and 89 (C) of the Rules

HEREBY GRANTS the Motion,

GRANTS leave to the Prosecution to amend its exhibit list to include the new exhibits identified in Annex A attached to the Motion.

⁶ See, for example *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution's Motion to Amend Its Rule 65 *ter* Exhibit List, 15 December 2005, p. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to Amend the Rule 65 *ter* Exhibit List, 6 December 2006 ("*Popović Decision*"), p. 8; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on Prosecution's Motion to Amend Witness List and for Protective Measures, 17 February 2006, para. 3; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution Motion to Amend its Rule 65 *ter* List, 6 June 2006, paras 3-4; *Prosecutor v. Milošević*, Case No. IT-98-29/1-PT, Decision on the Prosecution Motion to Amend its Rule 65 *ter* Exhibits List, 21 December 2006, p. 2.

⁷ *Prosecutor v. Orić*, Case No. IT-03-68-T, Decision on Prosecution's Confidential Motion For Leave to Add Exhibits to its Exhibit List, 13 October 2004, p. 3; *Popović Decision*, p. 7, also citing *Prosecutor v. Bagosora*, ICTR-98-41-T, Decision on the Nsengiyumva Motion to Add Six Witnesses to its Witness List, 11 September 2006 ("*Bagosora Decision*"), p. 2; *Prosecutor v. Ndindiliyimana*, Case No. ICTR-2000-56-T, Decision on Prosecution Motion to Vary its List of Witnesses: Rule 73bis(e) of the Rules, 11 February 2005 ("*Ndindiliyimana Decision*"), para. 20 (both referring to the 'materiality of the testimony').

⁸ *Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Prosecution's Application for Leave to Vary its Exhibit List Filed Pursuant to Rule 65 *ter* (E) (iii), 14 February 2005, p. 3; *Popović Decision*, p. 7; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion to Amend Witness List and for Protective Measures for Sensitive Source Witnesses, 13 March 2003, para. 16. See also *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001, para.18; *Bagosora Decision*, pp 2-3; *Ndindiliyimana Decision*, para. 20.

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



Judge Patrick Robinson
Presiding

Dated this fourteenth day of February 2007

At The Hague

The Netherlands

[Seal of the Tribunal]