

**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: 23 October 2012
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 23 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON THIRD PROSECUTION MOTION FOR LEAVE TO AMEND
PROSECUTION 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 seised of the “Third Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” filed by the Prosecution with confidential annexes on 8 October 2012 (“Motion”). The Defence filed its “Response to Third Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List” on 23 October 2012 (“Response”).

2. The Motion relates to the “Prosecution Notice of Rule 65 *ter* (E) Filings”, filed by the Prosecution on 20 June 2012,¹ which included, *inter alia*, the Prosecution exhibit list (“Exhibit List”) filed pursuant to Rule 65 *ter* (E)(iii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”). The Trial Chamber has granted Prosecution motions to amend the Exhibit List on 21 August 2012,² 15 October 2012,³ and 19 October 2012.⁴ The Trial Chamber issued an oral decision on 15 October 2012 granting in part the Motion and permitted the Prosecution to add two of the documents included in the Motion to the Exhibit List.⁵

A. Submissions

3. The Prosecution seeks leave to amend the Exhibit List by adding 334 documents.⁶ The Prosecution submits that all of the documents have been disclosed to the Defence and that it has met the legal test to amend the Exhibit List.⁷ The documents the Prosecution seeks to add to the Exhibit List comprise the following: (a) 209 documents obtained after the Prosecution filed its Exhibit List and pursuant to a formal Request for Assistance that was made several months before the Rule 65 *ter* filing;⁸ (b) 21 documents cited in the Theunens amalgamated report and inadvertently omitted from the Exhibit List;⁹ (c) five documents recently identified during the course of trial preparation;¹⁰ (d) 98 aerial images and maps extracted from Google Earth;¹¹ and (e) one GIS-generated map.¹² The Prosecution submits that, aside from the Google Earth Documents,

¹ Public, with confidential Annexes A, B, C, and E, and confidential and *ex parte* Annexes D and F.

² Decision on Prosecution Motion for Leave to Amend the Prosecution Rule 65 *ter* Exhibit List, 21 August 2012.

³ Oral Decision, 15 October 2012, T. 63-64.

⁴ Decision on Second Prosecution Motion for Leave to Amend Prosecution Rule 65 *ter* Exhibit List, 19 October 2012.

⁵ The Trial Chamber granted the Prosecution request to add documents designated with the following Rule 65 *ter* numbers: 06200 and 06201. Oral Decision, 15 October 2012, T. 64-65.

⁶ Motion, paras 1, 24.

⁷ The Prosecution submits that 314 of the documents were previously disclosed to the Defence and the remaining 20 (19 of which are the Theunens documents) were disclosed on the day the Motion was filed. Motion, paras 1, 3.

⁸ Motion, paras 1, 4-13.

⁹ Motion, paras 1, 14.

¹⁰ Motion, paras 1, 15-18.

¹¹ Motion, paras 1, 19-22.

¹² Motion, paras 1, 23.

the majority of the documents will be tendered through witnesses who are expected to appear after the winter recess.¹³

4. The Defence does not oppose the Motion.¹⁴

B. Applicable Law

5. Rule 65 *ter* (E)(iii) of the Rules provides, *inter alia*, that the Prosecution shall file, within a time-limit set by the Pre-Trial Judge and not less than six weeks before the Pre-Trial Conference, “the list of exhibits the Prosecutor intends to offer”, serving on the defence copies of the listed exhibits. 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 Prosecution request to amend the filed exhibit list.¹⁵ 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. Moreover, a Trial Chamber must carefully balance any amendment to the original list with an adequate protection of the rights of the accused.¹⁶

C. Discussion

6. The Chamber recalls that the deadline for the filing of the Exhibit List in this case was 19 June 2012.¹⁷

7. The Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of opposition to the Motion from the Defence, good cause has been shown for amending the Exhibit List to include the proposed documents. The documents sought to be included are relevant and of sufficient importance to justify their addition at this stage of the trial. The Chamber is satisfied that no undue prejudice to the Defence will incur as a result of the addition of the documents.

8. Issues as to admissibility of the documents will be addressed at such time as the documents are tendered.

¹³ Motion, para. 3.

¹⁴ Response, para. 1.

¹⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Prosecution’s Motion for Leave to File a Supplemental Rule 65 *ter* Exhibit List, 18 March 2010 (“*Karadžić Decision*”), para. 7; *Prosecutor v. Vujadin 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.

¹⁶ *Karadžić Decision*, para. 8; *Popović Appeal Decision*, para. 37.


¹⁷ Order on Pre-Trial Work Plan, 16 December 2011, Annex A, p. 1.

D. Disposition

9. Accordingly and for all the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 65 *ter* of the Rules, hereby **GRANTS** the Motion.

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

Done this twenty-third day of October 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]