



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: 16 January 2013
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 16 January 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON SIXTH 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 “Sixth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List”, filed confidentially by the Prosecution on 10 December 2012 (“Motion”). On 24 December 2012, the Defence filed its confidential “Response to Sixth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” (“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”).

A. Submissions

3. The Prosecution seeks leave to amend the Exhibit List by adding nine documents.² The Prosecution submits that it has met the legal test to amend the Exhibit List and asserts that the Defence will have adequate time to assess the documents prior to their use in this case.³ The documents the Prosecution seeks to add to the Exhibit List comprise the following: (a) proof of death documents that it recently received pursuant to a Request for Assistance from the Republic of Croatia;⁴ (b) photographs taken by the Prosecution in late September 2012 related to an alleged place of detention relevant to the Indictment;⁵ and (c) two documents concerning Lovas and some surrounding villages that the Prosecution did not consider including on the Exhibit List until certain issues were raised during the cross-examination of GH-102.⁶

4. The Defence opposes the addition of Rule 65 *ter* 06369 to the Exhibit List,⁷ submitting that its inclusion would be unfair and prejudicial to the Defence at this stage of the Prosecution case;⁸ that the unfairness could not be remedied by tendering the document through GH-068 because that witness is not in a position to attest to the document’s authenticity or the veracity of its contents and could not be meaningfully cross-examined on the allegations contained in the document;⁹ and that

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

² Motion, paras 1, 11.

³ Motion, paras 1, 3.

⁴ Motion, paras 1, 4-6.

⁵ Motion, paras 1, 7.

⁶ Motion, paras 1, 8-10.

⁷ Response, paras 1, 6.

⁸ Response, paras 2, 4-5.

⁹ Response, paras 4-5.

good cause has not been shown by the Prosecution to justify the addition of the document to the Exhibit List.¹⁰

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.¹¹ 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.¹²

C. Discussion

6. The Chamber recalls that the deadline for the filing of the Exhibit List in this case was 19 June 2012.¹³

7. The Chamber issued an oral decision on 7 January 2013 granting the Motion in part and permitting the Prosecution to add four of the documents to the Exhibit List.¹⁴

8. The document designated with Rule 65 *ter* number 06369 appears to be the minutes from a meeting of 3 November 1991 attended by representatives from the Territorial Defence (TO); the villages of Lovas, Opatovac, Sotin, Tovarnik, and Mohovo; and the SBWS government. The Trial Chamber finds that the Prosecution, in the present circumstances, has demonstrated good cause for addition of the document to the Exhibit List.

9. The Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of opposition to the remainder of the Motion from the Defence, good cause has been shown

¹⁰ Response, para. 3.

¹¹ *Prosecutor v. 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. 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.

¹² *Karadžić* Decision, para. 8; *Popović* Appeal Decision, para. 37.

¹³ Order on Pre-Trial Work Plan, 16 December 2011, Annex A, p. 1.

¹⁴ The Trial Chamber granted the Prosecution request to add documents designated with the following Rule 65 *ter* numbers: 06365, 06366, 06367, and 06368. Oral Decision, 7 January 2013, T. 2298-2299.

for amending the Exhibit List to include the remaining 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.

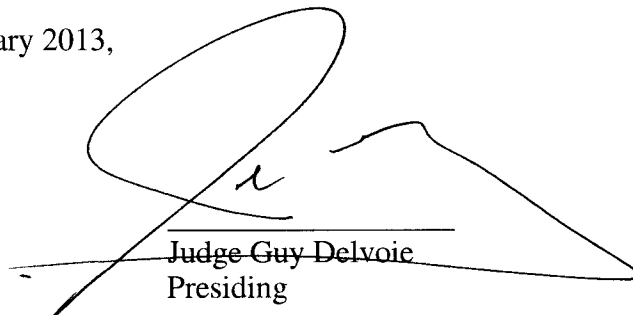
10. Issues as to admissibility of the added documents will be addressed at such time as the documents are tendered.

D. Disposition

11. Accordingly and for all the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 65 *ter* of the Rules, hereby **GRANTS** the Motion and **ALLOWS** the Prosecution to add the documents designated with Rule 65 *ter* numbers 06369, 06370, 06371, 06372, and 06373 to the Exhibit List.

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

Done this sixteenth day of January 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]