

**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: 26 April 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: 26 April 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON SEVENTH PROSECUTION 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 seised of the “Seventh Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List”, filed by the Prosecution on 18 February 2013 (“Motion”). On 21 February 2013 the Prosecution filed the “Corrigendum to the Seventh Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List” (“Corrigendum”).

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 two documents and to amend one document which is already on the Exhibit List.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) a three-page excerpt from the United States Army Field Manual titled “Staff Organization and Operations”;⁴ and (b) a one-page document titled “Order of the Cabinet of the Federal Secretary of the National Defence confidential no. 29-34/1,” dated 29 September 1991.⁵ The document the Prosecution would like to amend currently consists of Chapter 16, articles 141-155 of the Socialist Federal Republic of Yugoslavia (“SFRY”) Criminal Code. The Prosecution requests to replace the excerpt with a complete version of the code.⁶ The Prosecution indicates that it intends to tender these documents with the expert report of Reynaud Theunens in which they are all cited.⁷

4. The Defence does not oppose the Motion.⁸

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

² In the Motion, the Prosecution requested to add three documents. However, in the Corrigendum the Prosecution withdrew its request in relation to one of the documents. Motion, paras 1, 12; Corrigendum, para. 3.

³ Motion, paras 1, 3.

⁴ Motion, paras 6-7.

⁵ Motion, paras 4-5.

⁶ Motion, para. 11.

⁷ Motion, paras 1, 5, 7, 11.

⁸ Email from the Defence to the Trial Chamber, 3 March 2013.

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.⁹ 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.¹⁰

C. Discussion

6. The Chamber recalls that the deadline for the filing of the Exhibit List in this case was 19 June 2012.¹¹

7. The document designated with Rule 65 *ter* number 06387 is an excerpt from the United States Army Field Manual titled “Staff Organization and Operations”. The document provides, from the perspective of the United States Army, a definition for the concept of command, the function of the commander, and the position of the commander within the overall framework of a military force. The document is cited in the expert report of Reynaud Theunens as one example showing that the JNA definition of command and control was consistent with the definition of the same concept of NATO-member countries. The Chamber is not satisfied that the document is of sufficient importance to justify its addition to the Exhibit List at this stage of the trial.

8. The document designated with Rule 65 *ter* number 06389 is an order of the Federal Secretariat of the National Defence, dated 29 September 1991, which assigns officers to the Guards Motorized Brigade. According to the Prosecution, this document is probative to establishing a direct command link between the Federal Secretariat of the National Defence and the Guards Motorized Brigade, which subsequently had Territorial Defence and volunteer units subordinated to it. The Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of

⁹ *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.

¹⁰ *Karadžić* Decision, para. 8; *Popović* Appeal Decision, para. 37.

¹¹ Order on Pre-Trial Work Plan, 16 December 2011, Annex A, p. 1.

opposition from the Defence, good cause has been shown in the present circumstances for amending the Exhibit List to include the document designated with Rule 65 *ter* number 06389 to the Exhibit List. It is relevant and of sufficient importance to justify its 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 this document.

9. The Chamber notes that the document designated with Rule 65 *ter* number 00034 contains Chapter 16, articles 141-155, of the SFRY Criminal Code. Taking into account the specific circumstances of the case and the lack of opposition from the Defence, the Chamber is satisfied that good cause has been shown for amending this document to include a complete version of the SFRY Criminal Code.

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 in part;

ALLOWS the Prosecution to add the document designated with Rule 65 *ter* number 06389 to the Exhibit List and to amend the document designated with Rule 65 *ter* number 00034; and

DENIES the Motion in all other respects.

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

Done this twenty-sixth day of April 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]