

**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 EIGHTH 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 “Eighth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List”, filed by the Prosecution on 2 April 2013 (“Motion”).

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 add eleven documents to the Exhibit List and to replace one existing document 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 Prosecution submits that it recently obtained ten of the documents from the Osijek District Prosecutor’s Office in response to a Request for Assistance to Croatia.⁴ Rule 65 *ter* numbers 6394 to 6398 consist of three photographs and two lists of detainees relating to the Stajićevo and Sremska Mitrovica detention facilities.⁵ Rule 65 *ter* numbers 6400 to 6404 consist of minutes from five meetings of the “Joint Commission for Tracing Missing Persons” and relate to the detention of non-Serbs from Vukovar and surrounding villages.⁶ Rule 65 *ter* number 06399 is an investigative report that details exhumations undertaken in Erdut where the mortal remains of some individually named victims in the Indictment were located.⁷ The Prosecution submits that the relevance of this document only became apparent to the Prosecution during the document review process undertaken in anticipation of GH-037’s testimony in this case.⁸ Rule 65 *ter* number 02407.2 is a 16-page list of persons detained in the Stajićevo detention facility. Rule 65 *ter* number 02407, which is already on the Exhibit List, is comprised of one page from this list. The Prosecution seeks to remedy an earlier administrative error by replacing Rule 65 *ter* number 02407 with the full 16-page list. According to the Prosecution, the full document was disclosed to the Defence on 18 November 2011.⁹

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

² Motion, paras 1, 10.

³ Motion, para. 4.

⁴ Motion, paras 1, 7.

⁵ Motion, para. 5.

⁶ Motion, para. 5.

⁷ Motion, para. 8.

⁸ Motion, para. 8. GH-037 testified in this case on 10-11 April 2013.

⁹ Motion, para. 9.

4. The Defence has no submissions on the Motion.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 Prosecution was granted leave to add three of the documents in the Motion to the Exhibit List by way of oral decisions issued in the week of 8 April 2013, namely Rule 65 *ter* numbers 06395, 06399, and 06402.¹⁴

8. 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 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. As an annotated version of Rule 65 *ter* number 02407 has already been admitted into evidence,¹⁵ the Chamber considers it appropriate that Rule 65 *ter* number 02407.2

¹⁰ Email from the Defence to the Trial Chamber and Prosecution, 16 April 2013.

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 See Oral Decision, 8 April 2013, T. 3537-3538, 3596-3597, for Rule 65 *ter* number 06402; Oral Decision, 10 April 2013, T. 3752, for Rule 65 *ter* number 06399; Oral Decision, 11 April 2013, T. 3862-3863, for Rule 65 *ter* number 06395.

¹⁵ See P1414 and Rule 65 *ter* number 02407.1.

appear separately on the Exhibit List, rather than replace the document designated with Rule 65 *ter* number 02407 entirely.


9. Issues as to admissibility of the added documents, which have not already been admitted, will be addressed at such time as the documents are tendered.

D. Disposition

10. 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 **ORDERS** that the Prosecution may add the documents designated with Rule 65 *ter* numbers 06394, 06396, 06397, 06398, 06400, 06401, 06403, 06404, and 02407.2 to the Exhibit List.

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]