

**UNITED
NATIONS**

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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: 7 May 2015
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 7 May 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON SEVENTH DEFENCE 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 hereby seised of the “Seventh Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List”, filed with a confidential annex on 25 February 2015 (“Motion”). The “Prosecution Response to Seventh Defence Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” was filed with confidential annexes on 11 March 2015 (“Response”).¹ The Defence filed its “Reply to Prosecution Response to Seventh Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List” on 18 March 2015 (“Reply”).

A. Submissions

2. In the Motion, the Defence seeks leave to add 64 documents, which were disclosed to the Defence by the Prosecution between 17 October 2014 and 28 November 2014, and an interview with Dobrila Gajić-Glišić discovered recently on YouTube (“YouTube Video”), to its Rule 65 *ter* Exhibit List (“Exhibit List”).² The Defence also seeks leave to amend three documents on its Rule 65 *ter* Exhibit List by replacing them with more legible versions.³ The Defence argues that its request has been made well in advance of the time it intends to use the documents, allowing the Prosecution ample time to prepare, and the substance of the documents is not prejudicial to the Prosecution.⁴ The Defence argues that the documents are *prima facie* reliable.⁵ It also notes that the English translation of Rule 65 *ter* number 1D03889 is in the process of being finalised by CLSS.⁶

3. In the Response, the Prosecution requests that the Trial Chamber not add the 64 documents to the Defence’s Exhibit List as the Defence fails to explain the relevance of each document and the Prosecution is therefore not in an informed position to respond to the Motion.⁷ The Prosecution does not object to the substitution of Rule 65 *ter* numbers 1D01004 and 1D01005 with more legible versions found under Rule 65 *ter* numbers 1D01004.1 and 1D03856, respectively.⁸ In relation to Rule 65 *ter* number 1D01780.1, the Prosecution presently takes no position in relation to the document, but reserves the right to object to the addition of the document once a final translation has been received.⁹ Finally, the Prosecution objects to the addition of the YouTube Video, Rule 65 *ter* number 1D03841, to the Exhibit List on the grounds that it lacks relevance and probative value,

¹ The Prosecution filed a “Corrigendum to Prosecution Response to Seventh Defence Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” on 13 March 2015 (“Corrigendum”).

² Motion, paras 1, 4, 6.

³ Motion, paras 1, 5.

⁴ Motion, para. 7.

⁵ Motion, para. 8.

⁶ Motion, para. 9.

⁷ Response, paras 1, 3, 8.

⁸ Response, para. 4.

⁹ Response, paras 1, 4, 8.

and the admission of such a video circumvents the Tribunal's Rules of Procedure and Evidence ("Rules") on the admission and mode of witness testimony.¹⁰ The Prosecution submits that there is no apparent link between the video and witnesses DGH-046 and DGH-047, the witnesses through which the Defence indicates it wishes to tender the video into evidence.¹¹ The Prosecution notes that it had initially contacted Dobrila Gajić-Glišić as a witness, but decided not to call her as she sought the Prosecution's assistance in pursuing claims against the Serbian government to recover wages and her pension.¹²

4. In the Reply, the Defence seeks leave to file a reply and submits that the threshold level of relevance of the documents it seeks to add to its Exhibit List is demonstrated by the disclosure of the documents by the Prosecution pursuant to Rules 66 (B) or 68 of the Rules, the authorship of the documents, and the direct knowledge or expertise of the witnesses through which each document will be tendered or used.¹³ With regards to the YouTube Video, the Defence asserts that this Trial Chamber has not required that video interviews be tendered pursuant to Rule 92 *bis* and 92 *ter* of the Rules.¹⁴ The Defence argues that the video interview may "be used as a foundation for eliciting testimony from DGH-046 and DGH-047 about the supposed existence and formation of a 'Serbian Army'."¹⁵ Finally, the Defence argues that Ms. Gajić-Glišić's complaints about the Prosecution are of relevance to the reliability of Prosecution testimonial evidence heard in the case, and the extent of the Prosecution's contacts with Ms. Gajić-Glišić demonstrate that the Prosecution will suffer no legal prejudice from the addition of the material at this stage of the proceedings.¹⁶

B. Applicable Law

5. Rule 65 *ter* (G)(ii) of the Rules provides, *inter alia*, that the Defence shall file "a list of exhibits the Defence intends to offer in its case", serving the Prosecution with copies of the listed exhibits. The primary purpose of such an exhibit list is to give notice to the Prosecution of the documents to be used during the Defence case, which will allow the Prosecution to prepare its case accordingly and to ensure an efficient presentation of evidence during trial.¹⁷ In the exercise of its inherent discretion to manage trial proceedings, if satisfied that it is in the interests of justice, a trial

¹⁰ Response, paras 1, 5-8, Annex B.

¹¹ Response, para. 5.

¹² Response, para. 7.

¹³ Reply, paras 1-3.

¹⁴ Reply, para. 4.

¹⁵ Reply, para. 4.

¹⁶ Reply, paras 4-5.

¹⁷ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Decision on Third, Fourth and Fifth Motions by the Accused for Admission of Documents from the Bar Table, 22 March 2012 ("*Tolimir* Decision"), para. 3; *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Decision on Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List, 12 March 2008 ("*Boškoski and Tarčulovski* Decision"), para. 3.

chamber may grant a Defence request to amend the filed exhibit list.¹⁸ In doing so, a trial chamber must be satisfied that, taking into account the specific circumstances of the case, the Defence has shown good cause for amending the original list and that the newly offered material is relevant and of sufficient importance to justify the late addition.¹⁹ A trial chamber need not assess an exhibit's authenticity, relevance, and probative value in the same way as it would when determining its admission at trial.²⁰ However, leave should not be allowed to add exhibits that are obviously irrelevant.²¹

C. Discussion

6. The Trial Chamber notes that Rule 65 *ter* number 1D03848 is an excerpt of Rule 65 *ter* number 1D03850, and that Rule 65 *ter* numbers 1D03847, 1D3852, and 1D03853 are excerpts of Rule 65 *ter* number 1D03851. To avoid duplication, the Trial Chamber will only add Rule 65 *ter* numbers 1D03850 and 1D03851 to the Defence's Exhibit List.

7. The Trial Chamber notes the Defence's request to replace Rule 65 *ter* numbers 1D01004 and 1D01005 with, respectively, the documents listed as Rule 65 *ter* numbers 1D01004.1 and 1D03856. Taking into account that the proposed replacement documents are more legible and the lack of opposition from the Prosecution, the Trial Chamber is satisfied that good cause has been shown for amending the Defence's Exhibit List by replacing Rule 65 *ter* numbers 1D01004 and 1D01005 with Rule 65 *ter* numbers 1D01004.1 and 1D03856, respectively.

8. The Trial Chamber notes the Prosecution's lack of position *vis-à-vis* replacing Rule 65 *ter* number 1D01780 with a more legible version found under Rule 65 *ter* number 1D01780.1. The Prosecution, however, also wishes to reserve its right to object to the addition of the document to the Defence's Exhibit List until such time as a final translation has been obtained. The Trial Chamber finds that the current unrevised translation is sufficient for the purpose of determining whether the document can be added to the Defence's Exhibit List. The Prosecution may raise objections to the final translation at anytime once it has been uploaded in eCourt. The Trial Chamber is satisfied that good cause has been shown for amending the Defence's Exhibit List by replacing Rule 65 *ter* number 1D01780 with Rule 65 *ter* number 1D01780.1.

¹⁸ *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; *Prosecutor v. Hadžić*, Case No. IT-04-75-T, Decision on Third Prosecution Motion for Leave to Amend Prosecution Rule 65 *ter* Exhibit List, 23 October 2012 ("*Hadžić* Decision"), para. 5; *Tolimir* Decision, para. 4.

¹⁹ *Popović* Appeal Decision, para. 37, *Hadžić* Decision, para. 5; *Tolimir* Decision, para. 4.

²⁰ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Motion for Leave to Amend its Exhibit List, 19 October 2011 ("*Karadžić* Decision"), para. 10; *Boškoski and Tarčulovski* Decision, para. 3; *Prosecutor v.*

9. With respect to Rule 65 *ter* number 1D03841, the Trial Chamber notes that the interview of Ms. Gajić-Glišić took place on 12 November 2014 and was uploaded to the “Happy TV” channel on YouTube on 23 February 2015. The Defence has accordingly sought to add the YouTube Video to its Exhibit List in a reasonable time after it was publicly made available. In relation to the Prosecution’s challenges as to whether there is a sufficient link between the YouTube Video and DGH-046 and DGH-047 or whether it should be admitted under Rules 92 *bis* or 92 *ter* of the Rules, these are arguments more relevant to the issue of admission rather than the issue of whether it should be added to the Defence’s Exhibit List. The Prosecution may therefore bring these challenges if and when the Defence seeks to tender the video into evidence. The Trial Chamber finds Rule 65 *ter* number 1D03841 relevant and of sufficient importance to justify its addition to the Defence’s Exhibit List.

10. The Trial Chamber is satisfied that good cause has been shown for amending the Defence’s Exhibit List to include the remaining documents listed in the confidential annex to the Motion. While the Trial Chamber would have been better assisted by the Defence explaining with more specificity the relevance of each of the documents it seeks to add to its Exhibit List, the Trial Chamber considers that, in the present circumstances, given the authorship of the documents and their content, the threshold level of relevancy required for the purposes of determining whether the documents should be added to the Defence’s Exhibit List has been established. The Trial Chamber therefore finds that the documents are relevant and of sufficient importance to justify the late addition of the documents to the Defence’s Exhibit List. Further, no undue prejudice to the Prosecution will arise as a result of the addition of the documents to the Defence’s Exhibit List given that the Prosecution will have had ample time to review the documents and prepare for their potential use in court.

11. The Trial Chamber notes that Rule 65 *ter* number 1D03889 only contains a partial translation. While the Trial Chamber has been able to determine the relevance of the document for the purpose of adding it to the Defence’s Exhibit List, a full translation must be obtained before the document is tendered for admission.

D. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, and 126 *bis* of the Rules, hereby:

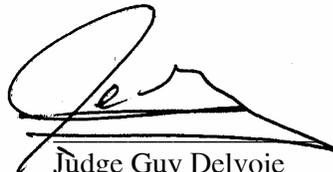
Rasim Delić, Case No. IT-04-83-T, Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List, 17 October 2007, p. 4.

²¹ *Tolimir* Decision, para. 4; *Karadžić* Decision, para. 10; *Boškoski and Tarčulovski* Decision, para. 3.

- (a) **GRANTS** the Defence leave to file the Reply;
- (b) **GRANTS** the Motion, in part;
- (c) **DENIES** the addition of the documents with the following Rule 65 *ter* numbers to the Defence's Exhibit List: 1D03847, 1D03848, 1D03852, 1D03853;
- (d) **GRANTS** the Defence request to replace the following documents on its Exhibit List:
- (i) Rule 65 *ter* number 1D01004 with Rule 65 *ter* number 1D01004.1;
- (ii) Rule 65 *ter* number 1D01005 with Rule 65 *ter* number 1D03856;
- (iii) Rule 65 *ter* number 1D01780 with Rule 65 *ter* number 1D01780.1;
- (e) **GRANTS** the addition of the documents with the following Rule 65 *ter* numbers to the Defence's Exhibit List: 1D03841, 1D03843, 1D03844, 1D03845, 1D03846, 1D03849, 1D03850, 1D03851, 1D03854, 1D03855, 1D03857, 1D03858, 1D03859, 1D03860, 1D03861, 1D03862, 1D03863, 1D03864, 1D03865, 1D03866, 1D03867, 1D03868, 1D03869, 1D03870, 1D03871, 1D03872, 1D03873, 1D03874, 1D03875, 1D03876, 1D03878, 1D03879, 1D03880, 1D03882, 1D03883, 1D03884, 1D03885, 1D03886, 1D03887, 1D03888, 1D03889, 1D03890, 1D03891, 1D03892, 1D03893, 1D03894, 1D03895, 1D03896, 1D03897, 1D03898, 1D03899, 1D03900, 1D03901, 1D03902, 1D03903, 1D03904, 1D03905, 1D01737.1, 1D01767.1, 1D02007.1, 1D01602; and
- (f) **ORDERS** the Defence to obtain a full translation of Rule 65 *ter* number 1D03889 before tendering it into evidence.

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

Done this seventh day of May 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]