



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-05-87-T

Date: 1 August 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 1 August 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON PROSECUTION REQUEST FOR ORDER THAT DEFENCE PROVIDE
FURTHER PARTICULARS REGARDING EXHIBITS**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 “Prosecution’s Request for an Order that the Defence Provide Further Particulars Regarding Exhibits”, filed on 6 July 2007 (“Request”), and hereby renders its decision thereon.

1. Prior to the commencement of trial proceedings, the Prosecution was ordered by the Trial Chamber to identify the exhibits it would be tendering for each witness. The pre-trial order and appended work plan issued on 5 April 2006 directed the Prosecution to file its witness and exhibit lists conforming to the requirements of Rules 65 *ter* (E)(ii) and (iii) of the Rules of Procedure and Evidence (“Rules”), and indicating, with respect to each witness, the exhibit(s) the witness would offer in evidence.¹ The Prosecution complied with this order and filed its witness and exhibit lists in the required format on 10 May 2006.²

2. The Trial Chamber notes that, in addition to the lists filed by the Prosecution pursuant to Rule 65 *ter*, during the course of its case the Prosecution also filed weekly witness notifications that included a list of exhibits to be tendered through or used with the witness(es) scheduled to testify the following week.³

3. On 5 and 23 March 2007, the Trial Chamber issued orders containing, *inter alia*, guidelines for the Defence filings pursuant to Rule 65 *ter* (G), and stating that it may issue further orders in due course as may be appropriate and necessary to ensure the fair and expeditious conduct of proceedings.⁴ On 15 June 2007, the Defence for each Accused filed their submissions pursuant to Rule 65 *ter* (G), as ordered by the Trial Chamber. The submission filed by the Defence for Sreten Lukić indicates the witness(es) to whom each proposed exhibit relates. The submissions filed on behalf of the remaining five Accused do not do so.

¹ Pre-trial Order and Appended Work Plan, 5 April 2006, p. 3, para. 3.

² Prosecution’s Submissions Pursuant to Rule 65 *ter* (E) with Confidential Annex A and Annexes B and C, 10 May 2006.

³ *See, e.g.*, Prosecution witness notification for trial week commencing 23 April 2007, 19 April 2007; Prosecution witness notification for trial week commencing 16 April 2007, 12 April 2007; Prosecution witness notification for trial week commencing 19 March 2007, 15 March 2007; Prosecution witness notification for the trial week commencing 26 February 2007 with confidential Annex A, 22 February 2007; Prosecution witness notification for trial week commencing 29 January 2007 with confidential Annex A, 25 January 2007; Prosecution witness notification for trial week commencing 4 December 2006, 30 November 2006; Partly Confidential Prosecution witness notification for trial week commencing 20 November 2006 with confidential Annex A, 16 November 2006; Prosecution witness notification for trial week commencing 30 October 2006, 26 October 2006; Prosecution witness notification for trial week commencing 11 September 2006, 7 September 2006.

⁴ Order on Prosecution motion to postpone close of case-in-chief, pre-defence conference, and commencement of Defence case, 23 March 2007, para. 10; Order on close of Prosecution case-in-chief, Rule 98 *bis* proceedings, and Defence Rule 65 *ter* filings, 5 March 2007, para. 9.

4. Subsequently, during the pre-defence conference on 22 June 2007, the Presiding Judge stated the following:

The rule we made at the outset of the case about identifying witnesses who will be called in the immediate and near future will continue to apply and, therefore, on a Thursday, we would expect the accused whose case is being presented at that time to tender a list similar to that that the Prosecution tendered of the witnesses for the following week. And we expect a monthly intimation in advance of the witnesses, and that should be as close as possible to the order in which they're likely to be led.⁵

5. By way of an email from the Chambers Legal Officer to the parties on 22 June 2007, the parties were further informed that, consistent with the practice that was followed during the Prosecution case, the Defence should file notifications on the last working day of each month detailing the witnesses who will be called to testify in the following two months. This practice was stated to be without prejudice to the submission of the weekly witness notifications, the first of which is expected on Thursday, 2 August 2007. The first of the monthly witness notifications was due on 31 July 2007.

6. In its Request, the Prosecution submits that the obligations currently incumbent on the Defence to furnish information linking witnesses to exhibits through the weekly witness notifications does not allow the Prosecution sufficient time to review the relevant exhibits and to prepare for cross-examination.⁶ Consequently, the Prosecution requests the Trial Chamber to order the Defence – with the exception of the Defence for Sreten Lukić – to file revised exhibit lists pursuant to Rule 65 *ter*, indicating the witness(es) to whom each proposed exhibit in the lists relates.⁷ In the alternative, the Prosecution requests the Trial Chamber to order the Defence for the remaining Accused to provide the information indicating the witness(es) to whom each proposed exhibit relates in the monthly witness notifications that each of the Defence is required to file.⁸ The Prosecution submits that granting the Request will promote the efficient management of the Defence case.⁹

7. The Trial Chamber notes that Rule 65 *ter* (G) is silent on the need for the Defence to link its proposed witnesses to its proposed exhibits at the time it files the list of witnesses it intends to call and the exhibits it intends to submit. However, considering the obligation that was incumbent on the Prosecution to provide information connecting their witnesses and exhibits in its Rule 65 *ter*

⁵ T. 12819 (22 June 2007).

⁶ Request, para. 2.

⁷ Request, para. 3.

⁸ Request, para. 3. The Prosecution refers to the email from the Chambers Legal Officer to the parties, dated 22 June 2007.

⁹ Request, para. 5.

lists, and considering furthermore the initiative taken by the Defence for Sreten Lukić to provide this information *proprio motu*, the Trial Chamber considers that no prejudice would result were it to require the Defence for the remaining Accused (with the exception of Lukić) to do the same, pursuant to Rule 54 of the Rules.¹⁰

8. The Trial Chamber is however aware of the imminence of the start of the Defence case, the unlikelihood of the Defence for the Accused Milutinović and Šainović being able to comply with an order to refile their Rule 65 *ter* witness lists at this late stage, and the significantly greater number of witnesses and exhibits anticipated from the Defence for the Accused Ojdanić, Pavković, and Lazarević respectively. The Trial Chamber therefore anticipates that the Defence for the Accused Milutinović and Šainović will indicate in their monthly witness notifications the exhibits that they propose to tender through or use with the witnesses they will be calling in their respective cases. Such information shall, in any event, be included in their weekly notifications.

9. In the foregoing circumstances, the Trial Chamber considers it appropriate, in the interests of the fair and expeditious conduct of the proceedings, that the Defence for the Accused Ojdanić, Pavković, and Lazarević should re-file their Rule 65 *ter* (G) lists indicating, with respect to each witness, the exhibit(s) to be tendered through or used with each witness.

¹⁰ Rule 54 provides *inter alia* that a Judge or a Trial Chamber may *proprio motu* issue such orders ... as may be necessary for the preparation or conduct of the trial.

10. For the foregoing reasons and pursuant to Rules 54 and 65 *ter* (G) of the Rules, the Trial Chamber hereby **GRANTS** the Request in part and **ORDERS** the Defence for the Accused Ojdanić, Pavković, and Lazarević to re-file their Rule 65 *ter* (G) witness and exhibit lists by 20 August 2007, which shall conform to the requirements of Rules 65 *ter* (E)(ii) and (iii), and which shall indicate, with respect to each witness, the exhibit(s) the witness will offer in evidence. This Order is without prejudice to the requirement that each Accused file his weekly witness notifications indicating the exhibits that will be offered through or used with each witness.

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

Judge Iain Bony
Presiding

Dated this first day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]