



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-08-91-PT
Date: 15 December 2008
Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Kimberly Prost
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision: 15 December 2008

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**DECISION ON STOJAN ŽUPLJANIN'S MOTION
REQUESTING AN ORDER THAT THE PROSECUTION
CLARIFY ITS MOTION OF 19 NOVEMBER 2008**

The Office of the Prosecutor:

Mr Thomas Hannis

Counsel for the Accused:

Mr Slobodan Zečević and Mr Slobodan Cvijetić for Mićo Stanišić
Mr Tomislav Višnjić and Mr Igor Pantelić for Stojan Župljanin

TRIAL CHAMBER II (“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”);

BEING SEIZED of “Stojan Župljanin’s Motion Requesting an Order that the Prosecution Clarify its Motion of 19 November 2008” by Counsel for Stojan Župljanin (“Župljanin Defence”), filed on 3 December 2008, seeking that (i) an order to the Prosecution to file appropriate motions under Rule 92*bis*, Rule 92*ter* and Rule 92*quater* in relation to Stojan Župljanin, (ii) an order to the Prosecution to properly identify to the Župljanin Defence how material disclosed on 2 December 2008 relates to such motions, and (iii) an extension of time to respond to the Prosecution’s Motion of 19 November 2008 to be granted to the Župljanin Defence (“Župljanin Defence Motion”);

NOTING the “Prosecution Notice and Request Regarding Rule 92*bis*, 92*ter* and 92*quater* Evidence, filed on 19 November 2008”(“Prosecution’s Notice”), in which it referred to its “Motion to Amend Its Rule 65*ter* Witness List, With Confidential Annexes” filed on 29 February 2008 in *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, “which included lists of witnesses whose evidence was proposed to be introduced pursuant to Rule 92*bis*, Rule 92*ter* and Rule 92*quater*”¹, and gave notice of its intent “to have its 29 February Motion be considered as applicable to both accused in this case number;”²

NOTING the “Prosecution Amended Notice and Request Regarding Rule 92*bis*, Rule 92*ter*, and Rule 92*quater* Evidence”(“Prosecution’s Amended Notice”), filed on 9 December 2008, in which the Prosecution gave notice of its intent “to have all five of its 29 February 2008 pleadings [...] be considered as applicable to both accused in this case number”,³ *i.e.* (i) “Motion to amend its Rule 65*ter* Witness List, With Confidential Annexes”,⁴ (ii) “Prosecution Motion for Admission of Transcripts and Written Transcripts in Lieu of Viva Voce Testimony Pursuant to Rule 92*bis*”, (iii) “Prosecution Motion for Admission of Evidence Pursuant to Rule 92*ter*”, (iv) “Prosecution Motion for Admission of Evidence Pursuant to Rule 92*quater*”, and (v) “Prosecution Notice of Disclosure of Expert Witness Statements Under Rule 94*bis*”,⁵ all filed on 29 February 2008 in *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, (“Five 29 February 2008 Motions”);

¹ Prosecution’s Notice, para 1.

² Prosecution’s Notice, para 3.

³ Prosecution’s Amended Notice, para 6.

⁴ Prosecution’s Amended Notice, para 3.

⁵ Prosecution’s Amended Notice, para 4.

NOTING further the Defence submissions that (i) the Prosecution has not expressly referred to any Rule 92bis, Rule 92ter or Rule 92quater Motion in the Prosecution's Notice,⁶ (ii) the Župljanin Defence initially had no access to confidential documentation from any other case, including Case No. IT-04-79,⁷ and that only on 2 December 2008 did the Prosecution disclose to the Župljanin Defence the material relevant to the Five 29 February 2008 Motions,⁸ and that the Annexes to the these motions refer to paragraphs of an earlier indictment;⁹

CONSIDERING that, the Prosecution by the Prosecution's Amended Notice has now clarified that it is the Five 29 February 2008 Motions it intends to have considered as applicable to both Accused in the present case;

CONSIDERING further that, according to the Defence submission, in the disclosure on 2 December 2008, the Prosecution has separated the material annexed to the motions into four separate folders according to Rule 92bis, Rule 92ter, Rule 92quater and Rule 94bis, and further, according to information from Counsel for Prosecution to Chamber's Legal Staff on 11 December 2008, the disclosure of 2 December 2008 contains a spreadsheet for each motion containing a hyperlink to the relevant material of that motion;

CONSIDERING, therefore, that the Prosecution in this respect has specified how the material disclosed on 2 December 2008 relates to the Five 29 February 2008 Motions;

CONSIDERING further that, in the material annexed to the Five 29 February 2008, the Prosecution has not provided cross-references to relevant provisions in the current indictment, *i.e.* the Consolidated Indictment of 29 September 2008, and that it should do so by Friday 19 December 2008;

CONSIDERING further that on 26 November 2008 the Chamber granted the Župljanin Defence access to all documents filed by the Prosecution on a confidential basis in the case of *Prosecutor v Mićo Stanišić*,¹⁰ and that the Župljanin Defence received all material annexed to the Five 29 February 2008 Motions on 2 December 2008;

⁶ Župljanin Defence Motion, para 6.

⁷ Župljanin Defence Motion, para 3.

⁸ Župljanin Defence Motion, para 5.

⁹ Župljanin Defence Motion, para 5.

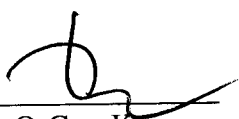
CONSIDERING also the volume of the material annexed to the motions;

For the foregoing reasons and pursuant to Rules 54 and 126*bis* of the Rules of Procedure and Evidence, the Chamber hereby:

- (1) Orders that the Prosecution provide to the Župljanin Defence and the Chamber cross-references to the relevant provisions in the Consolidated Indictment by Friday 19 December 2008;
- (2) Orders that the Župljanin Defence file its response to the Five 29 February 2008 Motions no later than Monday 26 January 2009;
- (3) Denies the Župljanin Defence Motion in all other respects.

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

Dated this fifteenth of December 2008
At The Hague
The Netherlands



Judge O-Gon Kwon
Presiding

[Seal of the Tribunal]

¹⁰ Order Regarding Access to Confidential Filings, 26 November 2008.