



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-T
Date: 20 October 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 20 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING PROSECUTION'S MOTION
FOR LEAVE TO AMEND RULE 65 *TER* LIST TO ADD
DOCUMENTS RELATED TO WITNESS ST092**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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 “Prosecution’s motion for leave to amend Rule 65 *ter* exhibit list to add documents related to witness ST-92, with annex”, filed publicly on 23 September 2009 (“Motion”).

I. SUBMISSIONS

1. The Prosecution requests permission to add two documents to its exhibit list regarding Christian Nielsen arguing that the documents substantiate the witness’ reports and are highly probative of issues in this case.¹ The proposed exhibits are a list of RSMUP Special Police Platoon employees who performed their duties during April 1992 (“First Document”), and a transcript of an intercepted telephone conversation between Radovan Karadžić and Nikola Koljević (“Second Document”).²

2. The Prosecution contends that the addition to its exhibit list of the documents is in the interests of justice.³ Both documents were incorrectly cited in the witness’ 29 February 2008 expert report (“Report”).⁴ The First Document was cited in a footnote to the Report using an incorrect exhibit reference number (“ERN”).⁵ The erroneous ERN was included on the exhibit list of 8 June 2009, but was later removed as the document that this ERN represents is not relevant to the Prosecution’s case.⁶ The Prosecution now seeks to add the correct document to its exhibit list. With regard to the Second Document, the relevant portion of the Report lacked a citation to this document.⁷ The Prosecution submits that these errors came to light during its recent preparations for the examination-in-chief of the witness.⁸

3. The Prosecution asserts that the First Document goes towards establishing the existence and membership of the Republika Srpska (“RS”) Ministry of Interior Special Police Platoon and that it, while under the command of Mićo Stanišić, played a critical role in combat activities throughout the RS.⁹ The Prosecution further submits that the Second Document complements telephone

¹ Motion, para. 1.

² Motion, Annex A.

³ Motion, para. 3.

⁴ Motion, para. 4.

⁵ Motion, para. 4.

⁶ Motion, para. 4.

⁷ Motion, para. 5.

⁸ Motion, para. 3.

⁹ Motion, para. 4, citing Prosecution’s pre-trial brief, 8 June 2009, paras 75, 312.

intercept transcripts already on the Prosecution's exhibit list and that it establishes, *inter alia*, that Stojan Župljanin communicated with other members of the alleged joint criminal enterprise.¹⁰

4. The Prosecution argues that the addition to its exhibit list of the two documents will not prejudice the Defence as they will have at least six weeks to review the documents "in light of the Trial Chamber's ruling that the Defence need not begin its cross-examination until CLSS has finished translating into English the 470 documents they wish to show this witness" and in light of the fact that Christian Nielsen will at the earliest be called for examination-in-chief on 2 November 2009.¹¹

5. On 6 October 2009, the Defence of Mićo Stanišić ("Stanišić Defence") responded to the Motion ("Stanišić Response"), objecting to the addition of the Second Document to the Prosecution's exhibit list.¹² The Stanišić Defence states that it "is filing a motion objecting to the admissibility of all intercepts proffered by the Prosecution, including the one which is now proposed by the Prosecution in relation to Mr. Nielsen, on the basis that these intercepts were illegally obtained and that they do not demonstrate any indicia of reliability that would support their admission into evidence."¹³

6. The Defence of Stojan Župljanin did not respond to the Motion within the time limit laid down in Rule 126 *bis* of the Rules.

II. APPLICABLE LAW

7. In the exercise of its inherent discretion of whether to grant the Motion, the Trial Chamber will assess whether the Prosecution has shown good cause for its request and whether the proposed exhibits sought to be added are relevant and of sufficient importance to justify their late inclusion on the exhibit list.¹⁴ As part of its discretion, the Trial Chamber must be satisfied that it is in the interests of justice to grant the Motion.¹⁵ The Trial Chamber may also take into consideration the complexity of the case, on-going investigations and issues related to the translation of documents

¹⁰ Motion, para. 5.

¹¹ Motion, para. 6.

¹² Mr. Stanišić's response to the Prosecution's motion for leave to amend Rule 65 *ter* exhibit list to add documents related to witness ST092, with annex" in response, 6 Oct 2009, para. 2.

¹³ Stanišić Response, p. 2.

¹⁴ *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 Dec 2007, para. 37 ("First Popović Decision"); *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution second motion to amend Rule 65 *ter* exhibit list, 11 Sep 2008 ("Lukić Decision"), para. 10.

¹⁵ First Popović Decision, para. 37.

and other materials.¹⁶ In making its determination, the Trial Chamber will carefully balance any amendment to the exhibit list with an adequate protection of the rights of the accused.¹⁷

III. DISCUSSION

8. The Stanišić Defence makes no reference to the First Document in its response. The Trial Chamber therefore infers that it does not oppose the addition of this document to the Prosecution's exhibit list. In relation to the Second Document, the Trial Chamber notes that the Stanišić Defence makes a general objection in respect to the "admissibility of all intercepts proffered by the Prosecution", arguing that they were "illegally obtained".¹⁸ The Trial Chamber will decide on issues regarding admissibility of intercepts, including issues relating to their authenticity or reliability, at a later stage once both parties have made their submissions on the matter.¹⁹ In this decision, the Trial Chamber solely considers the addition of the proposed documents onto the Prosecution's exhibit list. In this context, and without prejudice to any future motion by the Defence along the lines outlined in the Stanišić Response, the Trial Chamber considers that the Second Document displays *prima facie* relevance and probative value. The Trial Chamber considers that both the First and Second Document are of sufficient importance to allow their addition to the Prosecution's exhibit list.

9. The Prosecution did not include the proposed documents on the exhibit list which it filed on 8 June 2009 due to errors included in the Report, which it only recently discovered. Therefore, the Trial Chamber is satisfied that good cause has been shown for the request. Further, in view of the fact that Christian Nielsen is scheduled to begin his testimony at a date no sooner than 2 November 2009, the Trial Chamber considers that the time available to the Defence is adequate to review the two documents and to prepare for the cross-examination of the witness. Therefore, the Trial Chamber finds that granting the Motion will not cause unfair prejudice to the Defence.²⁰

IV. DISPOSITION

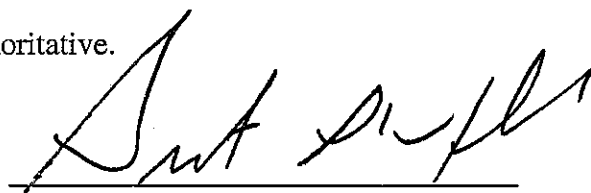
10. For the foregoing reasons, the Trial Chamber **GRANTS** the Motion.

¹⁶ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's motion for leave to amend Rule 65 *ter* witness list and Rule 65 *ter* exhibit list, confidential, 6 Dec 2006 ("Second Popović Decision"), p. 7; *Lukić Decision*, para. 10.

¹⁷ Second *Popović Decision*, para. 37.

¹⁸ Stanišić Response, p. 2.

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



Judge Burton Hall
Presiding

Dated this twentieth day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁹ *Lukić* Decision, para. 11; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's third motion for leave to amend Rule 65 *ter* exhibit list, 10 Jan 2007, p. 2; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on admissibility of intercepted communications, 7 Dec 2007, para. 76.

²⁰ Prosecution's notice regarding scheduling of expert witness Dr. Nielsen, 23 Sep 2009, para. 3.