



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: 4 December 2009
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 4 December 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING PROSECUTION'S SECOND
MOTION FOR LEAVE TO AMEND ITS RULE 65 *TER*
EXHIBIT LIST TO ADD DOCUMENTS RELATED TO
CHRISTIAN NIELSEN (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”);

BEING SEISED of the “Prosecution’s second motion for leave to amend its Rule 65 *ter* exhibit list to add documents related to witness ST-92, with annex A”, filed on 1 December 2009 (“Motion”), in which the Prosecution seeks leave to add 16 documents (“Proposed Documents”) to its exhibit list;

RECALLING the Trial Chamber’s procedural guideline that sets out that “a party seek[ing] to admit into evidence material that is not on its exhibit list [...] must, prior to requesting admission into evidence, seek the leave of the Trial Chamber by way of a written motion to add the material in question to the exhibit list”;¹

RECALLING that the Trial Chamber has the inherent discretion to grant leave to a party to amend its Rule 65 *ter* exhibit list provided that it is in interest of justice to do so;²

RECALLING that a party must show good cause for its request and that the proposed documents are *prima facie* relevant and of sufficient importance to justify their late inclusion on the exhibit list;³

RECALLING that the Trial Chamber, in determining requests for amendment of a party’s exhibit list, may take into consideration the complexity of the case, on-going investigations and issues related to the translation of documents and other materials;⁴

NOTING the Prosecution’s submission that at the time of filing the Rule 65 *ter* exhibit list, on 8 June 2009, it did not foresee that the unilateral nature of the creation of the RS MUP would be an issue at trial;⁵

NOTING that in its supplemental pre-trial brief, the Defence of Mićo Stanišić (“Stanišić Defence”) stated that “the division of the SR BiH MUP to three entities was a result of tri-party negotiations and agreement reached under the scrutiny of EU and headed by Jose Cutileiro”;⁶

¹ Revised procedural guidelines, 2 Oct 2009, para. 6.

² Decision granting Prosecution’s motion for leave to amend Rule 65 *ter* list to add documents related to witness ST092, 20 Oct 2009, 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 Dec 2007 (“First *Popović* Decision”), para. 37.

³ First *Popović* Decision, para. 37; *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.

⁴ *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, p. 7; *Lukić* Decision, para. 10.

⁵ Motion, para. 6.

NOTING that in its supplemental pre-trial brief, the Defence of Stojan Župljanin (“Župljanin Defence”) made no specific challenge regarding the formation of the RS MUP;⁷

NOTING that through the course of cross-examination of witnesses since 14 October 2009, both the Stanišić Defence and Župljanin Defence have advanced the argument that the creation of the RS MUP was not a unilateral act but rather a fruition of the Lisbon Agreement;⁸

CONSIDERING that the Proposed Documents relate to the circumstances surrounding the formation of the Republika Srpska’s Ministry of Interior (“RS MUP”) and as such, are *prima facie* relevant to the case since the Prosecution alleges that the formation of the RS MUP was a unilateral action, planned and executed by various members of the joint criminal enterprise, including both the Accused;⁹

NOTING that the 16 Proposed Documents amount to a total of 23 pages, comprising predominantly of letters and communiqués between Ambassador Cutiliero, Momčilo Krajišnik and Radovan Karadžić;¹⁰

NOTING that Christian Nielsen (ST092) is scheduled to testify from 10 December 2009 as an expert witness pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”) and that he, in the Prosecution’s submission, is competent to elucidate on the subject of the creation the RS MUP;¹¹

CONSIDERING that neither the Stanišić Defence nor the Župljanin Defence object to the addition of the Proposed Documents to the Prosecution’s exhibit list;¹²

CONSIDERING that the Prosecution has demonstrated good cause for its request and that it is in the interest of justice to grant the late inclusion of the Proposed Documents on the Prosecution’s Rule 65 *ter* exhibit list;

⁶ Supplemental pre-trial brief of the Defence of Mićo Stanišić, 31 July 2009, p. 22.

⁷ Motion, para. 8.

⁸ Motion, paras 9, 10.

⁹ Motion, paras 5-6.

¹⁰ Motion, Annex A.

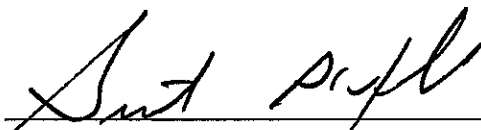
¹¹ Motion, para. 11. See also Corrigendum to confidential appendices 3 and 4 to the Prosecution’s pre-trial brief of 8 June 2009 with confidential annexes, Appendix 4, p. 42 and e-mail sent by the Prosecution containing a list of witnesses scheduled to testify from 7 to 11 December 2009, 3 Dec 2009.

¹² Hearing of 4 Dec 2009, T. 4198.

PURSUANT TO Article 20(1) and Article 21(4)(b) of the Statute and Rule 65 *ter* of the Rules;

GRANTS the Motion.

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



Judge Burton Hall
Presiding

Dated this fourth day of December 2009

At The Hague

The Netherlands

[Seal of the Tribunal]