



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: 29 June 2010  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Order of:** 29 June 2010

**PROSECUTOR**

**v.**

**MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN**

***PUBLIC***

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**ORDER REQUIRING THE PROSECUTION TO SELECT  
THE RELEVANT PORTIONS OF THE MLADIĆ  
NOTEBOOKS AND TO PROVIDE ENGLISH  
TRANSLATIONS THEREOF**

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**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 motion for leave to amend its *65ter* exhibit list with Annex A (Mladić Notebooks)”, filed on 18 May 2010 (“Motion”), whereby the Prosecution seeks to add to its Rule 65 *ter* exhibit list “eighteen recently-received military notebooks containing the handwritten wartime notes of VRS Main Staff Commander General Ratko Mladić” (“Notebooks”);<sup>1</sup>

**NOTING** the joint Defence response, objecting to the Motion, filed on 1 June 2010 (“Response”);<sup>2</sup>

**NOTING** the Prosecution submission that the Notebooks, dated between 29 June 1991 and 28 November 1996,<sup>3</sup> contain “contemporaneous notes taken by [Mladić] during the period relevant to the instant indictment”, totalling more than 3,000 pages;<sup>4</sup>

**NOTING** the Prosecution submission that the Ministry of the Interior of the Republic of Serbia recovered the Notebooks in Belgrade on 23 February 2010<sup>5</sup> and provided scanned images thereof to the Prosecution on 29 March 2010, whereupon the Prosecution began transcribing and translating them;<sup>6</sup>

**NOTING** the Prosecution submission that it is unaware of the Notebooks’ complete contents as they have yet to be fully translated,<sup>7</sup> but that certain Notebook entries, dated between 7 May 1992 and 30 October 1992, referred to in the Motion, are illustrative of their relevance;<sup>8</sup>

**NOTING** the Prosecution submissions that it expects that the Notebooks will prove to be authentic and that General Manojlo Milovanović, whom the Prosecution submits was the former Chief of Staff, Deputy Commander of the VRS Main Staff and “a close associate of General Ratko Mladić”, gave a statement to the Prosecution in which he concluded that the Notebooks were authored by Ratko Mladić during the conflict;<sup>9</sup>

**NOTING** the Prosecution submission that the addition of the Notebooks will not cause undue or unfair prejudice to the Accused because the Defence: (1) were informed of their existence

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<sup>1</sup> Motion, para. 1.

<sup>2</sup> Stanišić and Župljanin joint response to Prosecution’s motion for leave to amend its *65ter* exhibit list, with Annex A (Mladić Notebooks), 1 Jun 2010.

<sup>3</sup> Motion, fn. 1.

<sup>4</sup> *Id.*, paras 1, 3.

<sup>5</sup> *Id.*, para. 2.

<sup>6</sup> *Id.*, para. 3.

<sup>7</sup> *Id.*, para. 7.

<sup>8</sup> *Id.*, para. 8.

<sup>9</sup> *Id.*, paras 7, 9.

immediately upon seizure, (2) on 14 April 2010 were provided the scanned versions and (3) on 19 April 2010 were put on notice of the Prosecution intention to add the Notebooks to its Rule 65 *ter* list;<sup>10</sup>

**NOTING** the Defence submission that the Notebooks lack temporal or geographical relevance to the Indictment, as they deal with events occurring between 29 June 1991 to 28 November 1996 throughout the territory of the former Yugoslavia, while the Accused are only charged with crimes occurring in certain municipalities of Bosnia and Herzegovina between 1 April 1992 and 31 December 1992;<sup>11</sup>

**NOTING** the Defence submission that the Prosecution cannot satisfy the Trial Chamber of the relevance of the Notebooks since the Prosecution is, as yet, unaware of their complete contents;<sup>12</sup>

**NOTING** the Defence submission that they challenge the authenticity of the Notebooks;<sup>13</sup>

**NOTING** the Defence submissions that repeated requests to amend the exhibit list unduly prejudice the Defence and that, should the Motion be granted, the Defence would have to expend an “enormous amount of time” to challenge the Notebooks’ authenticity and contents;<sup>14</sup>

**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 the interests of justice to do so;<sup>15</sup>

**RECALLING** that a party must show good cause for its request, and satisfy the Trial Chamber that the proposed documents are *prima facie* relevant and of sufficient importance to justify their late inclusion on the exhibit list;<sup>16</sup>

**RECALLING** that the Trial Chamber may also take into account additional factors, including whether the moving party has exercised due diligence in identifying at the earliest opportunity the documents that it seeks to add to its exhibit list;<sup>17</sup>

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<sup>10</sup> *Id.*, para. 11.

<sup>11</sup> Response, paras 6-7.

<sup>12</sup> *Id.*, para. 7.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Id.*, para. 11.

<sup>15</sup> 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 (“*Popović* Decision”), para. 37.

<sup>16</sup> *Popović* Decision, para. 37; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on fourteenth Prosecution motion to amend its Rule 65 *ter* exhibit list, 16 Apr 2010, para. 15; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution’s motion to admit documents into evidence and add two documents to the Prosecution’s Rule 65 *ter* exhibit list, 25 Nov 2008, para. 9; *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, para. 10.

**CONSIDERING** that as the Notebooks were provided to the Prosecution on 29 March 2010, it has demonstrated good cause for its request;

**CONSIDERING** that the Prosecution has acted with due diligence in making its request on 18 May 2010, given the volume of the Notebooks;

**CONSIDERING**, nevertheless, that the Motion is premature since the Notebooks are untranslated;

**CONSIDERING** the Prosecution submission that it is unaware of the complete contents of the Notebooks;

**CONSIDERING** also that the Prosecution has not identified, with the required specificity, the portions of the Notebooks that it seeks to add to its exhibit list;<sup>18</sup>

**CONSIDERING** therefore that it is in the interest of the fair and expeditious conduct of the proceedings to order the Prosecution to identify and provide the translated portions of the Notebooks that are relevant to the present case and which it seeks to add to its exhibit list;

**CONSIDERING** the Prosecution submission that it does not intend to add General Manojlo Milovanović to its witness list unless the Trial Chamber orders it to do so or the Defence challenge the Notebooks' authenticity;<sup>19</sup>

**CONSIDERING** that the Defence do challenge the Notebooks' authenticity;<sup>20</sup>

**CONSIDERING** that a party seeking to amend its exhibit list would not generally be required to provide additional support for the authenticity of that which it seeks to add, but that in the particular circumstances of this case, and in order to save time, the Trial Chamber will exceptionally order the Prosecution to provide information and material supporting the *prima facie* authenticity of the portions of the Notebooks it seeks to add to its exhibit list;

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence:

**ORDERS** the Prosecution to:

- (1) Provide English translations of the portions of the Notebooks that the Prosecution submits are *prima facie* relevant and which it seeks to add to its exhibit list;

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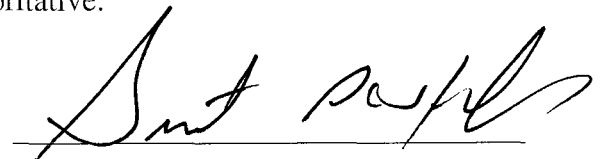
<sup>17</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-81-T, Decision on motion to amend witness and exhibit list, 16 Jan 2008, p. 6.

<sup>18</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Décision portant sur la requête de l'accusation en réouverture de sa cause, 16 Jun 2010, p. 5.

- (2) Provide information and material supporting the *prima facie* authenticity of the said portions of the Notebooks; and
- (3) Comply with (1) and (2) above by 12 July 2010 or, if unable to do so, provide a report to the Trial Chamber on that date.

**REMAINS SEISED** of the Motion.

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



Judge Burton Hall  
Presiding

Dated this twenty-ninth day of June 2010

At The Hague

The Netherlands

**[Seal of the Tribunal]**

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<sup>19</sup> Motion, para. 9.

<sup>20</sup> Response, para. 7.