



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-03-69-T
Date: 8 December 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 8 December 2010

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

**DECISION ON SEVENTEENTH PROSECUTION MOTION
FOR LEAVE TO AMEND ITS RULE 65 TER EXHIBIT LIST**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 28 July 2010, the Prosecution filed a motion seeking leave to add 27 documents (“Proposed Exhibits”) to its Rule 65 *ter* exhibit list (“Motion”).¹ On 2 August 2010, the Stanišić Defence requested an extension of time to respond to the Motion (“Request”).² The Prosecution filed its response to the Request on 6 August 2010, not objecting but requesting that, should the Chamber grant the Request, and ultimately the Motion, it take the extension into consideration in determining when the Proposed Exhibits could be used.³ The Simatović Defence did not respond to the Request.⁴ On 9 August 2010, the Chamber informed the parties via an informal communication that the Request was granted and that it expected the Stanišić Defence to file its response to the Motion no later than 30 August 2010. On 30 August 2010, the Stanišić Defence filed its confidential response requesting the Chamber to deny the Motion (“Response”).⁵ The Simatović Defence did not respond to the Motion.

II. SUBMISSIONS OF THE PARTIES

A. Prosecution

2. The Prosecution submits that the Proposed Exhibits are documents selected from the Serbian State Security Service (“Serbian DB”) and Serbian Ministry for the Interior (“Serbian MUP”) personnel files, which it received from the Republic of Serbia (“Serbia”) pursuant to a number of formal requests for assistance.⁶ The Prosecution asserts that the Proposed Exhibits relate to four individuals who allegedly were key members of the special units of the Serbian DB.⁷ The Prosecution submits that the Proposed Exhibits are highly relevant to the Prosecution case since they demonstrate the existence and organisation of these units.⁸ The Prosecution also submits that

¹ Seventeenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annexes A & B (Personnel Files), 28 July 2010 (Confidential with Confidential Annexes).

² Defence Request for Extension of Time to Respond to the Prosecution’s 17th Motion to Amend its Rule 65 *ter* Exhibit List and the Response to the Prosecution’s Motion for Leave to Amend Its Rule 65 *ter* Exhibit List and Witness List, 2 August 2010 (Confidential). The Stanišić Defence initially applied for the extension of time in an informal communication of 30 July 2010. On the same day, through an informal communication, the Chamber requested the Stanišić Defence to formally file the request and instructed the other parties to file a response to the request, if any, within four days of its filing.

³ Prosecution Response and Leave to Reply to ‘Defence Request for Extension of Time to Respond to the Prosecution’s 17th Motion to Amend its Rule 65 *ter* Exhibit List and the Response to the Prosecution’s Motion for Leave to Amend its Rule 65 *ter* Exhibit List and Witness List’, 6 August 2010 (Confidential).

⁴ On 6 August 2010, the Simatović Defence informed the Chamber through an informal communication that it would not file a response to the Request.

⁵ Stanišić Defence Response to Seventeenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 30 August 2010 (Confidential).

⁶ Motion, para. 1.

⁷ Motion, paras 1, 4, 6.

⁸ Motion, para. 4.

the Proposed Exhibits show the relationship of these individuals to the units and to the Serbian DB over time.⁹ It further argues that the evidentiary value of the Proposed Exhibits is increased by the way in which they corroborate each other and other evidence in the case.¹⁰

3. The Prosecution submits that the Defence will not be prejudiced by adding the Proposed Exhibits to the Prosecution's Rule 65 *ter* exhibit list at this stage of the proceedings.¹¹ It argues that there is still adequate time for the Defence to prepare to meet the evidence contained in the Proposed Exhibits.¹² The Prosecution further suggests that, should the Motion be granted, it may be appropriate for the Chamber to set a certain time period during which the Proposed Exhibits may not be tendered into evidence.¹³

B. Stanišić Defence

4. The Stanišić Defence opposes the Motion firstly on the basis of its timing.¹⁴ The Stanišić Defence submits that the Prosecution is required to file its exhibit list no less than six weeks before the Pre-Trial Conference so that the Defence be allowed sufficient time to prepare "with full knowledge of the case".¹⁵ It argues that the Prosecution's suggestion that the Chamber set a time period during which the Proposed Exhibits may not be tendered into evidence therefore only deals with one aspect of the late request for addition.¹⁶ The Defence also submits that the addition of the Proposed Exhibits to the Prosecution's Rule 65 *ter* exhibit list will require the Defence to recall witnesses who have already given evidence relevant to the Proposed Exhibits.¹⁷ The Defence further asserts that it is unacceptable for the Prosecution to continuously add evidence in the course of the trial depending upon how the case is unfolding.¹⁸

5. The Stanišić Defence submits that the Prosecution fails to explain why it only seeks addition of a selection of documents from the four personnel files, how the selection was made, and why this could not have occurred at an earlier stage.¹⁹ The Stanišić Defence asserts that absent such explanations, the Motion has "the hallmarks of an attempt to mould the factual basis of the case".²⁰

⁹ Ibid.

¹⁰ Motion, para. 5.

¹¹ Motion, para. 7.

¹² Ibid.

¹³ Ibid.

¹⁴ Response, paras 6-8.

¹⁵ Response, para. 6.

¹⁶ Ibid.

¹⁷ Response, para. 7.

¹⁸ Response, para. 8. The Stanišić Defence refers to its arguments outlined in its "Stanišić Defence Response to Sixteenth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List", 27 August 2010 (Confidential).

¹⁹ Response, para. 11.

²⁰ Response, paras 10-11.

6. The Stanišić Defence also submits that the Prosecution's explanation as to the relevance to the Indictment of the Proposed Exhibits in general, and five in particular, is inadequate.²¹ It asserts that documents purporting the relationship between the four individuals concerned and the Serbian DB are not necessarily relevant to the case, especially if relating to a time period after 1995, and more generally, that mere activity by the Serbian DB does not necessarily imply proof of crimes alleged in the Indictment.²² The Stanišić Defence further calls into question the authenticity of many of the Proposed Exhibits, arguing that they lack official stamps, signatures, dates, or names of the producing personnel.²³

III. APPLICABLE LAW

7. The Chamber recalls the applicable law governing amendments to the Rule 65 *ter* exhibit list as it has previously set out.²⁴

IV. DISCUSSION

8. The Proposed Exhibits are alleged to have been selected from the Serbian DB and Serbian MUP personnel files of four named individuals. It is the Prosecution's position that these persons were key members of the Serbian DB. The Chamber will first address the five Proposed Exhibits to which the Stanišić Defence objects in particular and subsequently deal with the remaining Proposed Exhibits.

9. The Stanišić Defence objects in particular to addition to the Prosecution's Rule 65 *ter* exhibit list of a report of the Secretariat of Interior of 1995 concerning one of the individuals concerned and to four official notes from 1999 relating to one of the others.²⁵ The Chamber notes that documents that carry a date falling outside the temporal scope of the Indictment do not necessarily lack relevance. The Chamber considers the documents concerned *prima facie* relevant and of probative value, in particular since they refer to contacts or relationships of the individuals concerned with the Accused.

²¹ Response, paras 12-13.

²² Response, paras 12-14.

²³ Response, paras 15, 17. Finally, with regard to one document, the Stanišić Defence submits that addition to the Rule 65 *ter* exhibit list should be denied for lack of an English translation, see Response, para. 9. On 3 September 2010, the Stanišić Defence informed the Chamber that it no longer sought to rely on this submission as it had received the translation of the document concerned. The Chamber therefore considers this submission to have become moot.

²⁴ See Decision on Sixteenth Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 7 October 2010, paras 10-12.

²⁵ Motion, Annex A, pp. 8, 13-14. It concerns the documents with ERN numbers 0637-6876-0637-6876-ET, 0609-0209-0609-0211-ET, 0609-0205-0609-0205-ET, 0609-0198-0609-0199-ET, 0609-0236-0609-0238-ET.

10. The remaining Proposed Exhibits include biographical notes, appointment decisions, vetting reports, employment evaluation forms, and equipment assignment lists. The activities of the special units of the DB are a constant theme in them. The majority of the Proposed Exhibits furthermore carry a (type-)signature and/or a stamp, including twice the signature of one Jovica Stanišić, which appear to be indicia of authenticity. Considering the above, the Chamber is satisfied that the Proposed Exhibits are *prima facie* relevant and of probative value.

11. The Chamber notes that for three of the individuals concerned the Prosecution only seeks addition to the Rule 65 *ter* exhibit list of parts of their personnel files. The Chamber however does not accept the Stanišić's Defence's reasoning that, without further explanation, this suggests moulding the factual basis of the case by the Prosecution. While the Prosecution is under an obligation pursuant to Rule 68 of the Rules of Procedure and Evidence ("Rules) to disclose exculpatory and certain other relevant materials, the Prosecution is under no obligation to explain why it does not seek addition of certain documents. Moreover, the Chamber recalls that the Defence has the possibility to tender its own documents at any stage of proceedings.

12. The Stanišić Defence submits that by continuously seeking to add documents to the Prosecution's Rule 65 *ter* exhibit list the Prosecution is attempting to mould the case against the Accused in the course of the trial. The Chamber is not convinced by this argument. An accused may only be found guilty of the charges as per the indictment against him.²⁶ Evidence to prove these charges and the factual basis of the case against the Accused may be added to the Prosecution's Rule 65 *ter* exhibit list during the course of proceedings if the required conditions are met. The existence of a connection between the Serbian DB and the Accused, and the Serbian DB's activities in the field has been the Prosecution's position from the beginning of the case. The Proposed Exhibits are presented as additional evidence to prove this connection, which in the view of the Chamber is neither new nor amounts to moulding of the case.

13. The Prosecution has not provided an explanation as to why it only seeks to add the Proposed Exhibits to its Rule 65 *ter* exhibit list at this stage of the trial. The Motion does not specify when the Prosecution received the respective Proposed Exhibits. However, according to the Motion the Proposed Exhibits related to one of the individuals were disclosed to the Defence on 28 October 2009, those related to two of the other individuals on 29 April 2010, and those related to the last individual concerned on 4 June 2010, which means that the Prosecution has had the Proposed Exhibits in its possession before, or at the latest on, these dates.²⁷ The Chamber finds that the

²⁶ See, for example, Decision on Defence Motion to Reject Prosecution's Final Pre-Trial Brief of 2 April 2007, 17 July 2007, para. 18.

²⁷ Motion, footnotes 4-7.

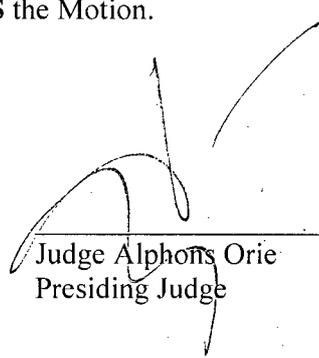
Prosecution, having been in possession of the Proposed Exhibits for at least several months before filing the Motion, falls short of properly establishing good cause in seeking to add the relevant documents to its Rule 65 *ter* exhibit list at this stage of the trial. In spite of this, the Chamber does not find that the addition of the Proposed Exhibits creates an undue additional burden on the Defence. The Proposed Exhibits are limited in volume, comprising 27 documents of between one and three pages each, and do not appear to be of a complex nature. Furthermore, sufficient time has been available to the Defence since the disclosure and the filing of the Motion to examine them.

14. Balancing all of the foregoing, the Trial Chamber is satisfied that it is in the interests of justice to grant the Prosecution leave to add the Proposed Exhibits to its Rule 65 *ter* exhibit list without further restrictions on their use in court.

V. DISPOSITION

15. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4)(b) of the Statute and Rules 54 and 65 *ter* (E)(iii) of the Rules, the Chamber **GRANTS** the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this eighth of December 2010
At The Hague
The Netherlands