



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: 25 February 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 25 February 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON PROSECUTION'S FURTHER
SUBMISSION ON THE SUBSTITUTION OF
WITNESSES ST188 AND ST194**

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 further submission on the substitution of witnesses ST-188 and ST-194”, filed on 11 December 2009 (“Further Submission”), wherein the Prosecution, in accordance with the Trial Chamber’s decision on 4 December 2009 (“Decision”),¹ gives reasons for the late filing of its motion of 13 October 2009 to substitute ST214 and ST215 for ST194 and ST188, respectively (“Motion”);²

NOTING that neither the Defence of Mićo Stanišić nor the Defence of Stojan Župljanin (collectively, “Defence”) sought leave to respond to the Further Submission;

RECALLING the Trial Chamber’s finding in the Decision that the Prosecution did not provide “any explanation as to why it is only now seeking leave to include these witnesses on its witness list and, in particular, as to why this selection was not made at the time of submission” of the Prosecution’s revised witness list filed on 10 September 2009;³

RECALLING that the Trial Chamber, therefore, denied the Motion insofar as it sought the substitution of ST214 and ST215 for ST194 and ST188, respectively, “without prejudice to the Prosecution filing its further submission, within one month of the filing of this Decision, setting out the reasons why it is seeking the substitution of these witnesses at this time”;⁴

NOTING that, in explaining the late timing of its request to substitute ST214 for ST194, the Prosecution states:

- that the Prosecution learned during an interview on 18 March 2009 that ST194 “was on disability leave during much of the summer of 1992, and as a result, could provide only very limited information regarding relevant events in the municipality of Vogošća during that period”, and that the Prosecution therefore “decided to locate and interview another witness from” that municipality;⁵

¹ Decision granting in part prosecution’s motion for leave to amend its 65 *ter* list of witnesses”, filed confidentially on 4 Dec 2009 (“Decision”), p. 10.

² Further Submission, para. 3; Prosecution’s motion for leave to amend its 65*ter* lists of witnesses, filed on 13 Oct 2009.

³ Decision, para. 25; Prosecution’s reduced list of witnesses, 10 Sep 2009.

⁴ Decision, p. 10.

⁵ Further Submission, para. 4.

- that “after careful consideration of the options, the Prosecution submitted a Request for Assistance to the [Republika Srpska] to locate” ST214 and that the Republika Srpska authorities provided the current address of ST214 on 1 May 2009;⁶
- that “given the impending 8 June 2009 deadline for the Prosecution’s Pre-Trial Brief, the Prosecution could not commit resources to conducting the interview of [ST214] until 14 July 2009”;
- that “[f]ollowing the interview [of ST214] the audio recording needed to be transcribed into English to allow the Prosecution to fully evaluate the evidence provided by this witness” but “[g]iven the poor quality of the transcript the Prosecution was unable to complete its assessment of this witness until mid-September 2009”;⁷
- that “the audiotape and transcript of the interview were disclosed to the Defence prior to 31 July 2009”;⁸
- that it met both ST213 and ST214 “during the course of the summer and in both cases, that the Prosecution endeavoured to promptly determine whether to seek leave to add them to the witness list”, and that ST214 therefore “falls in the same category of witness as [ST213] who’s [*sic*] addition to the Rule 65ter list was granted” in the Decision;⁹

NOTING that, in explaining the late timing of its request to substitute ST215 for ST188, the Prosecution states:

- that the Prosecution interviewed ST215 in 2003 for the investigation of a separate case and that the “existence of this statement came to the knowledge of the Prosecution team dealing with the present case only at during [*sic*] the course of this summer”;¹⁰
- that after evaluating “the quality of the evidence provided by other linkage witnesses for the municipality of Zvornik, the Prosecution reached the conclusion that ST-215 was better suited in demonstrating the knowledge of the Accused STANIŠIĆ of crimes committed in this municipality”;¹¹ and

⁶ Further Submission, para. 4.

⁷ Further Submission, para. 4.

⁸ Further Submission, para. 4.

⁹ Further Submission, para. 5, stating also that the “Prosecution appreciates that this information was not highlighted in the 13 October Motion”.

¹⁰ Further Submission, para. 6.

¹¹ Further Submission, para. 6.

- that “the Prosecution was unable to locate the witness to confirm whether he was alive and capable of testifying in this case” and therefore “submitted a Request for Assistance in July to the country in which the Prosecution believed the witness currently resides” to which the Prosecution received a response “only on the 30th of September 2009”;¹²

NOTING that the Prosecution also states that “timing considerations prevented the Prosecution from making these witness substitutions at the time of the reviewed witness list”, referring to the Trial Chamber’s order at the pre-trial conference on 4 September 2009 that the Prosecution file its revised witness list, having reduced the number of witnesses from 161 to 131, by noon on 10 September 2009;¹³

RECALLING the Prosecution’s submission that it requests the substitutions in order to increase the Trial Chamber’s understanding of relevant issues and to “contribute to the ascertainment of the truth”;¹⁴

CONSIDERING that in its evaluation of a request to amend a Rule 65 *ter* witness list, the Trial Chamber may consider such factors as the *prima facie* relevance of the evidence provided by the new witnesses with respect to the crimes alleged in the indictment, the stage of the proceedings, whether the Prosecution has shown good cause as to why it requests a variation of the witness list, and whether the Defence has adequate time to prepare the cross-examination of the proposed new Prosecution witnesses and reasons of judicial economy;¹⁵

CONSIDERING that it is in principle for each party to decide which witnesses to call to prove its case subject to determinations to be made by the Trial Chamber in the interest of the fair and expeditious conduct of trial proceedings;

CONSIDERING that the evidence that ST214 and ST215 are expected to provide is *prima facie* relevant;

CONSIDERING that although the Prosecution met ST214 and ST213 “during the course of the summer”, they are not “in the same category” because, as submitted in the Motion, ST213 “was found only by chance and then interviewed by the OTP in August 2009”;¹⁶ whereas the Prosecution

¹² Further Submission, para. 6.

¹³ Further Submission, para. 6.

¹⁴ Motion, p. 2.

¹⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, No. IT-03-69-PT, Decision on Prosecution motion to amend Rule 65 *ter* witness list, 27 Feb 2008 (“Stanišić and Simatović Decision”), p. 5.

¹⁶ Motion, para. 13.

became aware of and located ST214 significantly earlier when, on 1 May 2009, the Republika Srpska authorities responded to the Prosecution's request for assistance;¹⁷

CONSIDERING that the Prosecution knew since 18 March 2009 that the expected evidence of ST194, whom the Prosecution intended would be the only "linkage" witness for the municipality of Vogošća, would be problematic and that it therefore could have "commit[ed] resources to" interview ST214,¹⁸ a witness from the same municipality, with priority instead of more than two months after it knew that ST194's expected evidence would be problematic;¹⁹

CONSIDERING that the Prosecution's delays in addressing the poor quality of the interview transcript and in completing its assessment of ST214's statement were unreasonably lengthy given the purported importance of ST214's expected testimony to the Prosecution's case;

CONSIDERING, nevertheless, that the Prosecution disclosed to the Defence the audiotape and the transcript of the interview with ST214 before 31 July 2009, that the expected testimony of ST214 substantially corresponds to the expected testimony of ST194²⁰ of which the Defence has had sufficient notice, and that the Prosecution would call ST214 "towards the latter part of the presentation of its case";

CONSIDERING, therefore, that the Defence will not suffer undue prejudice if ST214 were to substitute ST194;

CONSIDERING that the Prosecution's recent awareness of ST215's 2003 statement does not itself justify the late filing of the Motion;

CONSIDERING that the Prosecution apparently "evaluated the quality of the evidence provided by other linkage witnesses for the municipality of Zvornik" after having filed its Rule 65 *ter* witness list;²¹

CONSIDERING, nevertheless, that, as the response to the Prosecution's request for assistance was only received on 30 September 2009, the Prosecution acted with due diligence when, on 13 October 2009, it requested substitution of ST215 for ST188;

¹⁷ Further Submission, para. 4.

¹⁸ Further Submission, para. 4.

¹⁹ Prosecution's pre-trial brief, 8 Jun 2009, Appendix 3, p. 18.

²⁰ Motion, para. 15, where the Prosecution states that ST214 "is expected to provide linkage evidence about the same crime base events in Vogošća as those [ST194] was expected to deal with".

²¹ Further Submission, para. 6.

CONSIDERING that the expected testimony of ST215 substantially corresponds to the expected testimony of ST188 of which the Defence has been on notice since 8 June 2009;

CONSIDERING, therefore, that the Defence will not suffer undue prejudice if ST215 were to substitute ST188;

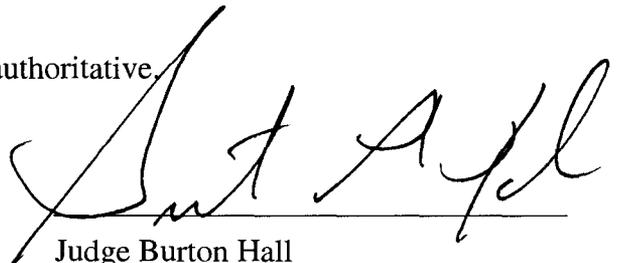
PURSUANT TO Rule 65 *ter* of the Rules;

GRANTS the Motion insofar as it seeks the substitution of ST214 and ST215 for ST194 and ST188, respectively;

ORDERS that the Prosecution shall call ST214 towards the end of its case-in-chief; and

GRANTS the Prosecution, within the time allotted to the Prosecution for the presentation of its case, four hours of examination-in-chief for each of these witnesses.

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



Judge Burton Hall
Presiding

Dated this twenty-fifth day of February 2010

At The Hague

The Netherlands

[Seal of the Tribunal]