



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: 16 September 2009

Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 16 September 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ & STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON DEFENCE MOTION FOR
CERTIFICATION OF THE DECISION ON JOINT
DEFENCE MOTION REQUESTING PRECLUSION OF
PROSECUTION'S NEW WITNESSES AND EXHIBITS**

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 “Motion for certification of the decision on joint Defence motion requesting preclusion of Prosecution’s new witnesses and exhibits”, filed on 1 September 2009 (“Motion”) by the Defence of Mićo Stanišić and the Defence of Stojan Župljanin (together “Defence”);

NOTING the Prosecution response, filed on 10 September 2009;¹

RECALLING that on 8 May 2009, the pre-trial Judge directed the Prosecution to file materials in the consolidated case pursuant to Rule 65 *ter*(E) by 8 June 2009 and that on 8 June 2009, the Prosecution filed pursuant to Rule 65 *ter*(E)(i) and (iii) a consolidated pre-trial brief with confidential annexes, including a consolidated list of witnesses and exhibits;²

RECALLING that on 22 June 2009 the Defence filed a motion to preclude what it considered to be new witnesses and new exhibits which the Prosecution had included in its Rule 65 *ter* submission on 8 June 2009 (“Motion to preclude”);³

RECALLING that at the Rule 65 *ter* conference on 8 July 2009, the pre-trial Judge ordered the Prosecution to ensure full compliance with its disclosure obligations under Rule 66(A)(ii) by 31 July 2009 and that on 3 August 2009, the Prosecution notified the Trial Chamber that it has “substantially complied with this order”;⁴

RECALLING that at the Rule 65 *ter* conference held on 24 August 2009, it transpired that the Prosecution had continued to disclose Rule 66(A)(ii) material after 31 July 2009, meaning that the Prosecution had not complied with the oral order of 8 July 2009;⁵

RECALLING that on 31 August 2009 the Trial Chamber ordered the Prosecution to make written submissions on the Prosecution’s failure to meet the deadline of 31 July 2009 and the impact of an order to remove the documents disclosed after 31 July 2009 from the Prosecution’s Rule 65 *ter*

¹ Prosecution’s response to motion for certification of the decision on joint Defence motion requesting preclusion of Prosecution’s new witnesses and exhibits, 10 September 2009.

² Scheduling order for submission of pre-trial briefs and other material pursuant to Rule 65 *ter*, filed on 8 May 2009; Prosecution’s pre-trial brief and appendices, 8 June 2009.

³ Joint motion by Defence of Mićo Stanišić and Stojan Župljanin requesting the Trial Chamber to preclude Prosecution’s new witnesses and new exhibits, 22 June 2009.

⁴ Rule 65 *ter* conference, 8 July 2009, T. 256; Prosecution’s notification of compliance with the Trial Chamber’s 8 July 2009 order regarding Rule 66(A)(ii) disclosure, 3 August 2009, para. 1.

⁵ Rule 65 *ter* conference, 24 August 2009, T. 297.

exhibit list, by noon on Wednesday 2 September 2009 and remained seized of the Motion to preclude;⁶

RECALLING that on 2 September 2009 the Prosecution responded to the Trial Chamber;⁷

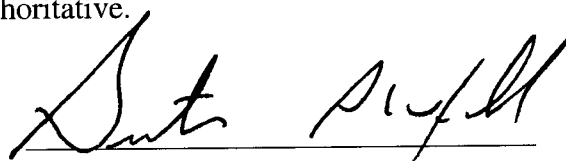
NOTING that during the pre-trial conference held on 4 September 2009 the Trial Chamber ordered the Prosecution to make submissions by Monday 14 September 2009 on the impact on the Prosecution's presentation of evidence of a proposed sanction whereby, in order to remedy any possible prejudice to the Defence caused by late disclosure, the Prosecution would be prevented from calling any witness in relation to whom it has failed to meet its disclosure obligations until the expiry of a two months delay;⁸

CONSIDERING therefore that the Motion for certification is premature as the Trial Chamber remains seized of the Motion to preclude;

PURSUANT TO Rule 54 and Rule 73(B) of the Rules of Procedure and Evidence;

DISMISSES the Motion for certification without prejudice.

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



Judge Burton Hall
Presiding

Dated this sixteenth day of September 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ Decision on joint Defence motion requesting preclusion of Prosecution's new witnesses and exhibits, 31 August 2009.

⁷ Prosecution's Response to the decision on joint Defence motion requesting preclusion of Prosecution's new witnesses and exhibits, 2 September 2009.

⁸ Pre-trial conference, 4 September 2009, T. 132-135.