



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: 1 April 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 1 April 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART PROSECUTION'S
CONSOLIDATED MOTION CONCERNING ST139**

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 consolidated motion with regard to witness ST-139, with confidential annexes”, filed confidentially on 12 March 2010 (“Motion”), whereby the Prosecution:

- provides “notice of the identity of ST-139 who has thus far been subject to delayed disclosure”;
- provides “a summary of the facts on which ST-139 will testify”,
- requests that the Trial Chamber admit the evidence of ST139 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”);
- seeks “leave to examine ST-139 for three hours”; and
- seeks “leave to amend the Prosecution’s Rule 65 *ter* exhibit list to add nine documents that are inseparable and indispensable parts of ST-139’s Rule 92*ter* statement”;
- seeks “to rescind the protective measure of testimony through video link granted to ST-139 in previous proceedings before this Tribunal”;¹

NOTING the “Stanišić and Župljanin joint response to Prosecution’s consolidated motion with regard to witness ST-139, with confidential annexes”, filed confidentially on 26 March 2010 (“Response”), wherein the Defence of Mićo Stanišić and the Defence of Stojan Župljanin (collectively “Defence”) state that they only object to the Motion insofar as the Prosecution seeks to amend its Rule 65 *ter* exhibit list;²

NOTING the Prosecution’s submissions that ST139 is scheduled to testify on 12 April 2010, that through the Motion the Prosecution “provides notice to the Defence of the identity of this witness” and that “[c]ontemporaneously with the filing of this Motion, the Prosecution is providing the Defence with its Rule 66 and 68 disclosure for this witness”;³

NOTING the Prosecution’s submissions that given the “breadth of [ST139’s] evidence and the fact that he has previously testified twice before this Tribunal, the Prosecution seeks leave to admit his evidence pursuant to Rule 92 *ter* as a time-saving measure”;⁴

¹ Motion, para. 1.

² Response, para. 2.

³ Motion, para. 3.

⁴ Motion, para. 5.

NOTING the Prosecution's submissions that ST139's "proposed Rule 92ter statement meets the requirements for admissibility" under Rule 92 ter of the Rules⁵ and that "none of the evidence contained in ST-139's proposed Rule 92ter statement goes to proof of the acts or conduct of the Accused",⁶

NOTING the Prosecution's submissions that the Prosecution includes within the Rule 92ter statement ST139's "testimony in the *Krajišnik* case in its entirety, as well as portions of his testimony in the *Brđanin* case that either supplement or clarify his *Krajišnik* testimony",⁷ and that it also "seeks admission of 71 associated exhibits that are inseparable and indispensable parts of this witness's prior testimony";⁸

NOTING the Prosecution's submission that if the Trial Chamber allows the Prosecution to call ST139 pursuant to Rule 92 ter it requests three hours for its examination-in-chief, stating that the witness will:

- 1) clarify "some of the points raised in [his] prior testimony",
- 2) "address a number of new issues that have arisen during the Defence's cross-examination of several witnesses in this case", in particular by testifying regarding "specific crimes charged in the Indictment" and by providing a more detailed analysis of the crimes recorded in Military Court and Military Prosecutor logbooks from 1992, including those investigated and reported by the civilian police"; and
- 3) "clarify matters concerning the jurisdiction of the military police vis-à-vis the civilian police in 1992, as well as the cooperation and interaction between the two law enforcement organs";⁹

NOTING the Prosecution's submission that three hours is the same estimate that it proposed to examine ST139 *viva voce* but that "upon further evaluation the Prosecution believes that its original estimate was grossly inadequate given the extent and probative value of this witness's evidence";¹⁰

NOTING the Prosecution's submissions that six of the nine documents that it seeks to add to its Rule 65 ter exhibit list were on the Prosecution's exhibit list that it filed in *Prosecutor v. Mićo Stanišić* (Case No. IT-04-79-PT) "but were removed in response to the Pre-Trial Chamber's orders

⁵ Motion, para. 7. Neither annex filed with the Motion includes any separate "statement" of ST139. The Trial Chamber therefore assumes that the Prosecution refers to ST139's prior testimony when referring to a "statement".

⁶ *Ibid.*

⁷ *Id.*, para. 5.

⁸ Motion, para. 10, where the Prosecution notes that seven of these documents have already been admitted into evidence through other witnesses.

⁹ Motion, para. 8.

for the Prosecution to streamline its case” and that the remaining three documents “were not on the Prosecution’s prior exhibit list but were available to the Defence through the Electronic Disclosure System (“EDS”);¹¹

NOTING the Prosecution’s submission that all nine documents are “relevant to the case and inseparable and indispensable parts of ST-139’s Rule 92*ter* statement”;¹²

NOTING the Prosecution’s submission that “any prejudice to the Defence resulting from the addition of these documents to the Prosecution’s exhibit list at this stage in the proceedings would be minimal, especially in light of the fact that ST-139 was until now a delayed disclosure witness”;¹³

NOTING the Prosecution’s submission that ST139 informed the Prosecution that he “does not consider it necessary for him to testify through video link in this case”;¹⁴

NOTING the Defence’s submission that the Prosecution “has not shown good cause for its current request to add the nine documents”;¹⁵

NOTING the Defence’s submissions that “[r]epeated amendments to the rule 65*ter* list cause undue prejudice to the Defence, both due to the time and resources taken in responding to them, and in the additional time and resources for reconsideration, modification and preparation of the Defence case” and that the Prosecution “is presumed to know its case long before filing its Pre-Trial Brief and accordingly, it should not be allowed to expand and modify its case as the trial progresses”;¹⁶

NOTING the Defence submission in relation to the three documents that were never on the Prosecution’s exhibit list that “the Prosecution does not even try to assert that it has acted with due diligence” and that “the practice of placing unidentified documents on the EDS without further notification is plainly no substitute for listing these documents in its rule 65*ter* exhibit list”;¹⁷

CONSIDERING that ST139 has testified previously before the Tribunal, that he will be present in court to attest to the accuracy of his prior testimony and for cross-examination by the Defence, and that it is, therefore, appropriate to allow the Prosecution to call this witness pursuant to Rule 92 *ter*;

¹⁰ Motion, para. 9.

¹¹ Motion, para. 12.

¹² Motion, para. 13.

¹³ Motion, para. 13.

¹⁴ Motion, para. 15.

¹⁵ Response, para. 4.

¹⁶ Response, para. 4. See also *id.*, para. 7, where the Defence “remind[s] the Trial Chamber that the Prosecution has now sought to amend its rule 65*ter* exhibit list at least 13 times in the six months that this case has been in trial”.

¹⁷ Response, para. 6.

CONSIDERING that the Prosecution's argument that it placed three of the nine documents that were not on its Rule 65 *ter* exhibit list on the EDS is without merit to whether the Defence would suffer undue prejudice as a result of the late inclusion of the documents on the Prosecution's exhibit list;

CONSIDERING that ST139 discusses proposed Rule 65 *ter* no. 10292 briefly in giving evidence during the *Krajišnik* trial but that the document is not necessary in order to fully understand or appreciate this evidence;¹⁸

CONSIDERING that ST139 does not discuss the remaining eight documents extensively while giving evidence in either the *Krajišnik* or *Brđanin* trials and that the documents are, therefore, not to be considered inseparable and indispensable from his testimony;¹⁹

CONSIDERING that the Prosecution has not shown good cause for its request to include the nine documents on its Rule 65 *ter* exhibit list;

CONSIDERING that the Rule 92 *ter* package of ST139 – except the nine documents and the seven documents which are already in evidence – shall be admitted into evidence once the formal requirements of Rule 92 *ter* are met;

CONSIDERING that it is appropriate, in view of the topics which the Prosecution has stated that it will cover with ST139, to extend the 20 minutes ordinarily allowed pursuant to the Trial Chamber's guidelines for the examination-in-chief of witnesses called pursuant to Rule 92 *ter* by 1 hour and 40 minutes, that is to a total of two hours for the Prosecution's examination-in-chief of ST139;

CONSIDERING that it is appropriate, in light of ST139's consent, to rescind the protective measure of video-conference link, granted by the *Krajišnik* Trial Chamber;

PURSUANT TO Rules 54, 65 *ter*, 75, 81 *bis* and 92 *ter*;

GRANTS the Motion **IN PART**;

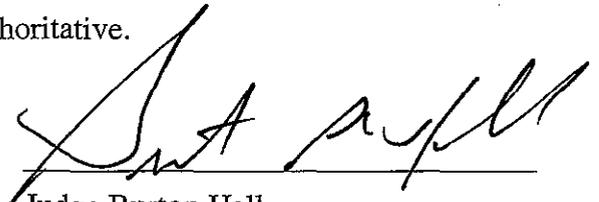
ALLOWS the Prosecution to call ST139 pursuant to Rule 92 *ter* and to present examination-in-chief within a total of two hours;

¹⁸ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Hearing, 17 Jun 2004, T. 3903-3905.

¹⁹ Decision on Prosecution's motions for admission of evidence pursuant to Rule 92 *ter* (ST012 and ST019), para. 18 with further references.

ORDERS that the Rule 92 *ter* package of ST139 – except the nine documents which are not on the Prosecution’s Rule 65 *ter* exhibit list and the seven documents which are already in evidence – shall be admitted into evidence once the witness has complied with the requirements of Rule 92 *ter*; and **RESCINDS** the protective measures of hearing the evidence of ST139 via video-conference link.

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



Judge Burton Hall
Presiding

Dated this the first day of April 2010
At The Hague
The Netherlands

[Seal of the Tribunal]