



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: 19 July 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 19 July 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART MIĆO STANIŠIĆ'S
MOTION FOR LEAVE TO AMEND HIS RULE 65ter
EXHIBIT LIST**

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. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. 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”) is seised of “Mr. Stanišić’s motion for leave to amend his Rule 65ter exhibit list”, filed on 3 June 2011 (“Motion”), whereby the Stanišić Defence seeks to add 21 documents to its Rule 65 *ter* exhibit list.¹

2. On 16 June 2011, the Prosecution responded objecting to the addition of 12 of the proposed documents (“Response”).² On 20 June 2011, the Defence, pursuant to Rule 126 *bis*, requested leave to reply and replied (“Reply”), “to make certain corrections to its Motion and to address issues raised in the Response”.³

II. SUBMISSIONS

A. General submissions

3. The Stanišić Defence submits that the addition of the proposed 21 documents to its exhibit list “will not cause prejudice to the Parties and they will assist the Trial Chamber by permitting the presentation of material that is relevant to, and probative to, live issues between the Parties.”⁴

4. The Prosecution “objects to the addition of proposed Rule 65ter exhibits 900D1 through 911D1 as Stanišić has failed to establish their relevance and probative value to this case, or good cause for failing to include them on his original exhibit list.”⁵

B. Specific submissions on proposed documents

1. Proposed Rule 65 *ter* 899D1

5. The Stanišić Defence seeks the addition of 899D1 on the basis of its connection with 1D530,⁶ a document shown to a witness and marked for identification. It submits that, on 20 April 2011, the Prosecution objected to the admission of document 1D530 on the basis that it “was the cover page of a document and the remainder of the document [...] was not included.”⁷ On

¹ Motion, para. 1.

² Prosecution’s response to Stanišić’s motion for leave to amend his Rule 65 *ter* exhibit list (“Response”), 16 Jun 2011, para. 1.

³ Request for leave to reply and reply to Prosecution’s response to Stanišić’s motion for leave to amend his Rule 65ter exhibit list (“Reply”), 10 Jun 2011, para. 2.

⁴ Motion, para. 1.

⁵ Response, para. 1.

⁶ Motion, para. 4.

⁷ *Ibid.*

the same date, the Prosecution disclosed to the Defence document 899D1, being “a Decision signed for Mr. Stanišić, which is the actual attachment to 1D530 mfi.”⁸

6. The Prosecution responds that it does not object to the addition of 899D1. However, it argues that “1D530 is dated 15 December 1992, while exhibit 899D1 is dated 21 December 1992, and therefore, the former could not possibly have been the cover letter to the latter.”⁹

7. The Stanišić Defence accepts that assertion but states that “all three documents are part of a disciplinary file against Veljko Šolaja and all three documents make reference to CSB Doboje decision on disciplinary measures No. 673/1 dated 25 November 1992.”¹⁰

2. Proposed Rule 65 ter 900D1 - 901D1

8. The Stanišić Defence seeks the addition of 900D1 and 901D1, “two RSMUP Administration for Crime Prevention payroll documents where witness MS-008 is mentioned”, which were disclosed by the Prosecution on 5 May 2011.¹¹ The Defence submits that they are relevant and probative to the position that MS-008 held during the indictment period.¹²

9. The Prosecution responds that, on 6 June 2011, the Stanišić Defence attempted to tender these documents into evidence and that the Trial Chamber declined to admit them, “finding that they were unnecessary and added nothing to the testimony of Witness MS-008.”¹³ The Prosecution argues that “[a]s Stanišić has not requested the Chamber to reconsider its oral ruling, the Prosecution opposes the addition of these exhibits to his Rule 65ter exhibit list.”¹⁴

3. Proposed Rule 65 ter 902D1 – 911D1

10. The Stanišić Defence seeks the addition of 902D1 to 911D1, all of which are said to relate to criminal or disciplinary proceedings,¹⁵ and submits that while “the Prosecution claimed that the documents [...] were disclosed on 1 April 2010 [...] neither of the Defence teams could locate that disclosure.”¹⁶ The Prosecution responds that it “disclosed these documents to the Stanišić Defence on 5 March 2010” and that “[w]hen the Stanišić Defence subsequently informed the Prosecution

⁸ *Ibid.*

⁹ Response, para. 2.

¹⁰ Reply, para. 3.

¹¹ Motion, para. 11.

¹² *Ibid.*

¹³ Response, para. 11; Milomir Orašanin, 6 June 2011, T. 21865-21868.

¹⁴ Response, para. 11.

¹⁵ Documents 902D1 and 903D1 contain information regarding criminal cases initiated for alleged crimes against Bosnian Muslims and Bosnian Croats; documents 904D1 to 910D1 are court judgements for alleged crimes committed during 1992 against non-Serbs; and document 911D1 is a disciplinary file of proceedings against a MUP employee for failing to keep records at CSN Trebinje. Motion, paras 6 – 10.

¹⁶ Motion, para. 5.

that they were unable to access these documents on EDS, the Prosecution informed them on 1 April 2010 by email correspondence that it would provide the documents on compact discs, and delivered the discs to the defence teams immediately thereafter”.¹⁷ The Prosecution states that the documents “became available on EDS as of 14 April 2010” and that, accordingly, “the Stanišić Defence failed to exercise due diligence in identifying at the earliest opportunity the proposed exhibits.”¹⁸ The Defence does not address this in its Reply but acknowledges that it did not repeat its request for disclosure.¹⁹ The Prosecution also asserts that the Defence has not established that the documents are of sufficient importance to justify their late addition to the Rule 65 *ter* exhibit list.²⁰ The Defence counters that it did not have these documents in its possession at the moment of filing its Rule 65*ter* exhibit list and that it “filed for amendment as soon as it came into possession of those documents.”²¹

(a) Proposed Rule 65 *ter* 902D1 and 903D1

11. The Stanišić Defence submits that these documents “contain information by the RS officials regarding criminal cases initiated for alleged crimes committed against Bosnian Muslims and Bosnian Croats”²² and are therefore relevant to “issues concerning police investigations conducted in the geographic and temporal time frame of the indictment.”²³

12. The Prosecution responds that 902D1 and 903D1 are “responses – dated 24 December 2008 and 25 November 2008, respectively – by the Republican Prosecutor’s Office of the Republika Srpska (“RS”) to Requests for Assistance (“RFA”s) issued by the prosecution team in the case against Radovan Karadžić, requesting information concerning criminal proceedings instituted by the RS in the period between 1992 and 1995 for crimes committed against non-Serbs during the same period”,²⁴ and that they lack relevance and probative value. In particular, the Prosecution argues that the responses do not indicate when the crimes occurred,²⁵ the ethnicities of the perpetrators²⁶ and, in most instances, the municipality in which the crime occurred.²⁷

¹⁷ Response, para. 3.

¹⁸ Response, para. 4.

¹⁹ Reply, para. 4.

²⁰ Response, para. 5.

²¹ Reply, para. 4.

²² Motion, para. 7.

²³ Motion, para. 5.

²⁴ Response, para. 5.

²⁵ Response, para. 6a.

²⁶ Response, para. 6b.

²⁷ Such as Bosanski Novi, Glamoč, Prnjavor, Laktaši and Bosanska Dubica. Response, para. 6c.

(b) Proposed Rule 65 ter 904D1 to 910D1

13. The Stanišić Defence submits that these documents are court judgements for alleged crimes committed during 1992 against non-Serbs. The Defence submits that it “has claimed throughout the trial that the police duties were to collect all available evidence” and that “[i]t can be seen from these judgements that evidence collected during 1992 was used for the prosecution and conviction of these persons.”²⁸ With regard to 908D1, which is the final judgement of the criminal case against Miladin Šugić, of Serb ethnicity, for aggravated murder, the Defence submits that several related documents are already in evidence whereas the final judgement is not.²⁹

14. The Prosecution responds that 904D1 through 910D1 lack relevance and probative value to this case arguing that “[a]ll of the judgements were rendered between 2003 and 2008,” long after the events charged in the indictment.³⁰ In addition, the Prosecution submits that 905D1, 906D1 and 907D1 pertain to crimes committed in municipalities that are outside the scope of the indictment and that 904D1, 906D1, 907D1 and 909D1 “pertain to crimes and perpetrators on which neither the Prosecution nor the Stanišić Defence has led any evidence.”³¹ The Prosecution concludes that it cannot be inferred from these documents “that evidence collected [by the police] during 1992 was used for the prosecution and conviction of these persons.”³²

15. The Defence replies, *inter alia*, that it offers these documents to support its assertion that “the police conducted investigations, collected evidence and filed criminal reports with the competent prosecutor’s office”, at which point “police investigative work is completed, unless the prosecutor or the investigating magistrate directs the police to conduct further investigations”,³³ and further that “the police has no influence whatsoever on further court proceeding, on the length time [*sic*] it takes for a matter to go to trial, or on the outcome of a particular case.”³⁴

16. The Defence further replies that these judgements “show the units to which the perpetrators belonged”, information which is “relevant to the issues of the jurisdiction of the civilian and military police in crime investigation and the charge of superior authority against the accused.”³⁵ The investigation of crimes committed during 1992 shows that “contrary to the Prosecution’s

²⁸ Motion, para. 8.

²⁹ Motion, para. 9.

³⁰ Response, para. 7.

³¹ *Ibid.*

³² Response, para. 8.

³³ Reply, para. 6.

³⁴ Reply, para. 6.

³⁵ Reply, para. 8.

assertions, those were not ‘sham investigations’ and that there is no pattern showing that investigations were not conducted when the victims were non-Serbs.”³⁶

(c) Proposed Rule 65 ter 911D1

17. This document consists of a disciplinary file against a MUP employee for failing to keep records in CSB Trebinje. The Stanišić Defence argues that this is relevant to the contested issue between the parties as to the initiation of disciplinary proceedings against Serb personnel.³⁷ The Defence asserts that this document shows both that disciplinary proceedings were initiated against Serbs and that the MUP performed supervisory inspections at CSB Trebinje which led to the discovery that records were not being properly maintained.³⁸

18. The Prosecution submits that 911D1 pertains to the inspection of the SJB in Trebinje, a municipality that is outside the scope of the indictment, and therefore is “neither relevant nor probative to any issues contested in this case.”³⁹ The Prosecution further responds that it does not contend that the RSMUP could not and did not initiate disciplinary proceedings against Serb police employees in 1992 but rather “that the RSMUP – and in particular the Accused – had the means to discipline police employees in 1992 but failed to do so for crimes committed against the non-Serb population in the Indictment municipalities.”⁴⁰

4. Proposed Rule 65 ter 913D1-919D1

19. The Stanišić Defence submits, *inter alia*, that it received no substantial disclosure in relation to the Batković camp but that during preparation for its case it found in EDS a set of documents pertaining to Batković, some of which are already on its exhibit list having been obtained from the archives of the State Court of Bosnia and Herzegovina.⁴¹ The Defence submits that it asked the Prosecution for an explanation as to why these documents had not been previously disclosed, to which the Prosecution responded that none of these documents fall under Rule 68 and that the Prosecution does not claim that the RSMUP was in charge of Batković but that it is a part of the JCE allegations.⁴² The Stanišić Defence asserts that these documents are relevant and probative and that they show that there was “exclusive military authority” over the Batković camp.⁴³

³⁶ Reply, para. 15.

³⁷ Motion, para. 10.

³⁸ *Ibid.*

³⁹ Response, para. 10.

⁴⁰ Response, para. 9.

⁴¹ Motion, para. 12.

⁴² *Ibid.*

⁴³ Motion, para. 14.

20. The Prosecution does not oppose the addition of these documents to the Stanišić exhibit list. However, it does dispute that these documents show that the military had “exclusive” authority over Batković camp⁴⁴ and reserves the right to oppose their admission into evidence.⁴⁵

5. Proposed Rule 65 ter 920D1

21. The Stanišić Defence submits that 920D1 was only disclosed to it on 2 June 2011. It is a document signed on behalf of Mr. Stanišić, which shows that it was the fourth time that the RS MUP insisted that CSBs report on war crimes. Reporting and investigation of war crimes by the RS MUP is a contested issue between the parties. The Defence submits that this document is relevant and probative to the RS MUP’s insistence on reporting and investigating war crimes by the CSBs.⁴⁶

22. The Prosecution responds that 920D1 has already been admitted into evidence on 7 June 2011 as exhibit 1D572.⁴⁷

III. APPLICABLE LAW AND DISCUSSION

23. The Trial Chamber will, in the exercise of its discretion, assess whether it is in the interests of justice to grant the Motion.⁴⁸ In so doing, the Trial Chamber will take into account whether good cause is shown for amending the exhibit list and whether the newly offered material is relevant and of sufficient importance to justify the late addition.⁴⁹ The Trial Chamber may also take into account other factors which speak in favour for or against amending the exhibit list,⁵⁰ 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 list⁵¹ and whether the opposing party would suffer undue prejudice as a result of the amendment of the exhibit list.⁵² As with all such applications, a decision by the Trial Chamber to permit the inclusion of a document on the exhibit list does not necessarily imply that the document is admissible per se, as actual admission into evidence is subject to a more detailed showing as to how each document fits into the case.

⁴⁴ Motion, para. 12.

⁴⁵ Response, para. 12.

⁴⁶ Motion, para. 15.

⁴⁷ Response, para. 13.

⁴⁸ *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, para. 37; *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 (“Lukić Decision”).

⁴⁹ *Ibid.*

⁵⁰ Lukić Decision para. 10; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s motion for leave to amend Rule 65 ter witness list and exhibit list, confidential, 6 Dec 2006, p. 7 (“Popović Decision”).

⁵¹ *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 (“Prlić Decision”).

⁵² Lukić Decision para. 12; *Popović Decision* p. 8; *Prlić Decision*, p. 5; *Prosecutor v Stanišić and Župljanin*, Case No. IT-04-81-T, Decision Granting in Part the Prosecution’s Motion of 18 February 2010 to Amend its Rule 65ter Exhibit List and Denying the Supplemental Motion of 2 March 2010, 14 Apr 2010, para. 38.

(a) Proposed Rule 65 ter 899D1

24. The Trial Chamber is satisfied as to the relevance and probative value of this document. During his testimony, Andrija Bjelošević discussed document 1D530 in relation to the disciplinary proceedings against Veljko Šolaja.⁵³ Document 1D530, a cover letter, has now been admitted into evidence by the Trial Chamber's decision of 8 July 2011, as has the document to which it refers, namely, the actual report of disciplinary proceedings against Veljko Šolaja.⁵⁴ While 899D1 is not the attachment referred to in 1D530, it is directly related to 1D530 as it constitutes the appeal decision, signed by Mićo Stanišić, on the disciplinary proceedings which form the attachment to 1D530. The Trial Chamber further notes that the Prosecution does not object to the Motion in this respect. For all these reasons, the Trial Chamber will, in the interests of justice, grant the addition of 899D1 onto the Stanišić Defence Rule 65ter exhibit list.

(b) Proposed Rule 65ter 900D1 - 901D1

25. The Trial Chamber notes that, after the filing of the Motion, the Defence attempted to tender these documents on 6 June 2011 through witness Milomir Orašanin. The Trial Chamber denied the admission of these documents at that time on the basis that the oral evidence of the witness on matters related to the content of these documents was sufficient and their admission, therefore, was unnecessary.⁵⁵ The Stanišić Defence has not requested the Trial Chamber to reconsider its position and, thus, the Motion is dismissed in this regard.

(c) Proposed Rule 65ter 902D1 – 911D1

26. The Trial Chamber is of the view that the Stanišić Defence could have acted more diligently in following up on the missing disclosure batch which contained these documents after 1 April 2010. However, these documents have been in the possession of the Prosecution throughout this time and, therefore, the Trial Chamber is satisfied that no undue prejudice would arise to the Prosecution were the Trial Chamber to grant their addition to the Stanišić exhibit list.

27. Documents 902D1 and 903D1 are reports which purport to list criminal proceedings instituted by authorities of the Republika Srpska between 1992 and 1995 for serious crimes committed against non-Serbs. While their contents are broad and not sufficiently detailed, the Trial Chamber is satisfied that both reports meet the threshold of *prima facie* relevance necessary to warrant their addition to the Stanišić exhibit list as they, at least partially, potentially cover issues

⁵³ Andrija Bjelošević, 20 Apr 2011, T. 19924 ff.

⁵⁴ Decision granting in part Prosecution's motion for admission of documents shown to witness MS001, Andrija Bjelošević, 8 Jul 2011, paras 72-73.

⁵⁵ Milomir Orašanin, 6 Jun 2011, T. 21865-21868.

relevant to the temporal and geographical scope of the indictment. The Trial Chamber is persuaded of the importance of these documents for the Stanišić Defence and will, in the interests of justice, grant the Motion in this respect.

28. The seven documents identified as 904D1 through 910D1 are judgements by the District Court in Banja Luka concerning crimes committed during the relevant period of the indictment. The fact that those judgements were rendered between 11 and 16 years later and that some of them concern crimes committed in municipalities outside the scope of the indictment, does not, in the view of the Trial Chamber, automatically render them irrelevant, provided they rely on and include references to investigative initiatives undertaken by the RS police in 1992 in respect of crimes committed by Serbs against non-Serbs.

29. The Trial Chamber notes that the five judgements identified as 905D1, 906D1, 907D1, 908D1 and 910D1 have already been admitted into evidence on 7 June 2011 as exhibits 1D596, 1D597, 1D598, 1D599 and 1D601.⁵⁶

30. With regard to 904D1 and 909D1, the Trial Chamber could not find in these documents any reference to investigative police work in 1992 which would permit the inference that the RS Police had taken any steps at the time to investigate these crimes established in these two judgements, as claimed by the Defence. For instance, while the Trial Chamber notes that 904D1 refers to an "autopsy report", there is nothing in this judgement to indicate that such a report was produced in the context of police investigations conducted in 1992. Furthermore, the fact that the perpetrators convicted in those judgements were members of the military does not assist the Trial Chamber in discerning whether police investigations into these crimes were or should have been conducted in 1992. The Trial Chamber is not persuaded of the relevance and importance of these documents and will therefore deny the Motion in this respect.

31. Document 911D1 is a disciplinary file against a MUP employee at the Trebinje SJB, in a municipality outside of the scope of the indictment. Nevertheless, the Trial Chamber is satisfied that this document meets the threshold of *prima facie* relevance necessary to permit its addition to the Stanišić exhibit list, as it concerns disciplinary proceedings within the RSMUP during the relevant period of the indictment. Despite the Prosecution submission that it does not dispute the fact that the RSMUP conducted inspections of various Public Security Stations in 1992, the Trial Chamber is persuaded of the importance of this document for the Stanišić Defence and will, in the interests of justice, grant the Motion in this respect.

⁵⁶ Simo Tusevljak, 20 Jun 2011, T. 22450-22451.

(d) Proposed Rule 65ter 913D1 to 919D1 (Documents related to Batković)

32. The Trial Chamber is satisfied as to the relevance and probative value of these documents and notes that the Prosecution is not opposed to their addition. The Trial Chamber will, therefore, grant the Motion in this respect.

(e) Rule 65ter 920D1

33. The Trial Chamber notes that this document has already been admitted into evidence on 7 June 2011 as exhibit 1D572.⁵⁷

IV. DISPOSITION

34. For the above reasons and pursuant to Rules 54 and 65 *ter* of the Rules, the Trial Chamber:

GRANTS the Stanišić Defence leave to reply;

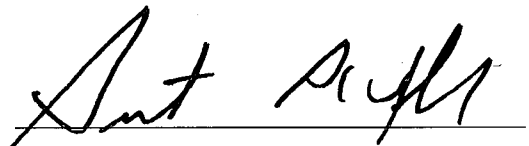
GRANTS the Motion **IN PART**;

GRANTS leave to the Stanišić Defence to add to its Rule 65 *ter* exhibit list the documents with proposed numbers Rule 65 *ter* 899D1, 902D1, 903D1, 905D1, 906D1, 907D1, 908D1, 910D1, 911D1, 913D1, 914D1, 915D1, 916D1, 917D1, 918D1, 919D1 and 920D1;

NOTES that the documents with proposed numbers Rule 65 *ter* 905D1, 906D1, 907D1, 908D1, 910D1 and 920D1 have already been admitted into evidence; and

DENIES the Motion in all other respects.

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



Judge Burton Hall
Presiding

Dated this nineteenth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵⁷ Milomir Orašanin, 7 Jun 2011, T. 21965.