



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-04-74-T
Date: 20 March 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Acting Registrar: Mr John Hocking

Order of: 20 March 2009

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION TO ADD 3 EXHIBITS TO ITS 65
TER LIST (ANDELKO MAKAR)**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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”),

SEIZED OF “Bruno Stojić’s Motion to Add Exhibits to the Rule 65 *ter* (G) Exhibit List with Annexes A-D”, to which 4 annexes are attached,¹ filed publicly by Counsel for the Accused Stojić (“Stojić Defence”) on 19 March 2009 (“Motion”), in which the Stojić Defence requests that the Chamber allow the addition of three exhibits² (“Proposed Exhibits”) that it plans to put to Witness Anđelko Makar, who is scheduled to appear from 23 to 25 March 2009 to its list of exhibits established pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”; “65 *ter* List”),

CONSIDERING that the other parties did not file a response to the Motion,

CONSIDERING that the Stojić Defence submits that it only recently received the Proposed Exhibits from its investigators and that it brought them to the attention of the Chamber and the other parties at the earliest opportunity,³

CONSIDERING that the Stojić Defence argues that Exhibits 2D 01530 and 2D 01531, both dated 16 February 1993 and signed by the Accused Stojić, concern the relieving and appointment of members of the 115th HVO Brigade,⁴

CONSIDERING that the Stojić Defence submits that these two documents are relevant insofar as they bear witness to the fact that the President of the HZ H-B had the power to appoint high-ranking officers and Brigade commanders, while the Chief of the Defence Department, the Accused Bruno Stojić, could only appoint subordinate officers; that Exhibits 2D 01530 and 2D 01531 are therefore essential in order to understand and interpret Article 34 of the Decree on the Armed Forces of the HZ H-B,⁵

¹ Annex A (Exhibit 2D 01530), Annex B (Exhibit 2D 01531), Annex C (Exhibit 2D 01532) and Annex D (supplement to the 65 *ter* summary of Witness Anđelko Makar).

² 2D 01530, 2D 01531, 2D 01532.

³ Motion, p. 3 para. 3.

⁴ Motion, p. 3 para. 4.

⁵ Motion, p. 3 para. 4.

CONSIDERING that the Stojić Defence argues that Exhibit 2D 01532 refers to the establishment of a joint command of the HVO and ARBiH in the operational zone of the ARBiH 2nd Corps and mentions the existence of a convoy of military equipment travelling from Grude to the zone of responsibility of this army corps; that therefore this document falls within the scope of Anđelko Makar's testimony, which will notably deal with the organisation of a system of command grouping together the HVO and the ARBiH and the HVO's logistical support to the ARBiH,⁶

CONSIDERING that the Stojić Defence notes that Anđelko Makar served within the command of the ARBiH 2nd Corps and that by virtue of his functions he (1) took part in the establishment of a joint HVO-ARBiH command (2) organised the delivery of military equipment coming from Grude and (3) was familiar with the appointment procedure within the ARBiH 2nd Corps, which at the time had authority over the 115th HVO Brigade; that his functions will allow him to testify about the reliability, relevance and probative value of the Proposed Exhibits,⁷

CONSIDERING, as a preliminary matter, that the Chamber notes the filing by the Stojić Defence of a supplement to the 65 *ter* summary of the testimony of Anđelko Makar in Annex D to the Motion,

CONSIDERING that the Chamber recalls that in order to grant a motion to add exhibits to the 65 *ter* List, these exhibits must be disclosed to the Parties sufficiently in advance in view of their presentation to a witness in court so as not to inhibit their preparations for cross-examination,

CONSIDERING that the Chamber recalls the "Decision Adopting Guidelines for the Presentation of Defence Evidence", rendered on 24 April 2008, and particularly Guideline 8 that stipulates that in order to grant a motion to add exhibits to the 65 *ter* List, the Parties in question must file a motion with the Chamber to add the exhibit(s) to the 65 *ter* (G) List, prior to the appearance of the witness to whom the exhibits will be shown, providing the reasons why the exhibit or exhibits are essential to the case and why the exhibit or exhibits were not on the list filed pursuant to rule 65 *ter* (G) of the Rules,

⁶ Motion, p. 4 paras. 6 and 7.

⁷ Motion, pp. 3 and 4, paras. 5 and 8.

CONSIDERING that when dealing with a motion to add exhibits to a 65 *ter* list, the Chamber will always carry out a *prima facie* examination of the reliability, relevance and probative value of the documents before it,

CONSIDERING that the Chamber finds that the Proposed Exhibits are *prima facie* reliable, in the sense that they are dated, signed and bear the letterheads and stamps of the organs that drafted them,

CONSIDERING that the Chamber notes that they are also *prima facie* relevant and have a certain probative value to the extent that (1) they refer to the Accused Stojić's power to appoint within the armed forces of the HZ H-B; (2) they deal with the co-operation that existed between the HVO and the ARBiH in terms of command and logistical support, information that is relevant within the meaning of paragraph 17.2 of the Amended Indictment of 11 June 2008,

CONSIDERING furthermore that none of the other parties have alleged prejudice resulting from the lateness of the Motion,

CONSIDERING that, despite the lateness of the motion and the relatively brief explanations provided by the Stojić Defence in this regard, the Chamber finds that it is in the interests of justice to authorise, on an exceptional basis, the addition of the Proposed Exhibits to the Stojić Defence 65 *ter* List,

CONSIDERING that the Chamber consequently decides to grant the Motion and authorises the Stojić Defence to add Exhibits 2D 01530, 2D 01531 and 2D 01532 to its 65 *ter* List,

