



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: 22 January 2009
Original: 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

Decision of: 22 January 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR THE PROVISION OF AN
ADEQUATE SUMMARY FOR THE FORTHCOMING TESTIMONY OF
SLOBODAN BOŽIĆ**

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 the “Prosecution Motion for the Provision of Fully Adequate Summaries for Defence Witnesses Slobodan Božić and Stipo Buljan in Compliance with Rule 65 *ter* and Tribunal Law”, filed by the Office of the Prosecutor (“Prosecution”) on 13 January 2009 (“Motion”), in which the Prosecution requests that the Chamber order Counsel for the Accused Stojić (“Stojić Defence”) to provide a summary that is adequate and consistent with Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”), of the facts on which Slobodan Božić and Stipo Buljan are to testify (“65 *ter* Summaries”),

NOTING “Slobodan Praljak’s Response to the 13 January 2009 Prosecution Motion for Supplemented Summaries Regarding Slobodan Božić and Stipo Buljan”, filed by Counsel for the Accused Praljak (“Praljak Defence”) on 16 January 2009, in which the Praljak Defence considers, *inter alia*, that the 65 *ter* Summary for Slobodan Božić is adequate and consistent with the established practice at the Tribunal,

NOTING “Bruno Stojić’s Response to ‘Prosecution Motion for the Provision of Fully Adequate Summaries for Defence Witnesses Slobodan Božić and Stipo Buljan in Compliance with Rule 65 *ter* and Tribunal Law’ with Confidential Annexes A-E”, filed partly confidentially by the Stojić Defence on 19 January 2009 (“Stojić Defence Response”), in which it responds to the Motion and provides a supplement to the 65 *ter* Summary for Slobodan Božić (“Supplemental 65 *ter* Summary”),

NOTING the “Further Prosecution Motion for the Provision of a Fully Adequate Summary for Defence Witness Slobodan Božić in Compliance with Rule 65 *ter* and Tribunal Law”, filed by the Prosecution on 21 January 2009 (“Further Motion”), in which it contends that the Supplemental 65 *ter* Summary for Slobodan Božić submitted by the Stojić Defence does not provide any additional information,¹ that both the 65 *ter* Summary and the Supplemental 65 *ter* Summary remain inadequate²

¹ Further Motion, para. 8.

² Further Motion, para. 13.

and therefore requests the postponement of the testimony of Slobodan Božić until it receives an adequate and sufficient summary,

NOTING “Bruno Stojić’s Response to ‘Further Prosecution Motion for the Provision of Fully Adequate Summaries for Defence Witnesses Slobodan Božić and Stipo Buljan in Compliance with Rule 65 ter and Tribunal Law’”, filed by the Stojić Defence on 21 January 2009 (“Further Response”), in which it responds to the Further Motion and asserts, *inter alia*, that what the Prosecution requests is tantamount to a written witness statement, which is not required under the Rules,³ and that the lateness of the Motion shows that the 65 *ter* Summary was sufficiently detailed to allow it to prepare its case,⁴

CONSIDERING that since the appearance of Slobodan Božić is scheduled to begin on 26 January 2009, the Chamber will rule only on the part of the Motion regarding the 65 *ter* Summary for this witness and subsequently render a decision in regard to Witness Stipo Buljan,

CONSIDERING that, in support of the Motion, the Prosecution contends, *inter alia*, that the 65 *ter* Summary for Slobodan Božić is clearly inadequate and fails to satisfy the requirements of Rule 65 *ter* (G) since it does not indicate “what the witness will actually say in respect of any significant topic”,⁵

CONSIDERING that the Prosecution thus contends that the indication that the witness will testify about “his contacts with UNPROFOR and international organizations”, “his authorities within the HZ HB Defence Department” and “about his knowledge about forming of detention camps and duties and relations of Defence Department and Bruno Stojić towards detention camps” does not provide sufficient details as to what the witness will actually say in court,⁶

CONSIDERING, moreover, that the Prosecution is of the opinion that the most significant topics about which Slobodan Božić will testify concern “reactions by Bruno Stojić to certain events at Mostar and HZ HB and about his true powers, his

³ Further Response, para. 3.

⁴ Further Response, para. 7.

⁵ Motion, paras. 8 and 9.

⁶ Motion, paras. 10 and 11.

legal authorizations and about factual capacities of his actions”, and that the 65 *ter* Summary does not provide any details in that regard,⁷

CONSIDERING that the Prosecution therefore contends that it does not have any information which might assist it in preparing its cross-examination,⁸

CONSIDERING that, in support of the Stojić Defence Response, the Stojić Defence submits that the 65 *ter* Summary for this witness was sufficient and consistent with the Rules; that it nonetheless annexed a Supplemental 65 *ter* Summary for Witness Slobodan Božić,⁹

CONSIDERING that, in the Supplemental 65 *ter* Summary, the Stojić Defence indicates that Slobodan Božić will testify, *inter alia*, about his responsibilities in the Defence Department of the HZ HB and his knowledge of the functioning of military prisons,¹⁰

CONSIDERING that Rule 65 *ter* (G) provides that after the close of the Prosecutor’s case and before the commencement of the defence case, the pre-trial Judge shall order the Defence to file a list of witnesses it intends to call specifying a summary of the facts on which each witness will testify,

CONSIDERING that the Chamber recalls that in its Oral Ruling on the Prosecution request regarding Defence 65 *ter* (G) summaries of 20 May 2008, it held that there was no need to systematically request further information for all the summaries filed under Rule 65 *ter* (G) and that it would request, on a case-by-case basis, further information in relation to the 65 *ter* Summaries when it deemed this necessary,¹¹

CONSIDERING further that the Stojić Defence filed its 65 *ter* (G) List on 31 March 2008 and disclosed a Supplemental 65 *ter* Summary on 19 January 2009,

CONSIDERING that the Chamber notes that the Prosecution has been in possession of the 65 *ter* Summary for Slobodan Božić since 31 March 2008 and the schedule of

⁷ Motion, paras. 14 and 15.

⁸ Motion, para. 12.

⁹ Response, para. 7.

¹⁰ Response, Annex A.

¹¹ French transcript of 20 May 2008, pp. 28228-28229.

witnesses for the Stojić Defence since 19 November 2008 and that the Motion therefore appears to be out of time,

CONSIDERING that the Chamber nevertheless wishes to recall that the Defence teams are under no obligation, as recalled also by the Stojić Defence, to obtain written statements from the witnesses they intend to call,

CONSIDERING, however, that the Chamber agrees with the Prosecution that the practice of the Tribunal, in particular as established in the *Mrkšić* and *Boškoski* cases¹² and in the order regarding the request for supplemental information on the 65 *ter* (G) summary for Witness Martin Raguž, issued by the Chamber on 15 August 2008, requires that the summaries drafted under Rule 65 *ter* (G) should be sufficiently detailed to allow the Prosecution to prepare its cross-examination; accordingly, the mere indication of the topics to be addressed is not sufficient unless it is accompanied by a summary of what the witness will say during his testimony,

CONSIDERING that the Chamber holds that the 65 *ter* Summary, read in conjunction with the Supplemental 65 *ter* Summary, is not consistent with the above-mentioned jurisprudence of the Tribunal since it provides a sufficiently specific list of the topics Witness Božić will address in court but contains no details as to what the witness will say about these topics,

CONSIDERING that the Chamber therefore holds that the Stojić Defence must provide the necessary details by 23 January 2009 at the latest,

CONSIDERING that, for the sake of judicial economy, the Chamber holds that the date of the appearance of Slobodan Božić need not be postponed,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 65 *ter* (G) of the Rules

GRANTS the Motion,

¹² IT-95-13/1-T, "Decision on Prosecution Motions Regarding 65 *ter* (G) Defence Submissions", 22 August 2006, confidential; IT-04-82-T, "Decision on Urgent Prosecution's Motion for Additional Detail in Rule 65 *ter* Summaries of the Accused Ljube Boškoski and Johan Tarčulovski", 24 January 2008, confidential.

PARTIALLY GRANTS the Further Motion,

ORDERS the Stojić Defence to supplement the 65 *ter* Summary for Witness Slobodan Božić as specified above, **no later than 23 January 2009**,

DEFERS ITS DECISION on the part of the Motion regarding the 65 *ter* Summary for Witness Stipo Buljan, **AND**

DENIES the remainder of the Further Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]