



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-95-5/18-T
Date: 30 June 2010
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 30 June 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR LEAVE TO AMEND ITS WITNESS
LIST TO ADD WITNESS KDZ597**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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 the “Prosecution’s Motion for Leave to Amend Its Witness List to Add Witness KDZ597 with Confidential Annex A” filed confidentially on 25 June 2010 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Prosecution seeks leave from the Chamber to amend its list of witnesses filed pursuant to Rule 65 *ter* (E) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) to include one additional Rule 92 *ter* witness, identified as KDZ597.¹ The Prosecution submits that adding this witness is in the interests of justice as the evidence of KDZ597 is relevant and of probative value and “will be of material assistance to the Trial Chamber in determining the extent to which the Accused and other members of the Bosnian Serb leadership were able to maintain contact with their military and civilian subordinates in Serb-held territory in Bosnia throughout the Indictment period.”² It further argues that the addition of KDZ597 will not result in unfair prejudice to the Accused since (i) the Prosecution disclosed a transcript of the witness’s interview with the Prosecution on 10 May 2010 and indicated in the disclosure letter that KDZ597 was a “potential future Prosecution witness”;³ (ii) the Prosecution does not intend to call the witness before early next year;⁴ (iii) the hearing of the witness’s evidence will not significantly increase the length of the trial;⁵ and (iv) this request is being made at an early stage of the trial.⁶

2. The Prosecution does not explain why KDZ597 was not included in its original Rule 65 *ter* list of witnesses, other than to say that “it has become increasingly clear that the issue of communications is a contested issue in this trial” and proceed to give examples of the Accused mentioning the poor quality of communications during his cross-examination of other witnesses.⁷

¹ Motion, paras. 1 and 12. The Prosecution notes that protective measures will be sought for KDZ597, should the Motion be granted. In order to protect the identity of the witness and because the Motion contains references to a confidential decision, the Prosecution filed the Motion confidentially.

² Motion, paras. 4 and 13.

³ Motion, para. 11.

⁴ Motion, para. 12.

⁵ Motion, para. 12. The Prosecution states that it “intends to tender the Witness’s evidence pursuant to Rule 92 *ter* and conduct a limited examination-in-chief of no more than two hours in duration.”

⁶ Motion, para. 12.

⁷ Motion, paras. 15–18.

3. On 28 June 2010, the Accused filed his “Response to Motion to Add KDZ597” (“Response”), expressing no objections to the Motion as long as the witness is not called this year.⁸

II. Applicable Law

4. Pursuant to Rule 73 *bis* (F) of the Rules, a Trial Chamber may grant a motion requesting an amendment of the witness list if it is satisfied that doing so is in the interests of justice. In exercising its discretion, the Trial Chamber must balance the Prosecution’s duty to present available evidence to prove its case with the right of the Accused, pursuant to Articles 20(1) and 21(4)(b) of the Statute of the Tribunal, to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence.

5. In making its determination, the Trial Chamber shall take into consideration several factors, including whether, in accordance with Rule 89 (C) and (D) of the Rules, the proposed evidence is *prima facie* relevant and of probative value, and whether its probative value is substantially outweighed by the need to ensure a fair trial.⁹ When assessing whether it is indeed in the interests of justice to permit the Prosecution to vary its witness list the Chamber should also consider whether any prejudice would be caused to the defence by the amendment of the witness list, whether the Prosecution has shown good cause for the amendment of the witness list, the repetitive or cumulative nature of the proposed testimony, and whether the defence has adequate time to prepare its cross-examination of the proposed new witness.¹⁰ The Trial Chamber may further consider the stage of the trial, whether the witness sought to be added is of sufficient importance to justify his or her inclusion on the witness list, whether granting the amendment would result in undue delay in the proceedings, and other circumstances specific to the case.¹¹

III. Discussion

6. On the basis of the information provided by the Prosecution in Confidential Appendix A to the Motion, the Chamber is satisfied as to the *prima facie* relevance and probative value of

⁸ Response, para. 2.

⁹ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Second Renewed Motion for Leave to Amend Its Rule 65ter List to Add Michael Phillips and Shaun Byrnes, 12 March 2007, para. 18; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on the Prosecution’s Request to Add Two Witnesses to its Witness List and to Substitute One Witness for Another, 1 November 2007 (“*Haradinaj Decision*”), para. 4.

¹⁰ *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 December 2007, (“*Popović Decision*”), para. 37; *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion for Leave to Amend its Rule 65 ter Witness List, 14 May 2009 (“*Đorđević Decision*”), para. 5; *Haradinaj Decision*, paras. 4, 6, 10.

KDZ597's anticipated evidence. It is also satisfied of the importance of KDZ597's anticipated evidence to the Prosecution's case, and that the probative value of his anticipated evidence is not substantially outweighed by the need to ensure a fair trial.

7. Furthermore, the Chamber is satisfied that adding KDZ597 to the Prosecution's Rule 65 *ter* witness list at this stage of the proceedings would not cause any prejudice to the Accused. First, the Chamber notes that the Accused does oppose the addition of KDZ597. Secondly, on 10 May 2010, the Prosecution disclosed to the Accused a transcript of KDZ597's interview with the Prosecution and indicated that KDZ597 was a potential future witness. Thirdly, the Prosecution is still in the early stages of presenting its case and has given an assurance that KDZ597 will not be called until next year. Accordingly, the Accused will have enough time to prepare for his cross-examination of this witness.

8. Finally, the Chamber is of the view that granting the Motion will not cause an undue delay to the proceedings. The Prosecution has indicated that KDZ597 will testify as a Rule 92 *ter* witness and his examination-in-chief will last no longer than two hours. Even taking into account the cross-examination and a possible re-examination of this witness, the Chamber does not consider that the addition of KDZ597 to the Rule 65 *ter* witness list will cause any undue delay, particularly in light of the fact that the overall time available to the Prosecution for the presentation of its evidence-in-chief, namely a total of 300 hours, will remain unchanged.

9. Taking the above factors into account, the Trial Chamber considers that it is in the interests of justice that KDZ597 be added to the Prosecution's witness list.

IV. Disposition

10. For the foregoing reasons, and pursuant to Rule 73 *bis* (F) of the Rules, the Trial Chamber hereby **GRANTS** the Motion to allow the Prosecution to add KDZ597 to its Rule 65 *ter* list of witnesses.

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



Judge O-Gon Kwon
Presiding

Dated this 30th day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ *Popović* Decision, para. 37; *Dorđević* Decision, para. 5; *Haradinaj* Decision, para. 4.