



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: 8 January 2013

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:** 8 January 2013

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

**DECISION ON ACCUSED'S MOTION FOR CLARIFICATION OF DECISION ON  
DEFENCE WITNESS INTERVIEWS**

**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 Accused’s “Motion for Clarification of Decision on Defence Witness Interviews,” filed on 26 November 2012 (“Motion”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. On 8 November 2012, the Chamber issued its “Decision on Interview of Defence Witnesses by the Prosecution” (“Decision”), in which, following a discussion at a Pre-Defence conference on 15 October 2012, it decided on a procedure enabling the Office of the Prosecutor (“Prosecution”) to interview witnesses on the Accused’s list of witnesses of 11 September 2012 (“Witness List”), filed pursuant to Rule 65 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). In the Decision,<sup>1</sup> the Chamber recalled the jurisprudence of the Tribunal that there is no proprietary interest in witnesses and that both parties have the right to interview them,<sup>2</sup> and ordered as follows:

- (a) the Prosecution shall immediately provide the Accused, on a confidential basis, with a list of those witnesses on his Rule 65 *ter* witness list whom it wishes to interview, distinguishing clearly between (i) witnesses whose contact details are already in its possession or are obtainable independently of the Accused and (ii) those for whom it will require the Accused’s assistance in obtaining contact details;
- (b) with respect to witnesses referred to in paragraph 16(a)(i), the Prosecution shall be allowed to contact them directly and without the involvement of the VWS for the purpose of inquiring whether they would be willing to submit to an interview with the Prosecution;
- (c) with respect to witnesses referred to in paragraph 16(a)(ii), the parties shall follow the procedure set out in the Second Decision, namely:
  - (i) the Prosecution shall immediately provide the VWS, on a confidential basis, with the list of witnesses referred to in paragraph 16(a)(ii);
  - (ii) the Accused shall then furnish the VWS with current contact information for the said witnesses;
  - (iii) the VWS shall make contact with the said witnesses, as expeditiously as possible, to establish whether they agree to be interviewed by a member of the

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<sup>1</sup> The Chamber notes that the complex background to this Decision has been outlined in detail in paragraphs 1 to 9 of the Decision and shall therefore not be repeated here.

<sup>2</sup> Decision, para. 10.

Prosecution, and, if so, whether they wish a representative of the Accused to be present at that interview;

(iv) the VWS shall advise the Prosecution of the results of these inquiries, and provide it with the contact information of those witnesses who have agreed to be interviewed by the Prosecution; and

(v) the Prosecution shall notify the Accused and his defence team of the time and location of the interviews with those witnesses who have indicated that they wish a representative of the Accused to be in attendance.<sup>3</sup>

2. In the Decision, the Chamber also ordered the Prosecution to give timely notice to the Accused of the names of those witnesses it wished to interview in order to give him and his defence team an opportunity to speak to those witnesses first, should they wish to do so, and to avoid any allegation of interference with or intimidation of witnesses.<sup>4</sup>

3. In the Motion, the Accused submits that the parties tried to co-operate to implement the Decision but that they have now reached an impasse on one aspect.<sup>5</sup> In relation to the issue of timely notice of the names of witnesses the Prosecution wishes to interview, the Accused submits that on 15 November 2012, the Prosecution provided him with a list of 210 witnesses it wished to interview and for whom it had contact details (“Interview List”), together with a list of 309 witnesses it wished to interview and whose contact details it did not have.<sup>6</sup> According to the Accused, in a subsequent meeting with the Victims and Witnesses Section (“VWS”), the Prosecution indicated that it did not anticipate interviewing many witnesses in the field, that it would notify the VWS on a rolling basis of the upcoming witnesses it wished to interview, and that it was therefore not necessary for VWS to contact all 309 witnesses at this stage.<sup>7</sup> As for the other 210 witnesses, the Accused submits that the Prosecution takes the position that the Interview List complies with the Decision and that it would therefore not provide any further notice to the Accused before interviewing the witnesses.<sup>8</sup> The Accused submits that this is problematic as he wishes to contact witnesses who may be interviewed by the Prosecution but does not wish “to alarm [the] potential witnesses that they may be contacted by the [P]rosecution until it is absolutely necessary.”<sup>9</sup> According to the Accused, this would also involve unnecessary diversion of resources from the taking of witness statements.<sup>10</sup> The

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<sup>3</sup> Decision, para. 16.

<sup>4</sup> Decision, para. 14.

<sup>5</sup> Motion, para. 2.

<sup>6</sup> Motion, para. 4.

<sup>7</sup> Motion, para. 5.

<sup>8</sup> Motion, para. 6.

<sup>9</sup> Motion, para. 7.

<sup>10</sup> Motion, para. 7.

Accused further submits that he interprets the Decision as requiring the Prosecution to give him an opportunity to contact a witness when the Prosecution actually, in “good faith”, intends to contact that witness for an interview.<sup>11</sup> Accordingly, the Accused asks the Chamber to indicate whether the Prosecution’s notice of intention to interview 210 witnesses is adequate or whether a more reasonable notice must be provided.<sup>12</sup>

4. The Prosecution responded to the Motion orally on 27 November 2012, stating that the Motion is in fact a request for reconsideration “cloaked as a motion for clarification”.<sup>13</sup> The Prosecution further submits that it has complied with the Decision as it has informed the Accused of the names of those witnesses it wished to interview as instructed therein.<sup>14</sup> With respect to the Accused’s submission that the witnesses might feel alarmed if told that they might be contacted by the Prosecution, the Prosecution submits that this is not only highly speculative but also seems to arise because many witnesses have not yet been contacted by the Accused and/or his defence team and thus do not know that they are potential witnesses in this trial.<sup>15</sup> According to the Prosecution, this is a defence-created problem which does not warrant any clarification of the Decision.<sup>16</sup> The Prosecution also submits that the reason the Interview List is so extensive lies in the Accused’s own failure to provide adequate witness summaries in his Witness List, which in turn means that the Prosecution has no meaningful information about most of the witness on the Witness List, resulting in a need to interview them. If such information was available to the Prosecution, it could lead to the reduction of the Interview List.<sup>17</sup>

5. In reply, the Accused’s legal adviser reiterated the arguments made in the Motion, adding that the witnesses might be alarmed because many were either suspects when interviewed by the Prosecution in the past or are concerned about being prosecuted in their domestic courts.<sup>18</sup>

6. Following a lengthy discussion on 28 November 2012 on the issue of whether the Witness List was in compliance with Rule 65 *ter* of the Rules,<sup>19</sup> the Chamber issued an oral decision on 4 December 2012, holding that the Witness List was not in compliance with Rule 65

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<sup>11</sup> Motion, para. 8.

<sup>12</sup> Motion, para. 9.

<sup>13</sup> T. 30424 (27 November 2012).

<sup>14</sup> T. 30425 (27 November 2012).

<sup>15</sup> T. 30425–30426 (27 November 2012).

<sup>16</sup> T. 30425–30426 (27 November 2012).

<sup>17</sup> T. 30428–30429 (27 November 2012).

<sup>18</sup> T. 30426–30428 (27 November 2012).

<sup>19</sup> T. 30524–30534 (28 November 2012).

*ter* (G).<sup>20</sup> It therefore ordered the Accused to (i) revise and reduce his Witness List by 14 December 2012 and (ii) provide adequate Rule 65 *ter* summaries by the end of January 2013 for the witnesses who are to testify about the hostage taking and municipalities component of the case, and by the end of February for the witnesses who are to testify about the Srebrenica component of the case.<sup>21</sup> The Chamber also held that it would postpone its decision on the Motion until the Accused filed a revised version of the Witness List and the Prosecution was able to revise its Interview List, if necessary. The Chamber also instructed the Prosecution to file, by 21 December 2012, a submission as to whether the number of witnesses it wished to interview has changed.<sup>22</sup>

7. On 14 December 2012, the Accused filed a revised version of the Witness List, whereby he dropped some witness and placed a number of others on a reserve list (“Revised Witness List”).<sup>23</sup>

8. On 20 December 2012, the Prosecution filed the “Prosecution Notification on Defence Witness Interviews” (“Notification”) informing the Chamber that, as a result of the Revised Witness List, the number of witnesses it wishes to interview is reduced by 161 witnesses. Thus, the number of witnesses for whom the assistance of the VWS is required is now 197, while the number of witnesses for whom no assistance is required is now 159 (“Revised Interview List”).<sup>24</sup>

## II. Discussion

9. The Chamber does not consider that the Motion is a request for reconsideration. Instead, the Chamber is being asked by the Accused to indicate whether the Prosecution’s Revised Interview List, which has now been reduced to 159 witnesses, is adequate in light of the Decision. It shall therefore proceed to do so.

10. The Chamber considers that the Revised Interview List is indeed in compliance with paragraph 14 of the Decision. In that paragraph, the Prosecution was instructed to give timely notice to the Accused of the witnesses it wished to interview in order to give him, and his defence team, an opportunity to speak to those witnesses first should they wish to do so. By submitting the Revised Interview List, regardless of the fact that it still contains 159 names, the Prosecution has done exactly what it was instructed to do. The Chamber is in agreement with

<sup>20</sup> T. 30894–30897 (4 December 2012).

<sup>21</sup> T. 30897–30898 (4 December 2012).

<sup>22</sup> T. 30898–30899 (4 December 2012).

<sup>23</sup> Defence Second Revised Rule 65 *ter* Witness List, 14 December 2012, Confidential Annex “E”.

<sup>24</sup> Notification, para. 3.

the Prosecution's submission that the fact that the Revised Interview List is extensive and that the Prosecution is unable to say with absolute certainty that it will interview all of the 159 witnesses listed therein is largely due to the Accused's failure to provide an appropriate Witness List with adequate Rule 65 *ter* (G) witness summaries. Accordingly, the Prosecution is entitled to take the position that, as things now stand, it will interview all 159 witnesses on the Revised Interview List.

11. As for the argument that the witnesses will be unnecessarily alarmed if contacted, the Accused has been provided with the Revised Interview List precisely so that he can contact these witnesses first and alleviate any concerns they may have about being contacted by the Prosecution, assuming they have any. To the extent that there are some witnesses on the Revised Interview List that may not even know that they are potential witnesses in this trial, and the Chamber is concerned that this may be the case, this is not a reason for the Prosecution to be prevented from contacting them now rather than later.

12. Furthermore, with respect to the Accused's argument that it is an unnecessary diversion of resources to have him and his team contact 159 witnesses even though the Prosecution has not committed with absolute certainty to interviewing all of them, the Chamber notes that the Accused is not obliged to contact all these witnesses and is at liberty not to do so for some or all of them. Furthermore, as has been pointed out on many occasions throughout this case,<sup>25</sup> the Accused has a large defence team and significant resources available to him, some of which can be deployed towards contacting the 159 witnesses in question, should he consider it necessary.

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<sup>25</sup> Scheduling Order on Close of the Prosecution's Case, Rule 98 *BIS* Submissions, and Start of the Defence Case, 26 April 2012, para. 11; Decision on Accused's Second Submission on Trial Schedule, 23 October 2010, para. 9; Order on the Trial Schedule, 27 May 2010, para. 5.

13. Accordingly, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby finds that the Revised Interview List submitted by the Prosecution is in compliance with paragraph 14 of the Decision. The Motion is therefore denied.

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



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Judge O-Gon Kwon  
Presiding

Dated this eighth day of January 2013  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**