



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: 11 April 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: 11 April 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR RELIEF FOR DEFENCE DISCLOSURE
VIOLATIONS – SREBRENICA WITNESSES**

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 Motion for Relief for Defence Disclosure Violations with Respect to 24 Srebrenica Witnesses”, filed publicly with a confidential annex on 25 March 2013 (“Motion”), and hereby issues its decision thereon.

I. Submissions and Procedural History

1. The Chamber ordered the Accused, by 27 August 2012, to file a summary of the “specific facts” on which each witness he intends to call will testify in accordance with Rule 65 *ter*(G) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 27 August 2012, the Accused filed a 65 *ter* witness list which included 579 witnesses.² A revised 65 *ter* witness list was filed on 11 September 2012 (“Revised Witness List”) in which the Accused dropped ten witnesses and added 14 witnesses to be called in the sentencing phase of the case.³

2. On 28 November 2012, after previous failed attempts between the parties to find a workable solution,⁴ the Office of the Prosecutor (“Prosecution”) requested, *inter alia*, that the Accused be ordered to provide all outstanding witness statements for witnesses being called for the Srebrenica component of the case by the end of January 2013.⁵ This request was made by the Prosecution due to the alleged failure by the Defence to provide adequate 65 *ter* summaries.⁶

3. The Chamber reviewed the 65 *ter* summaries provided by the Accused in the Revised Witness List and concluded that the list was not in compliance with Rule 65 *ter*(G) given that “a significant number of those summaries do not provide adequate notice regarding the witnesses’ evidence” and were formulaic and general in nature and provided very little information other than the component of the case to which the witness’s evidence relates.⁷ On 4 December 2012, the Chamber expressed its view that the inadequate summaries were a product of a failure to

¹ Scheduling Order on Close of the Prosecution Case, Rule 98 *bis* Submissions, and Start of the Defence Case, 26 April 2012, para. 22.

² Annex “A” to Rule 65 *ter* Submission: Defence Witness List, confidential, 27 August 2012.

³ Annex “C” to Rule 65 *ter* Submission: Defence Revised Witness List, confidential, 11 September 2012.

⁴ Status Conference, T. 28807–28808 (3 September 2012); Pre-Defence Conference, T. 28819, 28839–28845 (15 October 2012).

⁵ T. 30523–30530 (28 November 2012). The Prosecution clarified that because most of the Defence witnesses are called pursuant to Rule 92 *ter*, it is not the Prosecution’s intention to make the Defence convert statements which have to be prepared pursuant to Rule 92 *ter* into Rule 65 *ter* summaries. *See* T. 30529–30530 (28 November 2012).

⁶ T. 30524–30528 (28 November 2012).

⁷ T. 30894–30895 (4 December 2012).

adequately revise a “very unrealistic and excessive witness list” and that it was concerned that the witness list was compiled without the Accused knowing what the witnesses would testify about.⁸ Accordingly, it ordered the Accused, by the end of February 2013, to provide adequate 65 *ter* summaries for witnesses relating to the Srebrenica component of the case.⁹ The Chamber declined to order the Accused to provide witness statements to the Prosecution by the end of February 2013 but left the “option open to the parties to agree on should it be more practicable”.¹⁰ Following the Chamber’s order to file revised summaries for the Srebrenica witnesses, the Accused filed a further revised 65 *ter* witness list on 26 February 2013 (“Further Revised Witness List”).¹¹

4. In the Motion, the Prosecution argues that the Accused has violated the Chamber’s order to provide adequate 65 *ter* summaries by the end of February 2013 for the Srebrenica witnesses.¹² The Prosecution contends that there remain 24 witnesses (“Witnesses”) pertaining to the Srebrenica component of the case for whom there are inadequate 65 *ter* summaries, and in relation to whom no English versions of their witness statements have been disclosed.¹³ In the Prosecution’s submission, the 65 *ter* summaries for the Witnesses in the Accused’s Further Revised Witness List remain deficient and are “formulaic in nature, and include lists of topics and/or assertions, rather than a summary of the individual facts on which the witnesses are expected to testify”.¹⁴ It further argues that when the Defence has not disclosed an English translation of a witness statement and has only a provided deficient 65 *ter* summary, the Prosecution has no meaningful disclosure for the purposes of properly preparing for cross-examination.¹⁵

5. The Prosecution notes that none of the 65 *ter* summaries included in the Further Revised Witness List have been modified since the witness list filed by the Accused on 31 January 2013.¹⁶ With respect to 19 of the Witnesses, the Prosecution observes that while there had been some modifications to the 65 *ter* summaries since the witness list filed on 27 August 2012, those modifications “do not change the largely topical and generic nature of the summaries” and they fail to provide “detailed summaries of the facts the witnesses are expected

⁸ T. 30896 (4 December 2012).

⁹ T. 30897 (4 December 2012).

¹⁰ T. 30897 (4 December 2012).

¹¹ Defence Further Revised Rule 65 *ter* Witness List, 26 February 2013, Confidential Annex “G”.

¹² Motion, para. 3.

¹³ Motion, paras. 3–5.

¹⁴ Motion, para. 3.

¹⁵ Motion, para. 4.

¹⁶ Motion, para. 7.

to testify to".¹⁷ For five of the Witnesses there has been no modification at all to the original 65 *ter* summaries.¹⁸

6. The Prosecution seeks an order that the Accused be precluded from calling the Witnesses, until 30 days following the disclosure of an English translation of the witness's statement.¹⁹ The Prosecution notes that there may be situations where this 30 day period will not provide sufficient time to prepare for a specific witness and that it would seek additional relief in those circumstances.²⁰

7. On 28 March 2013, the Accused's legal adviser indicated that the Accused would not respond to the Motion.²¹

III. Discussion

8. Having reviewed the revised 65 *ter* summaries for the Witnesses, the Chamber finds that the Accused has failed to comply with the Chamber's order to provide adequate summaries for all witnesses pertaining to the Srebrenica component of the case by the end of February 2013. The Chamber observes that the 65 *ter* summaries for the Witnesses have either not been amended at all, or the additions are so general or minimal that they do not provide adequate notice about the facts on which each witness will testify. The Chamber's original concerns that a significant number of the summaries are formulaic, general in nature, and provide very little information other than the component of the case which the witness will testify about, remain unaddressed.²²

9. The Chamber reiterates that the inability of the Accused to provide adequate witness summaries derives from what remains a very unrealistic, excessive, and ultimately speculative witness list given that there remain witnesses on the list who will testify about matters which the Accused himself does not know about.²³ The Chamber repeats its observation that this is unfair to the Prosecution and goes against the spirit of the Rules.²⁴

10. As it did with the witnesses pertaining to the municipalities and hostages components of the case, the Chamber finds that given the continuing inadequacy of the Accused's 65 *ter*

¹⁷ Motion, para. 9.

¹⁸ Motion, para. 8.

¹⁹ Motion, paras. 4, 10.

²⁰ Motion, fn. 9.

²¹ T. 36301 (28 March 2013), referring to the Decision on Prosecution's Motion for Relief for Defence Disclosure Violations, 26 March 2013 ("Municipalities and Hostages Decision").

²² T. 30894-30896 (4 December 2012).

²³ Municipalities and Hostages Decision, para. 13.

summaries provided in the Further Revised Witness List, it is appropriate to provide the Prosecution with a reasonable time to prepare for cross-examination following disclosure of the English translation of a particular witness's statement.²⁵ The Chamber considers that two weeks is a sufficient period of time and orders that the Accused should not call any of the Witnesses until two weeks after the disclosure to the Prosecution of the English version of the draft witness statement sought for admission pursuant to Rule 92 *ter*. This does not affect the ability of the Accused to incorporate corrections to the statement following the arrival of the witness in The Hague and to disclose a final Rule 92 *ter* statement up to 48 hours prior to the witness's testimony.²⁶

11. The Chamber repeats its observation that the Accused and his team should prioritise their work and take measures to ensure that this requirement does not affect the smooth conduct of trial and does not lead to situations where witnesses are not available to testify. If any of the Witnesses are not available to testify due to the Accused's failure to provide an English version of the draft witness statement sought for admission pursuant to Rule 92 *ter* within two weeks of that witness's testimony, unless good cause is shown, the Chamber will deduct any lost court time from the time allocated to the Accused to present his case.

IV. Disposition

12. For the foregoing reasons, the Chamber, pursuant to Rules 54 and 65 *ter*(G) of the Rules, hereby:

- a) **GRANTS** the Motion in part;
- b) **ORDERS** the Accused not to call any of the Witnesses to testify until two weeks after disclosing to the Prosecution the English version of the draft witness statement sought for admission pursuant to Rule 92 *ter*; and

²⁴ T. 30896 (4 December 2012); Municipalities and Hostages Decision, para. 13.

²⁵ Municipalities and Hostages Decision, para. 14.

²⁶ In accordance with the Order on the Procedure for the Conduct of Trial, 8 October 2009, para. L.

- c) **DECIDES** that if any of the Witnesses are not available to testify due to the Accused's failure to provide an English version of the draft witness statement sought for admission pursuant to Rule 92 *ter* within two weeks of that witness's testimony, unless good cause is shown, the Chamber will deduct any lost court time from the time allocated to the Accused to present his case.

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



Judge O-Gon Kwon
Presiding

Dated this eleventh day of April 2013
At The Hague
The Netherlands

[Seal of the Tribunal]