



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-09-92-T
Date: 5 November 2015
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 5 November 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO AMEND ITS
RULE 65 *TER* WITNESS LIST AND TO RECALL EXPERT
WITNESS SVETLANA RADOVANOVIĆ AND REASONS FOR
DECISION ON DEFENCE REQUEST TO ADD WITNESS
DRAGAN VUJČIĆ TO ITS RULE 65 *TER* WITNESS LIST**

Office of the Prosecutor

Mr Peter McCloskey
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Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 October 2015, the Defence filed a motion to amend its Rule 65 *ter* witness list of 19 May 2014 (“Motion”) and recall expert witness Svetlana Radovanović.¹ The Defence seeks to add five new witnesses to its witness list.² The Defence submits that when it compiled its witness list, it could not predict what evidence would be led in the re-opening of the Prosecution’s case-in-chief and was therefore only in a position to identify and seek the addition of the five new witnesses after the re-opening.³ The Defence also seeks to recall its expert witness Radovanović to refute the re-opening testimony of Prosecution expert witness Ewa Tabeau.⁴ On 19 October, the Chamber granted the Motion in relation to one witness, Dragan Vujčić, with reasons to follow.⁵ On 21 October, the Prosecution confirmed on the record that it does not oppose the Motion.⁶

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law regarding additions to witness lists, as set out in a prior decision.⁷

3. Pursuant to Rule 89(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law. In determining whether there are sufficient grounds to recall a witness, the Chamber will consider whether the requesting party has demonstrated good cause to recall the witness.⁸ In assessing good cause, a Chamber will consider the purpose of recalling the witness and the applicant’s justification for not eliciting the relevant evidence from the witness when he or she originally testified.⁹

¹ Defence Motion Seeking to Add Witnesses to its Rule 65ter List to Address the Prosecution Re-opening as to Tomasica Evidence and Related Matters as to Witnesses not Originally on the Rule 65ter List, 8 October 2015 (Confidential).

² Motion, para. 5.

³ Motion, para. 2.

⁴ Motion, paras 2, 8.

⁵ T. 39983.

⁶ T. 40204-40205.

⁷ Decision on Defence Motion to Amend Witness List, 12 August 2014 (“August 2014 Decision”), para. 4.

⁸ *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution Motion to Recall Marko Rajčić, 24 April 2009 (“*Gotovina* Decision”), para. 10; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005 (“*Bagosora* 2005 Decision”), para. 2; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004 (“*Bagosora* 2004 Decision”), para. 6.

⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Decision on Prosecution Motion to Recall Witness VS-1033 or, in the Alternative, Admit the Witness’s Written Statement, 14 October 2010 (“*Šešelj* Decision”), para. 7; *Gotovina*

III. DISCUSSION

A. The Defence Request to Add Five Witnesses to its Rule 65 ter Witness List

4. At the time it filed its witness list, the Defence could not have identified any witnesses which could give evidence to counter the evidence presented during the re-opening of the Prosecution's case. Therefore, good cause for why the Defence did not seek to add these witnesses to the list at an earlier stage of the proceedings exists.

5. The Chamber considers the anticipated evidence of Dragan Gajić, Vukašin Vučen, Ostoja Marjanović, and Mile Matijević, as outlined in the Motion, to be *prima facie* relevant and of probative value. Furthermore, the Prosecution does not oppose the addition of these witnesses. The Chamber considers that it is in the interests of justice to grant the Defence leave to add these witnesses to its witness list. For the same reasons, the Chamber considered that it was in the interests of justice to grant the Defence leave to add Vujčić to its witness list.

B. The Defence Request to Recall Witness Radovanović

6. The presentation of the Prosecution's re-opening evidence ended on 8 July 2015.¹⁰ Radovanović testified from 24 through 27 August 2015.¹¹ Therefore, for over four weeks prior to Radovanović testifying, the entirety of the Prosecution's re-opening evidence was known to the Defence. Some of the statements and reports of the witnesses testifying during the reopening were available to the Defence even as early as 26 August 2014. The Chamber finds that it would have been prudent and in the interests of judicial economy for the Defence to have postponed Radovanović's testimony until she was in a position to also testify about the evidence presented in the re-opening of the Prosecution's case. However, considering that the Prosecution does not object to Radovanović being recalled, and that because her Tomašica report is yet to be drafted, it could be of assistance to bifurcate her testimony, the Chamber finds that there are sufficient grounds to recall Radovanović.

7. With regard to the Defence request to convert Zoran Stanković from a fact witness to an expert witness, the Chamber finds that it does not have to make a determination at this stage.

Decision, para. 10; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness Ahmed Mbonnyunkiza, 27 September 2007, para. 5; *Bagosora* 2005 Decision, para. 2; *Bagosora* 2004 Decision, para. 6.

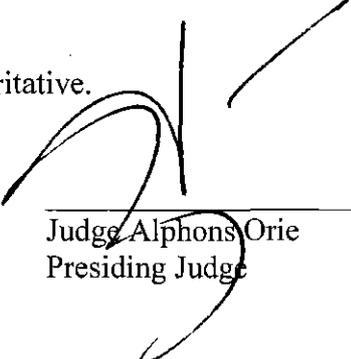
¹⁰ T. 36885.

¹¹ T. 38131, 38458.

IV. DISPOSITION

8. Based on the foregoing, pursuant to Rules 73 *ter* (D) and 89 (B) of the Rules, the Chamber **PROVIDES** its reasons for its decision to add Dragan Vujčić to the Defence's witness list; **GRANTS** the addition of Dragan Gajić, Vukašin Vučen, Ostoja Marjanović, and Mile Matijević to the Defence's witness list; and **GRANTS** the Defence request to recall Svetlana Radovanović.¹²

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



Judge Alphons Orié
Presiding Judge

Dated this fifth day of November 2015
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² With regard to the Defence request to convert Zoran Stanković from a fact witness to an expert witness, the Chamber acknowledges the request and will make its determination on Stanković's expert status once the Defence files a 94 *bis* motion for this witness.