



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-83-A

Date: 12 July 2013

Original: English

IN A SPECIALLY APPOINTED CHAMBER

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. John Hocking

Decision of: 12 July 2013

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**ORDER ISSUING A PUBLIC REDACTED VERSION OF
THE TRIAL CHAMBER DECISION ON MOTION FOR LEAVE
TO AMEND THE PROSECUTION'S WITNESS AND EXHIBIT
LISTS OF 9 JULY 2007**

The Office of the Prosecutor:

Mr. Douglas Stringer
Mr. Aditya Menon
Ms. Michelle Jarvis

Counsel for the Accused:

Ms. Vasvija Vidović
Mr. John R.W.D. Jones Q.C.

The specially appointed Chamber (“Chamber”)¹ of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (“Tribunal”) is seized of the “Prosecution Motion to Request Public Redacted Version of Trial Chamber’s Decision on Motion for leave to Amend the Prosecution’s Witness and Exhibit Lists”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 24 June 2013 (“Motion”);

NOTING that in the Motion, the Prosecution requests a public redacted version of the “Decision on Motion for leave to Amend the Prosecution’s Witness and Exhibit Lists”, rendered confidentially by Trial Chamber I in the case of the *Prosecutor v. Rasim Delić*² on 9 July 2007 (“Decision”)³;

NOTING that the Prosecution indicates in the Motion that it has relied on the Decision which highlights a general legal principle⁴ in support of a motion filed in the case of the *Prosecutor v. Goran Hadžić*⁵;

NOTING that the Prosecution argues that due to its confidential status the Decision is not available to the Defence in the *Hadžić* case and as the Decision concerns protected witnesses, it is appropriate to request a public redacted version of the Decision⁶;

NOTING that the Defence Counsel for the Accused Rasim Delić did not respond to the Motion;

CONSIDERING that it is in the interests of justice that the portions of the Decision which contain the legal reasoning shall become public, whereas some parts of the Decision related to protected witnesses and exhibits should remain confidential;

¹ *Prosecutor v. Rasim Delić*, Case No, IT- 04-83-A, “Order Assigning a Bench”, confidential, 4 July 2013.

² Case No IT-04-83.

³ Motion, paras 1 and 5.

⁴ Motion, para. 3.

⁵ *Prosecutor v. Goran Hadžić*, Case No, IT- 04-75-T, “Prosecution Motion for Leave to Amend Its Rule 65 *Ter* Witness List (Substitution of GH-167 for GH-118), For Testimony To Be Heard *Via* Video-Conference Link and For Admission of Evidence Pursuant To Rule 92 *Ter*”, confidential with confidential annexes, 31 May 2013, (“*Hadžić case*”), para. 8.

⁶ Motion, paras. 2 and 3.

FOR THE FORGOING REASONS, pursuant to Rule 54 and 75 of the Rules of Procedure and Evidence, the Chamber

HEREBY GRANTS the Motion and

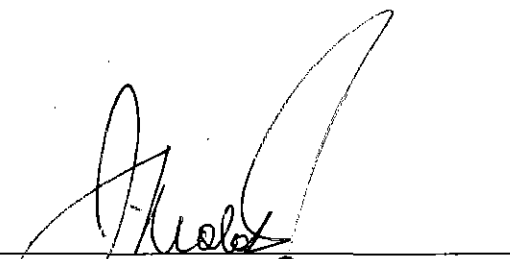
ISSUES a public redacted version of the Decision as attached in an annex to the present decision.

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

Dated this 12 day of July 2013

At The Hague

The Netherlands



Judge Bakone Justice Moloto
Presiding

[Seal of the Tribunal]

ANNEX

**UNITED
NATIONS**

International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-83-PT

Date: 09 July 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 09 July 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC REDACTED VERSION

**DECISION ON MOTION FOR LEAVE TO AMEND THE
PROSECUTION'S WITNESS AND EXHIBIT LISTS**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

TRIAL CHAMBER I (“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”);

BEING SEISED OF the Prosecution’s “Motion for Leave to Amend the Prosecution’s Witness and Exhibit Lists” filed on 4 June 2007 (“Motion”), whereby the Prosecution requests leave to exceed the word limit and seeks leave to amend its Witness List and Exhibit List, which were filed pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) on 31 October 2006, with the addition of 15 witnesses (“proposed witnesses”) and 106 exhibits (“proposed exhibits”);¹

NOTING the Prosecution’s arguments that the proposed additions will not impact on the rights of the Accused Rasim Delić, as:

- a) “the timing of the Prosecution’s request is not a key factor to be considered by the Trial Chamber”, rather “it is notice that the Defence have of the proposed exhibits”, and “whether it will be sufficient to meet the Prosecution’s case at trial”;²
- b) “neither the testimony of the proposed witnesses, nor the content of the proposed exhibits alter the Prosecution’s theory of the case” and the Defence will have sufficient time to prepare its cross-examination of the proposed witnesses before they are called and to review the proposed exhibits before they are introduced into evidence;³
- c) the Prosecution has already disclosed the statements it has so far taken from the proposed witnesses, and none of these witnesses will appear before 1 September 2007;⁴
- d) the addition of the proposed witnesses is not likely to extend the length of the trial as the Prosecution has identified several witnesses from its witness list which it does not expect to call;⁵
- e) each witness and exhibit is relevant to the charges against Rasim Delić;⁶
- f) all of the proposed exhibits have been disclosed to the Defence;⁷

¹ Prosecution Submission Pursuant to Rule 65*ter*, 31 Oct 2006.

² Motion, para. 9.

³ Motion, para. 10.

⁴ Motion, para. 11.

⁵ Motion, paras 10, 12.

⁶ Motion, paras 17-18.

- g) only twenty-six of the proposed exhibits will be tendered into evidence during the first month of trial, whereas the rest of the proposed exhibits will not be tendered before 1 September 2007;⁸
- h) proposed exhibits [REDACTED] and [REDACTED] are largely identical to exhibits already on the exhibit list;⁹

NOTING that the Prosecution submits that there is good cause for the addition of all proposed witnesses, namely that:

- a) [REDACTED];¹⁰
- b) [REDACTED];¹¹
- c) [REDACTED];¹²
- d) [REDACTED];¹³
- e) [REDACTED];¹⁴
- f) [REDACTED];¹⁵

NOTING that the Prosecution submits that there is good cause for the addition of all proposed exhibits to the 31 October exhibit list, namely that:

- a) [REDACTED];¹⁶
- b) [REDACTED];¹⁷
- c) [REDACTED];¹⁸
- d) [REDACTED];¹⁹

⁷ Motion, para. 13.

⁸ Motion, para. 13. The proposed exhibits that are to be tendered into evidence before 1 September 2007 are: [REDACTED]

⁹ Motion, para. 14. *See* Motion, Annex B, [REDACTED] *See* Motion, Annex A.

¹⁰ Motion, para. 22.

¹¹ Motion, para. 23.

¹² Motion, para. 24.

¹³ Motion, para. 25.

¹⁴ Motion, para. 26.

¹⁵ Motion, para. 27.

¹⁶ Motion, para. 28. *See also* Motion, Annex D; Motion, Annex B, pp 1-2.

¹⁷ Motion, para. 29. *See also* Motion, Annex B, p. 3.

¹⁸ Motion, para. 30. *See also* Motion, Annex B, pp 3-4.

- e) [REDACTED];²⁰
- f) [REDACTED];²¹
- g) [REDACTED];²²

NOTING that the Prosecution submits that the description of exhibit [REDACTED] listed in the 31 October exhibit list was incomplete and therefore seeks the addition of the full description to the exhibit list;²³

NOTING the Defence "Response to Prosecution Motion for Leave to Amend the Prosecution's Witness and Exhibit Lists", filed on 14 June 2007 ("Response"), whereby the Defence requests leave to exceed the word limit and objects to the proposed additional witnesses and exhibits, *inter alia*, on the grounds that:

- a) the filing of the Motion five weeks prior to the scheduled Pre-Trial Conference, as opposed to the required six-week period under Rule 65 *ter*, infringes upon Rasim Delić's right to a fair and expeditious trial and his right to have adequate time and resources to prepare his defence;²⁴
- b) the Prosecution has failed to demonstrate that it acted with due diligence in submitting the Motion at such a late stage, even though it was in possession of much of the proposed evidence at least several months prior to the submission of its exhibit list in October 2006;²⁵
- c) the statements of four of the proposed witnesses have not been disclosed by the Prosecution, and that the summary of their expected testimony as provided in the Motion does not provide a sufficient basis for the Trial Chamber to assess the potential relevance nor the possible probative value of their evidence;²⁶
- d) statements of the proposed witnesses [REDACTED] and [REDACTED] contain hearsay explanations concerning the fate of the alleged victims, and the Proposed Witness [REDACTED] will be used by the Prosecution to introduce evidence from relatives of

¹⁹ Motion, para. 31. *See also* Motion, Annex B, pp 19-23.

²⁰ Motion, paras 32-35. *See also* Motion, Annex B, pp 4-18.

²¹ Motion, paras 36-37. *See also* Motion, Annex B, pp 23-52.

²² Motion, para. 38. *See also* Motion, Annex B, pp 52-53.

²³ Motion, para. 3; Motion, Annex H.

²⁴ Response, paras 15-16, 18-19, 21.

²⁵ Response, paras 29-30, 32

²⁶ Response, para. 23. Defence refers to the statements of [REDACTED] Response, fn 19.

persons killed in [REDACTED] and will result in the Trial Chamber being faced with “double hearsay”;²⁷

NOTING the Prosecution “Request for Leave to Reply and Reply to Defence Response to Motion for Leave to Amend the Prosecution’s Witness and Exhibit Lists” filed on 21 June 2007 (“Reply”), whereby the Prosecution requests leave to reply and informs the Trial Chamber that it is withdrawing its request to add [REDACTED] to the witness list, and provides a copy of the statement of [REDACTED] which it had omitted from the Motion and wherein it responds to the arguments of the Defence;

CONSIDERING that a Trial Chamber may grant a motion requesting amendment of the 65 *ter* lists where it is in the interests of justice, and that this standard has been applied to motions for amendment made prior to the start of trial;²⁸

CONSIDERING that pursuant to Articles 20(1) and 21(4) (b) of the Statute of the International Tribunal an accused is entitled to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence;

CONSIDERING that in exercising its discretion as to whether an amendment is in the interests of justice, the Trial Chamber must balance the Prosecution’s duty to present the available evidence to prove its case with the right of the accused to have adequate time and facilities to prepare a defence and to be tried without undue delay;²⁹

CONSIDERING that in exercising its discretion the Trial Chamber may additionally take into account whether good cause for amending the 65 *ter* lists has been shown, bearing in mind the complexity of the case, on-going investigations, and translation of documents and other materials;³⁰

CONSIDERING that there is a difference between the admission of a document into evidence as an exhibit and the inclusion of the document into the 65 *ter* exhibit list, as in the latter case the Trial Chamber does not need to assess the relevance and probative value of such documents, provided it is satisfied that the party does not submit documents that are obviously irrelevant;³¹

²⁷ Response, paras 25-27.

²⁸ Rule 73 *bis* (F) of the Rules. See *Prosecutor v. Bošković and Tarčulovski*, Confidential Decision on Motion for Leave to Amend its Original Rule 65 *ter* Witness List Dated 7 Nov 2005 with Annexes A and B, filed on 5 May 2006; *Prosecutor v. Sefer Halilović*, Decision on Prosecution’s Motion to Vary its Rule 65 *ter* Witness List, 7 Feb 2005.

²⁹ *Prosecutor v. Vujadin Popović et. al.* Confidential Decision on Prosecution’s Motions for Leave to Amend Rule 65*ter* Witness List and Rule 65*ter* Exhibit List, 6 Dec 2006 (“*Popović* Decision”).

³⁰ *Popović* Decision, p. 7.

³¹ *Prosecutor v. Bošković and Tarčulovski* Confidential Decision on Prosecution’s Fifth Motion to Amend its Exhibit List and on its Second Motion to Remove Witnesses from its Witness List, 20 Apr 2007, para. 3.

CONSIDERING that the proposed exhibits have been disclosed to the Defence on or before 21 May 2007 and that the Pre-Trial Conference in this case was held on 2 July 2007 and that the hearing of evidence will commence on 9 July 2007;

CONSIDERING that at the Pre-Trial Conference the Trial Chamber determined pursuant to Rule 73 *bis* (C) that the Prosecution may call 55 witnesses and that the time available to the Prosecution for presenting evidence is 170 hours, to include direct examination, cross-examination and redirect, and allowing for procedural matters;³²

CONSIDERING that the reasons stated by the Prosecution for the request to add the proposed exhibits at this stage, such as the complexity of the investigation in the present case, the Prosecution's other investigative commitments, and difficulties it has encountered in co-operation with the staff employed in the various archives do not, as such, provide good cause for amendment of its 65 *ter* exhibit list;

CONSIDERING that accepting the proposed exhibits may place the Defence in a situation where its right to have adequate time to prepare its defence would be unduly infringed;

RECALLING the Prosecution's submission that only twenty-six of the proposed exhibits would be tendered before 1 September 2007;

FINDING therefore, that it is not in the interests of justice to allow the addition of proposed [REDACTED];

FINDING that it is in the interests of justice to allow the addition of proposed exhibits [REDACTED];

CONSIDERING furthermore, that in relation to the addition of witnesses, the Trial Chamber may also take into account the stage of proceedings at which the request to amend the witness list was made, and the repetitive or cumulative nature of the witness testimony;³³

FINDING that there is no need for the Trial Chamber to consider further the part of the Motion relating to the amendment of the witness list in light of the Trial Chamber's Oral Order of 2 July 2007, whereby the Trial Chamber set the number of witnesses to be called by the Prosecution at 55,

³² Pre-Trial Conference, 2 July 2007.

³³ *Prosecutor v. Slobodan Milošević*, Decision on Prosecution Motion to Amend Witness List and for Protective Measures for Sensitive Source Witnesses, filed on 13 Mar 2003. *Prosecutor v. Blagojević et. al.*, Decision on Prosecution's Third Motion for Leave to Amend Witness List, p. 2.

and informed the Prosecution that it had taken the present Motion into consideration in making that Order;

CONSIDERING that informing the Trial Chamber by way of this Motion that there are witnesses currently on the 65 *ter* witness list whom the Prosecution “does not expect to call at trial” is not an appropriate manner for the Prosecution to inform the Trial Chamber of changes to its witness list and that in such cases the Prosecution should file a separate motion requesting the withdrawal of any witnesses from its witness list;

PURSUANT TO Articles 20(1) and 21(4) (b) of the Statute and Rule 54 and Rule 65 *ter* of the Rules,

GRANTS the Prosecution and Defence requests to exceptionally exceed the word limit,

GRANTS the Prosecution leave to reply,

GRANTS the Motion insofar as it relates to the amendment of the witness list, in light of the Trial Chamber's Oral Order of 2 July 2007, and

GRANTS the Motion in part, insofar as it relates to the amendment of the exhibit list, as follows, and

ORDERS:

- Proposed exhibits [REDACTED] be added to the Prosecution exhibit list, and that the Prosecution may not tender them into evidence before 1 September 2007.
- the Prosecution select between proposed exhibits [REDACTED] and [REDACTED], and those exhibits which are already on its 65 *ter* exhibit list which the Prosecution has indicated are substantively the same as proposed exhibits [REDACTED] and [REDACTED], and place only one version in its 65 *ter* exhibit list, thereby either removing the similar exhibits already on its list, or not adding the proposed exhibits.

DENIES the Motion, in part, insofar as it relates to the amendment of the exhibit list for proposed exhibits [REDACTED] and [REDACTED].

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

Judge Bakone Justice Moloto
Presiding

Dated this ninth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]