



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: 29 October 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: 29 October 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S REQUEST FOR ADDITIONAL TIME TO PRESENT
HIS DEFENCE CASE AND ON MOTION TO RECALL DEFENCE 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 “Motion to Recall Defence Witnesses” filed by the Accused on 16 October 2013 (“Motion to Recall”) and of the request in the “Defence Supplemental Submission Pursuant to Rule 65 *ter*”, filed by the Accused on 18 October 2013 (“Request”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion to Recall, the Accused moves for leave to recall 46 defence witnesses to give testimony relevant to Count 1 of the Third Amended Indictment (“Indictment”).¹ In the Request, the Accused seeks an additional 100 hours in which to present his case to enable him to call 137 witnesses in relation to Count 1 of the Indictment.²

2. By way of background, the Chamber recalls that, on 28 June 2012, it delivered its ruling on the Accused’s oral motion for a judgement of acquittal pursuant to Rule 98 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and acquitted the Accused for genocide in seven municipalities in Bosnia and Herzegovina (“Municipalities”) under Count 1 of the Indictment, holding, *inter alia*:

Having reviewed the evidence admitted in this case with respect to Count 1, the Chamber finds that there is no evidence, even taken at its highest, which could be capable of supporting a conviction for genocide in the municipalities as charged under Article 4(3) of the Statute.³

3. The Prosecution filed its “Notice of Appeal of Judgement of Acquittal under Rule 98 *bis*” on 11 July 2012 and the “Prosecution Rule 98 *bis* Appeal Brief” confidentially on 24 September 2012, with a public version filed on 25 September 2012 (together “Prosecution’s Appeal”).

¹ Motion to Recall, para. 1. The Chamber notes that the Accused filed a “Motion for Permission to Exceed Word Limit: Motion to Recall Defence Witnesses” on 28 October 2013 (“Accused’s Motion to Exceed Word Limit”), wherein he seeks to exceed the limit of 3,000 words in relation to the Motion to Recall. On 28 October 2013, the Office of the Prosecutor (“Prosecution”) informed the Chamber *via* email that it did not wish to respond to the request. The Chamber considers that while it is preferable for extensions of the word limit to be sought prior to the filing of the submission in question, it shall, in exceptional circumstances, grant this request.

² Request, para. 2, specifying that the Accused intends to recall 46 witnesses who have already testified, in addition to bringing 91 new witnesses.

³ T. 28769 (28 June 2012).

4. On 19 September 2012, the Chamber granted the Accused 300 hours in which to present his defence case on Counts 2 to 11 of the Indictment.⁴ The presentation of the defence case commenced on 16 October 2012 with the testimony of the first witness.⁵

5. On 11 July 2013, some ten months after the commencement of the Accused's defence case, the Appeals Chamber issued its Judgement on the Prosecution's Appeal, reversed the Chamber's acquittal of the Accused under Count 1, and reinstated the charges against the Accused under that Count.⁶

6. On 2 August 2013, the Chamber ordered the Accused to file a revised list of witnesses pursuant to Rule 65 *ter* of the Rules which would also include witnesses relevant under Count 1.⁷ On 18 October 2013, the Accused filed his revised list of witnesses ("Revised Witness List"), together with the Request.⁸

7. On 21 October 2013, the Chamber ordered the Prosecution to file an expedited response to the Request no later than 23 October 2013.⁹ The Prosecution filed the "Prosecution Response to Karadžić's Request for 100 Additional Hours" on 23 October 2013 ("Response"), opposing the Request. The Prosecution argues that the Request is unreasonable in that a one-third increase of the time allotted to the Accused for Counts 2 to 11 in the Indictment is not warranted for a single count,¹⁰ particularly in light of the nature of the proposed additional evidence.¹¹ However, the Prosecution does not oppose a "modest" increase in the time granted to the Accused to present his case "given the timing of the re-instatement of Count 1".¹²

8. Also on 23 October 2013, the Prosecution filed the "Prosecution Response to Karadžić's Motion to Recall Defence Witnesses" ("Response to Motion to Recall"), opposing the Motion to Recall on the basis that it "amounts to a proposal to needlessly prolong the trial for a patently insufficient evidential basis".¹³

⁴ Decision on Time Allocated to the Accused for the Presentation of his Case, 19 September 2012 ("Decision on Time"), paras. 12, 14.

⁵ See T. 28882 (16 October 2012).

⁶ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR98bis.1, Judgement, 11 July 2013 ("Appeal Judgement"), para. 117.

⁷ Decision on Accused's Motions for Severance of Count 1 and Suspension of Defence Case, 2 August 2013, para. 25(d).

⁸ Defence Supplemental Submission Pursuant to Rule 65 *ter*, 18 October 2013, confidential Annex H.

⁹ The Chamber's order was communicated *via* email by the Chamber's Legal Officer.

¹⁰ Response, paras. 1, 9.

¹¹ Response, paras. 3–8.

¹² Response, para. 9.

¹³ Response to Motion to Recall, para. 1. The Chamber notes that the Prosecution filed a "Prosecution Motion to Exceed Word Limit in Response to Karadžić's Motion to Recall Defence Witnesses" on 21 October 2013. The

II. Discussion

9. The Chamber recalls that Article 20(1) of the Tribunal's Statute ("Statute") entrusts it with ensuring that the Accused's trial is fair and expeditious. Article 21(4)(e) of the Statute provides that the Accused shall be entitled "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". Furthermore, Rule 73 *ter*(E) of the Rules provides that "[a]fter having heard the defence, the Trial Chamber shall determine the time available to the defence for presenting evidence". Finally, Rule 73 *ter*(F) provides that "[d]uring a trial, the Trial Chamber may grant a defence request for additional time to present evidence if this is in the interests of justice".

10. In considering the amount of additional time to grant to the Accused to present his case, the Chamber has had regard to a number of factors. First, prior to the start of his defence case, the Accused was granted 300 hours in which to present his evidence on Counts 2 to 11. Count 1 charges the Accused with criminal responsibility for genocide in the Municipalities. The Chamber notes, however, that Counts 3 to 9 of the Indictment also pertain, *inter alia*, to crimes alleged to have occurred in the Municipalities which the Prosecution alleges form part of the *actus reus* of genocide under Count 1. Having already called a large number of witnesses relevant to these crimes, the Accused has been able to produce a substantial amount of evidence relevant to Count 1 in the 300 hours that were granted to him, and of which about 67 hours still remain available.¹⁴ Accordingly, the reinstatement of Count 1, albeit well into the presentation of the defence case, does not mean that the Accused should start his defence on this Count afresh.

11. Second, the Chamber further reiterates the concerns expressed on numerous occasions in relation to the relevance and repetitive nature of the expected testimony of a large proportion of prospective witnesses.¹⁵ The Chamber fails to see how a large number of witnesses listed as witnesses under Count 1 in the Revised Witness List are in fact relevant to that Count at all.¹⁶ The Chamber is of the view that the Accused has not given careful consideration to its repeated guidance on the need to focus his defence case and that the Request to be granted an additional 100 hours for Count 1 is blatantly unreasonable given that the Prosecution had 300 hours to discharge its burden of proof on Counts 1 to 11 of the Indictment and given that his defence on Count 1

Chamber's decision to grant the request to exceed the word limit was communicated *via* email to the Parties by the Chamber's Legal Officer on 22 October 2013.

¹⁴ Report on Use of Time in the Trial, 5 August 2013.

¹⁵ T. 30895–30896 (4 December 2012); Decision on Time, para. 11; T. 28790–28794 (3 September 2012).

¹⁶ The Chamber refers for instance to KW178, KW327, KW591, KW634, KW642, KW655, KW657, and KW668.

should, at this stage, focus on the issue of specific intent for the crimes alleged to have been committed in the Municipalities in question.

12. Nonetheless, given the late stage of the proceedings at which Count 1 was reinstated, and as a result of which the Accused has had to readjust his defence case, the Chamber considers that some additional time is warranted. In light of the above considerations, namely that much of the evidence relevant to Count 1 and the Municipalities in question has already been presented by the Accused and that his evidence on that Count should therefore be focused on the issue of the specific intent requirement for genocide, the Chamber considers that it is appropriate in the circumstances to grant the Accused 25 hours, in addition to the 300 hours already granted to him, to present his case on Count 1. This figure shall include the Accused's direct examination, as well as any re-examination of his witnesses.

13. Finally, in relation to the Motion to Recall, the Chamber has reviewed the Accused's submission as well as the Prosecution's in-depth analysis of the contents of each witness's expected testimony in the Response. However, the Chamber shall not, at this stage, place any restriction on the witnesses the Accused intends to call within the time granted by the Chamber. While the Chamber will provide guidance to the Accused as to what it considers to be relevant to his defence case when necessary, it will leave it to the Accused to decide how to best use the time granted to him by the Chamber. The Motion to Recall shall therefore be dismissed as moot.

IV. Disposition

14. Accordingly, the Chamber, pursuant to Articles 20 and 21 of the Statute and Rule 73 *ter*(F) of the Rules, hereby:

- a) **GRANTS** the Request in part and **ORDERS** that the Accused shall have 25 additional hours in which to present his case;
- b) **DENIES** the Request in all other respects;
- c) **GRANTS** the Accused's Motion to Exceed Word Limit; and
- c) **DISMISSES** the Motion to Recall as moot.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-ninth day of October 2013
At The Hague
The Netherlands

[Seal of the Tribunal]