



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: 4 November 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: 4 November 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION TO VARY LIST OF WITNESSES:
SREBRENICA & MUNICIPALITIES COMPONENTS**

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 to Vary List of Witnesses: Srebrenica & Municipalities Components”, filed on 11 October 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion the Accused moves, pursuant to Article 73 *ter*(D) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), for an order allowing him to vary his list of witnesses submitted pursuant to Rule 65 *ter* of the Rules (“Witness List”).¹ He seeks leave to add two witnesses related to the Srebrenica component of the case (“Proposed Witnesses”) to the Witness List and also provides notice of his intention to withdraw 98 municipalities-related witnesses already on the Witness List.²

2. The first witness the Accused wishes to add to the Witness List is Vladimir Matović who was a former journalist and adviser to the former President of the Federal Republic of Yugoslavia, Dobrica Cosić. Matović is to testify about the Accused’s knowledge of crimes that took place following the fall of Srebrenica.³ The second witness, Vidoje Blagojević, was Commander of the VRS Bratunac Brigade during the events in Srebrenica. He is to testify, *inter alia*, that he was never informed by Momir Nikolić of a plan to execute Bosnian Muslim prisoners on the evening of 12 July as claimed by Nikolić in his testimony.⁴ The Accused submits that the testimony of the Proposed Witnesses is both highly relevant to his case and has probative value.⁵

3. According to the Accused’s submission, Matović was not on the Witness List filed on 27 August 2012, as it was only on 24 September 2013 that the Accused became aware that Matović had information relevant to his case.⁶ He contends that given the volume of material in this case, the failure to discover Matović’s information earlier should not serve as a bar to his addition to the Witness List.⁷ The Accused further argues that while the Chamber granted his

¹ Motion, para. 1. When the Motion was filed, the Accused’s most current Witness List was dated 26 February 2013. Since the date of the Motion, a revised witness list was filed on 18 October 2013.

² Motion, paras. 1, 18, Confidential Annex A.

³ Motion, paras. 5–7.

⁴ Motion, para. 8.

⁵ Motion, 7–10.

⁶ Motion, para. 11.

⁷ Motion, para. 13. The Accused states that he was unaware of the information concerning Matović contained in the Dutch NIOD report which became public as of 27 August 2012. Motion, para. 12.

motion to vary the Witness List and, *inter alia*, to withdraw Blagojević,⁸ Blagojević became more significant to the Accused's case when other witnesses declined to testify, and when he was subsequently granted early release, he agreed to give evidence.⁹

4. Finally, the Accused lists the names of the 98 municipalities-related witnesses he wishes to withdraw from the Witness List.¹⁰

5. On 16 October 2013, the Office of the Prosecutor ("Prosecution") filed the "Prosecution Response to Defence Motion to Vary List of Witnesses: Srebrenica and Municipalities Components" ("Response"), stating that it does not oppose the Motion but that it requires clarification of the identities of three of the witnesses to be withdrawn as explained in the Confidential Appendix.¹¹

6. On 18 October 2013, the Accused filed the "Corrigendum to Motion to Vary List of Witnesses: Srebrenica & Municipalities Components" ("Corrigendum"), stating that there were errors in the numbers allocated to these three witnesses and attaching a correct version of the list of witnesses to be withdrawn ("Amended Confidential Annex A").¹²

II. Applicable Law

7. Rule 73 *ter*(D) of the Rules provides: "After commencement of the defence case, the defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called". The Chamber may grant such a motion when it is in the interests of justice.¹³ In making such a determination, the Trial Chamber shall take into consideration several factors, including whether the proposed evidence is *prima facie* relevant and of probative value. The Chamber shall also balance the defence's right to present available evidence during its case with the Prosecution's right to have adequate time to prepare for cross-examination of the proposed new witnesses.¹⁴ The Chamber must also consider whether the defence has shown good cause for not seeking to add the

⁸ Motion to Vary List of Witnesses, 22 November 2012. This motion was granted orally on 4 December 2012. See T. 30891–30892 (4 December 2012).

⁹ Motion, paras. 14–15, noting that the Prosecution was informed by email on the following day of the Accused's intention to request that Blagojević be reinstated to the Witness List.

¹⁰ Motion, para. 18.

¹¹ Response, para. 1, Confidential Appendix.

¹² Corrigendum, para. 1.

¹³ Decision on Accused's Motion to Vary List of Witnesses, 21 February 2013, para. 5, citing *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Čermak Defence's Second and Third Motions to Add a Witness to Its Rule 65 *ter* (G) Witness List, 22 September 2009 ("*Gotovina Decision*"), para. 7; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Stanišić Defence Motion to Add Witness DST-081 to Its Rule 65 *ter* Witness List, 20 October 2011 ("*Stanišić Decision*"), para. 4.

¹⁴ *Gotovina Decision*, para. 7; *Stanišić Decision*, para. 4.

witnesses to the witness list at an earlier stage of the proceedings. Good cause may exist when witnesses have only recently become available to give evidence or the relevance of the evidence has only recently become apparent.¹⁵

III. Discussion

8. The Chamber considers that the Proposed Witnesses' anticipated evidence, as described in the Motion, is relevant to issues concerning the execution of Bosnian Muslim prisoners in Srebrenica in July 1995 and, in particular, the alleged pre-existence of a plan to kill these prisoners. These are live issues relating to the alleged participation of the Accused in the joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica in 1995, as charged in the Third Amended Indictment. For these reasons, the Chamber is satisfied as to the *prima facie* relevance and probative value of the anticipated evidence.

9. The Chamber notes that the Prosecution does not object to the addition of the Proposed Witnesses to the Witness List. In any event, the Chamber considers that such additions would not negatively affect the Prosecution's right to have adequate time to prepare for cross-examination, given that one of the Proposed Witnesses, Blagojević, was on the original Witness List. Furthermore, in light of the Accused's notice to withdraw 98 municipalities-related witnesses from the Witness List, the Chamber considers that the addition of the Proposed Witnesses would neither cause an undue delay to these proceedings nor require an extension of the time allocated to the Accused for the presentation of his defence case

10. Although the Chamber is not entirely satisfied with the reasons put forth by the Accused for only becoming aware of Matović's evidence at such a late stage of the proceedings, it reiterates once again that it deems it important to allow the Accused a certain degree of flexibility in the presentation of his case, so that he can use the remainder of his allocated time as efficiently as possible. The Chamber is therefore satisfied that the Accused has shown good cause for the late addition of Matović to the Witness List. In light of the information before it, the Chamber is also satisfied that the Accused has shown good cause for the late addition of Blagojević to the Witness List.

11. For the above reasons, the Chamber considers that it is in the interests of justice to grant the addition of the Proposed Witnesses to the Witness List, as well as the withdrawal of 98 municipalities-related witnesses listed in Amended Confidential Annex A.

¹⁵ *Gotovina* Decision, para. 7; *Stanišić* Decision, para. 4.
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IV. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rule 73 *ter*(D) of the Rules, hereby:

(a) **GRANTS** the Motion; and

(b) **ORDERS** the Accused to implement the changes to the Witness List by no later than 11 November 2013.

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



Judge O-Gon Kwon
Presiding

Dated this fourth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]