



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-T
27-4-2006
(4826 - 4823)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4826
Zhang

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, presiding
Khalida Rachid Khan
Lee Gacuga Muthoga

Registrar: Adama Dieng

Date: 27 April 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

2006 APR 27 P 12:23

**DECISION ON THE DEFENCE MOTION FOR
DISCLOSURE OF *VOIR DIRE* EVIDENCE**

Office of the Prosecutor:
Wallace Kapaya
Charity Kagwi-Ndungu
Sylver Ntukamazina
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

4825

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga;

BEING SEIZED of the “Defence Motion for Disclosure of *Voir Dire* Evidence”, filed on 23 March 2006;

CONSIDERING the “Prosecutor’s Response to Defence Motion for Disclosure of *Voir Dire* Evidence”, filed on 28 March 2006, and the Defence “Reply to Prosecutor’s Response to Defence Motion for Disclosure of *Voir Dire* Evidence”, filed on 30 March 2006;

NOW DECIDES the Motion on the basis of the written briefs of the parties pursuant to Rule 73 (A).

INTRODUCTION: Procedural History of the Accused’s Curriculum Vitae

1. The present Motion relates to a *voir dire* hearing to be held on the admissibility of a hand-written document prepared by the Accused, which is entitled *Curriculum Vitae* (“CV”). This document was included in a number of records which, on 3 October 2005, the Prosecution tendered as Exhibit P2.¹ On 2 March 2006, the Defence formally raised an objection to the admissibility of the CV. According to the Defence, the CV, being a statement by the Accused, is not admissible in evidence unless certain procedural safeguards have been satisfied – which, the Defence alleges, have not been met.² The Prosecution contends that this document, having already been entered into evidence as Exhibit P2, may be referred to by Prosecution witnesses and does not need to be further admitted. Following these exchanges by the parties, the Chamber decided to provisionally admit the document as part of Exhibit P42 and allow reference to it pending a determination of its final status. The Chamber held that a determination on the admissibility of this document will be made following a *voir dire* hearing.³

SUBMISSIONS OF THE PARTIES

Defence Motion

2. The Defence for Protais Zigiranyirazo, in preparation for the *voir dire* proceedings on the non-admissibility of the entitled *Curriculum Vitae*, requests the Chamber to order the Prosecution to disclose of the following information:

- a. A detailed statement of the evidence to be provided by all *voir dire* witnesses, in either a written or a signed declaration or a detailed will-say;
- b. The dates of all meetings between the Accused and members of the Office of the Prosecutor (OTP) or between the Accused and any intermediary acting between the accused and the OTP;

¹ T. 3 October 2005 p. 26.

² T. 2 March 2006 pp. 37-38.

³ T. 2 March 2006 p. 45.

- c. The names of all members of the OTP who met Mr. Zigiranyirazo and all intermediaries acting between the Accused and the OTP;
- d. Copies of all notes taken with all times of questioning;
- e. Copies of all questions put to the Accused and answers by the Accused;
- f. Copies of all documents signed by the Accused.

3. The Defence argues that the information sought is central to the *voir dire* proceedings and should be provided, under Rule 66 (A)(ii), no later than 60 days prior to trial. However, insofar as the trial has already commenced, the Defence requests the Prosecution to furnish the materials immediately in order to conduct investigations prior to the hearing.

Prosecution Response

4. The Prosecution argues that a *voir dire* examination is an interlocutory proceeding, to which disclosure obligations, under Rule 66 (A), do not apply. Nevertheless, the Prosecution affirms that it will disclose a summary of the anticipated testimony of the witnesses to be called, as requested by the Defence in paragraph 2 (a) of its Motion cited above.

5. The Prosecution asserts that the other information requested by the Defence, in paragraph 2 (b) through (f) above, is extraneous to the *voir dire* proceedings on the admissibility of the Accused's C V. The Prosecution also argues that the Defence "chose not to" raise issues, in relation to the other requested information, during cross-examination of the witness, Mr. Zuhdi Janbek, who tendered the Accused's CV as part of the Prosecution Exhibit P2.⁴ The Prosecution maintains that no evidence will be led during the *voir dire* hearing regarding matters raised in paragraphs 2 (b) through (f) above of the Defence Motion and that this hearing is not an appropriate forum for their re-litigation.

6. According to the Prosecution, the provisions of Rule 42 do not apply because the Accused was not a suspect when he "voluntarily prepared and offered his CV to the Prosecutor".⁵ The Prosecution also argues that copies of any notes taken by representatives of the OTP, during discussions with the Accused when he was not a suspect, are internal documents which, under Rule 70, are not subject to disclosure.

Defence Reply

7. In its Reply, the Defence argues that, under Rule 66 (A)(ii), disclosure applies to all witnesses that the Prosecution intends to call, whether on direct or *voir dire* examination.

8. The Defence also argues that the Prosecution has erred in suggesting that the Defence chose not to cross-examine the investigator, Mr. Janbek, about the circumstances under which the OTP received the Accused's hand-written CV. The transcript reveals that, on 4 October 2005, the Defence raised an objection about the introduction of the statement during the testimony of Mr. Janbek, who was not employed by the OTP when the CV was written or received by the Evidence Unit and has no direct knowledge of the document.

⁴ Prosecution Response, para. 6.

⁵ Prosecution Response, para. 8.

DELIBERATIONS

Specific Identification of Requested Materials

9. According to established case law, a request for production of documents must be sufficiently specific concerning the nature of the evidence sought and its being in the possession of the addressee of the request.⁶ The Chamber considers that identification of the material requested in paragraph 2 (a) of the Defence Motion, in relation to the witnesses to be called, meets these requirements. Although of a general nature, the information sought has been precisely defined, and the Prosecution has affirmed that it will disclose summaries of anticipated witness testimonies.⁷ The Chamber therefore considers it unnecessary to order disclosure of item (a): "a detailed statement of the evidence to be provided by all *voir dire* witnesses".

10. However, the Chamber observes that the Defence has knowledge of the information sought in paragraphs 2 (b) through (f) of its Motion and that this material therefore cannot be subject to disclosure.

11. The Chamber observes that disclosure is a tool for ensuring fair trial proceedings and that both parties in the present case have disclosure obligations to assist the Chamber in assessing the admissibility of the CV. Accordingly, the Chamber expects that the Defence will demonstrate any circumstances for the non-admissibility of the document and that the Prosecution will show the chain of custody leading to its receipt of the document.

Rights of Suspects During Investigation

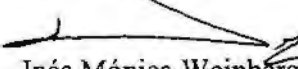
12. In order for the procedural safeguards guaranteed under Rule 42 to be applicable in the present case, the Applicant must show that he was a suspect and that, while such a suspect, he was questioned by the Prosecutor, following which the statement entitled CV was written, and which the Applicant was induced to offer, contrary to his wishes.⁸

FOR THE ABOVE REASONS, THE CHAMBER

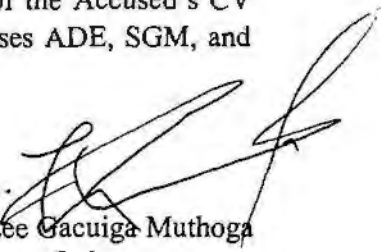
DENIES the Defence Motion in its entirety;

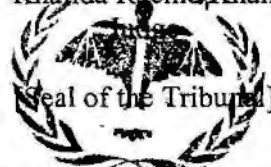
NOTIFIES the parties that the *voir dire* hearing on the admissibility of the Accused's CV will be scheduled directly following the hearing of Prosecution Witnesses ADE, SGM, and BPP.

Arusha, 27 April 2006


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachida Khan


Lee Gacuiya Muthoga
Judge



⁶ *Prosecutor v. Blaškić*, Appeals Chamber Decision on the Appellant's Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2006, para. 40; *Prosecutor v. Bagosora et al.*, Decision on Disclosure of Materials Relating to Immigration Statements of Defence Witnesses, 27 September 2005, para. 3; *Prosecutor v. Kordić and Čerkez*, Order on Pasko Ljubčić's Motion for Access to Confidential Supporting Material, Transcripts, and Exhibits in the Kordić and Čerkez Case, 19 July 2002.

⁷ Prosecution Response, para. 5.

⁸ Rule 42 (A) of the Rules of Procedure and Evidence.