



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-02-65-PT
Date: 18 February 2004
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Order of: 18 February 2004

PROSECUTOR
v.
ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ

**DECISION ON PROSECUTION MOTION FOR LEAVE
TO AMEND ITS RULE 65ter WITNESS AND EXHIBIT LISTS**

The Office of the Prosecutor:

Ms. Joanna Korner
Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simić, for Željko Mejačić
Ms. Sanja Turlakov, for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Ms. Slobodanka Nedić, for Duško Knežević

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 (“the International Tribunal”),

BEING SEISED of a confidential “Prosecution’s Motion for Leave to Amend its Rule 65ter Witness and Exhibits Lists” filed on 18 December 2003 (“Motion”), in which the Prosecution seeks the following relief:

- (a) leave to add 3 witnesses (one of which would be a reinstatement) to its list of witnesses,
- (b) the addition of 17 items (“P115-P131”) to its exhibit list, and
- (c) the withdrawal of 1 item (“P97”) from the exhibit list,

NOTING the “Defence Response to Prosecution’s Motion for Admission of Statements pursuant to Rule 92bis and 89 (F) of the Rules of Procedure and Evidence” filed by the Defence of Željko Međaković on 29 January 2004, in which it submits as follows:

- (a) no objection to the addition of witnesses 57 and 47 to the Prosecution witness list,
- (b) objection to the addition of witness 56 on the ground that the witness, an accused before the Tribunal whose case is on appeal, has not consented to testifying in these proceedings, and
- (c) no comments as to the exhibits,

NOTING the “Defence Response to Prosecution Motion for Leave to Amend its Rule 65ter Witnesses and Exhibit Lists” filed by the Defence of Momčilo Gruban on 30 January 2004, in which it is submitted:

- (a) no objection to the addition of all but witness 56, on the same ground as above, and
- (b) no objection to the addition of all but exhibit P130, a transcript of interview of witness 56 with a Prosecution’s investigator in 2000, on the basis that the Defence should be given an opportunity to cross-examine the maker of the statement,

NOTING the “Dušan Fuštar’s Response to the Prosecution’s Motion for Leave to Amend its Rule 65ter Witnesses and Exhibit List” filed by the Defence of Dušan Fuštar on 30 January 2004, in which it submits as follows:

- (a) no objection to adding all three witnesses to the witness list,
- (b) no objection to the withdrawal of 1 exhibit, and

- (c) objects to the addition of 7 exhibits to the exhibit list “on the grounds of lack of relevance and lack of proof of authenticity”,

NOTING the “Duško Knežević’s Response on Prosecution’s Motion for Leave to Amend its Rule 65ter Witness and Exhibit Lists” filed by the Defence of Duško Knežević on 30 January 2004, followed by a confidential corrigendum to “Duško Knežević’s Response on Prosecution’s Motion for Leave to Amend its Rule 65ter Witness and Exhibit Lists” filed on 2 January 2004, in which the Defence submits as follows:

- (a) no objection to the addition of all three witnesses to the witness list, and
(b) clarifications are needed as to the appropriateness of adding exhibit P130, the transcript of interview of witness 56 to the exhibit list, considering that the witness will be called to testify,

CONSIDERING that there is good cause for granting the request to add witnesses 57 and 47 to the Prosecution’s witness list pursuant to Rule 65 ter (E) (ii) of the Rules, both of whom will testify about sexual assaults in the Omarksa camp, the knowledge and position of authority of the accused Mejakić and Gruban,

CONSIDERING that in relation to witness 56, it is for the party wishing to call a witness to obtain her/his consent to testify, or otherwise apply to the Trial Chamber for an appropriate order; it would be for the relevant Trial Chamber to decide, in due course, whether to grant any such application;

CONSIDERING that, in the view of the Trial Chamber, there is no prejudice to the Defence in adding witness 56 to the Prosecution’s witness list at this stage, thus putting the Defence teams on notice that he might be called to testify in these proceedings; as an insider to the events at the Omarska camp, his evidence is certainly significant,

CONSIDERING FURTHER that, with respect to the items proposed to be added to the Prosecution’s exhibit list (marked “P115 to P131”), the Trial Chamber will grant this request, save for item marked P128, identical to item P97 already on the list, and item P130, the interview of witness 56, on the basis that the disclosure of those items at this stage does not prejudice the rights of the Accused, and that any challenge to their admissibility, authenticity or relevance is a matter for trial,

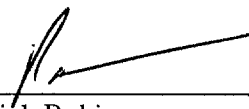
CONSIDERING that in light of the fact that there is no certainty that witness 56 will testify in this case, so that the accused would have an opportunity to cross-examine him as to the content of his interview with the Prosecution, it would not be proper for the interview (proposed item P130) to be listed on the Prosecution exhibit list,

PURSUANT TO Rules 54 and 65 *ter* of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY ORDERS AS FOLLOWS:

- (1) The Prosecution application to add witnesses **47, 56** and **57** to its witness list is allowed,
- (2) The application to add items **P115** to **P131** to the Prosecution exhibit list is granted, save for items **P128** and **P130**,
- (3) The withdrawal of the item marked **P97** from the Prosecution exhibit list is noted, and
- (4) The Prosecution shall, no later than Friday, 27 February 2004, file a revised witness and exhibit lists in accordance with this Decision.

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



Patrick Robinson
Pre-trial Judge

Dated this eighteenth day of February 2004
At The Hague
The Netherlands

[Seal of the Tribunal]