



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: 22 October 2004
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 22 October 2004

PROSECUTOR

v.

**ŽELJKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ**

**DECISION ON PROSECUTION'S MOTION FOR LEAVE TO ADD AND REMOVE
WITNESSES FROM ITS RULE 65 *TER* WITNESS LIST**

The Office of the Prosecutor:

Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simić, for Željko Mejačić
Mr. Branko Lukić, 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 partly confidential “Prosecution’s Motion for Leave to Add Witnesses to the Rule 65 *ter* Witness Lists and Summaries”, filed by the Office of the Prosecutor (“Prosecution”) on 30 August 2004 (“the Prosecution Motion”), seeking leave to add four witnesses and withdraw one witness from its list of witnesses (“Witness List”),

NOTING the Prosecution submission that in light of the Trial Chamber’s decision on Judicial Notice,¹ it must now add four witnesses whose evidence is tendered to prove the requirement for evidence of a “widespread or systematic attack against a civilian population” in the charges of crimes against humanity and the existence of an armed conflict; that the accused would not be prejudiced by the addition of the four witnesses because none of the witnesses gives direct evidence against any of the accused, and since no trial date has been set in this case, that the accused will have adequate time to prepare their case prior to the commencement of the trial,

NOTING that, with respect to the witness sought to be withdrawn from the list, the Prosecution submits that the request is made after further consideration of the evidence available and in light of significant issues relating to the production of his evidence,

NOTING that the Defence of Duško Knežević filed a confidential “Dusko Knezevic’s Response to Prosecution’s Motion for Leave to Add Witnesses to the Rule 65 *ter* Witness Lists and Summaries” on 30 September 2004 (“the Knežević Response”), with the leave of the Trial Chamber, objecting to the Prosecution Motion *inter alia* on the basis that it has not been provided with prior statements of the four witnesses that the Prosecution seeks to add to its Witness List and whose transcripts the Prosecution seeks to have admitted pursuant to Rule 92 *bis*, and requesting (i) an order for the disclosure of the statements, and (ii) additional time to file a response after receiving the aforesaid witness statements (“Request for Leave to Respond”),

NOTING the “Prosecution’s Reply to Defence Responses and Reply”, filed by the Prosecution on 7 October 2004 (“Prosecution Reply”), seeking (i) leave to file a reply pursuant to Rule 126 *bis* of the Rules, (ii) to inform the Trial Chamber and the parties that it completed its Rule 66(A)(ii)

¹ *Prosecutor v. Međaković et al.*, Case No. IT-02-65-PT, “Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B)”, 1 April 2004 (“Decision on Judicial Notice”).

disclosure with respect to the four witnesses on 4 October 2004, on which date the statements of the four witnesses were couriered to the Defence, and (iii) to inform the Trial Chamber that the Prosecution has no objection to Knežević's request for additional time to respond,

NOTING that the Defence of Duško Knežević filed an "Addendum to Dusko Knezevic's Response to Prosecution's Motion for Leave to Add Witnesses to the Rule 65 *ter* Witness Lists and Summaries" on 18 October 2004 ("Addendum to the Knežević Response"), in which it submits that having reviewed the statements, the Defence objects to the addition of one of the proposed witnesses on the basis of inconsistencies emerging from prior statements and testimony; that it wishes to cross-examine one other proposed witness, and otherwise would agree to the admission of the evidence of the remaining two witnesses without cross-examination,

CONSIDERING that, in the Decision on Judicial Notice, the Trial Chamber refused to take judicial notice of a number of facts, such as those covering the existence of an armed conflict in the municipality at the relevant time, and those providing the context of the commission of the alleged crimes, on the basis that those facts were too broad, tendentious and containing legal characterizations of facts,

CONSIDERING that in light of the Decision on Judicial Notice, the request to add the four witnesses should be granted; no prejudice would flow to the accused from allowing the amendment to the Witness List, since the Defence will have adequate time to prepare their case prior to the commencement of the trial;

PURSUANT TO Rules 54, 65 *ter*, and 126 *bis* of the Rules,

HEREBY ACCEPTS the filing of the Prosecution Reply and the Addendum to the Knežević Response, **GRANTS** the Prosecution Motion and **ORDERS** as follows:

- (1) the Prosecution may add to the Witness List the four witnesses, numbered 58-61 and identified in confidential Annex A to the Prosecution Motion, and
- (2) the Prosecution may withdraw from its Witness List witness numbered 5, identified in confidential Annex A to the Prosecution Motion.

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



Patrick Robinson
Presiding

Dated this twenty-second day of October 2004
At The Hague
The Netherlands

[Seal of the Tribunal]