



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-03-68-T  
Date: 30 November 2004  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Hans Henrik Brydensholt  
Judge Albin Eser

**Registrar:** Mr. Hans Holthuis

**Decision of:** 30 November 2004

**PROSECUTOR**

**v.**

**NASER ORić**

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**DECISION ON DEFENCE MOTION TO RECALL A WITNESS**

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**The Office of the Prosecutor:**

Mr. Jan Wubben

**Counsel for the Accused:**

Ms. Vasvija Vidović  
Mr. John Jones

**TRIAL CHAMBER II** (“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”);

**BEING SEISED OF** an “Urgent Motion Regarding Late Disclosure of Evidence and to Recall a Witness” filed by the Defence for Naser Orić (“Accused”) on 18 November 2004 (“Motion”);

**NOTING** that in the Motion, the Defence refers to a video concerning events in Kravica, which the Office of the Prosecutor (“Prosecution”) disclosed to the Defence on 10 November 2004 (“video”);

**NOTING** that the Defence has repeatedly requested the disclosure of this video and that this was also a matter of discussion during the Pre-Trial Conference on 28 September 2004;

**NOTING** that the video contains a number of interviews which are relevant to this case, including an interview with Mr. Slaviša Erić, who gave evidence before this Trial Chamber on 26 October 2004, and an interview with Mr. Jovan Nikolić, the Commander of the Territorial Defence of Kravica during a period which is relevant to the indictment against the Accused (“Indictment”);

**NOTING** that the Defence in its Motion requests an order for Mr. Erić to re-appear before the Trial Chamber for further cross-examination on his statement and on the other matters disclosed by the video;

**NOTING** that the Prosecution objects to this request<sup>1</sup>;

**CONSIDERING** the oral arguments put forward by the Defence and the Prosecution on this issue and the portions of the video which were shown in court on 26 November 2004<sup>2</sup>;

**CONSIDERING** that the Trial Chamber accepts the Prosecution’s explanation as to why the video was not disclosed to the Defence in a timely manner;

**CONSIDERING** that the interviews on the video contain information which is relevant to the Indictment and events upon which Mr. Erić testified;

**CONSIDERING** that the Prosecution will not call Mr. Jovan Nikolić as a witness<sup>3</sup>;

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<sup>1</sup> Transcript page (“T.”) 2134.

<sup>2</sup> T. 2134 – 2171.

<sup>3</sup> T. 2165.

**CONSIDERING** that the information on the video can be used in the examination of future witnesses, but that it would be unfair to deprive the Defence of the possibility of further cross-examining Mr. Erić on matters on which he could have been cross-examined if the video had been made available to the Defence prior to his testimony;

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

**HEREBY GRANTS the Motion and ORDERS THAT**

**Mr. Slaviša Erić be called to re-appear before the Trial Chamber for further cross-examination, and furthermore**

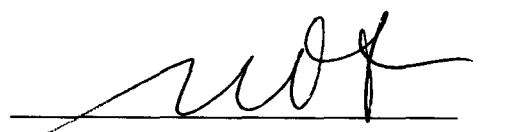
**ENJOINS the Prosecution to exercise the utmost diligence in all areas of disclosure regulated by the Rules, especially since late disclosure can result in the recalling of witnesses, which causes unnecessary inconveniences and financial burdens for this Tribunal.**

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

Dated this 30th day of November 2004,

At The Hague,

The Netherlands.



**Carmel Agius**

**Presiding Judge**

**[Seal of the Tribunal]**