



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-95-13/1-T
Date: 6 June 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin
Registrar: Mr Hans Holthuis
Decision: 6 June 2006

PROSECUTOR

v.

**MILE MRKŠIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN**

**DECISION ON PROSECUTION MOTION TO AMEND
ITS RULE 65 *TER* LIST**

The Office of the Prosecutor:

Mr Marks Moore
Mr William Smith
Mr Philip Weiner
Ms Meritxell Regue
Mr Alexis Demirdjian

Counsel for the Accused:

Mr Miroslav Vasić and Mr Vladimir Domazet for Mile Mrkšić
Mr Borivoje Borović and Ms Mira Tapušковиć for Miroslav Radić
Mr Novak Lukić and Mr Momčilo Bulatović for Veselin Šljivančanin

1. 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 (“Chamber”) is seized of a motion from the Office of the Prosecutor (“Prosecution”) dated 18 May 2006, seeking to add a witness, Slobodan Lazarević, to its witness list (“Motion”).¹ A summary of the anticipated evidence of the proposed witness and a witness statement given in 1999 are attached to the Motion. On 25 May 2006 the Defence for Mile Mrkšić and Veselin Šljivančanin jointly objected to the Motion (“Response”).² On 29 May 2006 the Prosecution requested leave to reply to the Response and submitted its reply (“Reply”).³ The Trial Chamber grants leave to reply and takes note of the contents of this Reply.

2. Under Rule 73 *bis* (E) of the Rules of Procedure and Evidence (“Rules”), the Chamber may grant any motion for an amendment to the witness list “if satisfied that this is in the interests of justice.” In its assessment, the Chamber will consider the relevance and probative value of the proposed evidence and whether the interests of the Defence and the fairness of the proceedings are adequately protected.

3. The proposed evidence concerns conversations Slobodan Lazarević allegedly had with Mile Mrkšić in 1992, during which the Accused allegedly appeared proud of what he had done in Vukovar. It is submitted that the witness, if called, would testify that Mile Mrkšić said he had ordered Veselin Šljivančanin to kill the Croatian defenders gathered in the Vukovar hospital. The Chamber finds that the proposed evidence would be relevant to the Accused’s individual criminal responsibility. The Defence observes that the proposed witness’ knowledge is not of a direct nature.⁴ Since the proposed evidence is based on the witness’ recollection of his own conversations with Mile Mrkšić and it relates to that Accused’s state of mind, the Chamber sees no appearance of any significant limitation to the probative value of the proposed evidence.

4. The Prosecution submits that the Defence would not be required to conduct a lengthy investigation in connection with the testimony of Slobodan Lazarević, because it is short and concise.⁵ The Defence observes that Mile Mrkšić is said to have talked to the witness in the presence of a number of persons, whose identity the Defence would need to establish.⁶ The Defence also submits that the conversations between Slobodan Lazarević and Mile Mrkšić allegedly took place in 1992, which falls outside of the scope of the Indictment and thus has not

¹ Prosecution Motion to Amend Its Rule 65*ter* Witness List, 18 May 2006.

² Joint Defence Response to the Prosecution Motion to Amend Its Rule 65*ter* Witness List, 25 May 2006.

³ Prosecution Reply to Joint Defence Response to Prosecution Motion to Amend Its Rule 65*ter* Witness List, 29 May 2006.

⁴ Response, para 13.

⁵ Motion, para 9.

⁶ Response, para 10.

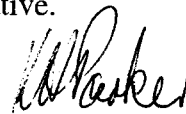
been a subject of the Defence investigations so far.⁷ The Chamber accepts that the Defence would be required to conduct an additional, although not necessarily lengthy, investigation in respect of the proposed testimony.

5. The Defence notes that the proposed witness had given a statement to the Tribunal in 1999 and, in addition, testified as a Prosecution witness in the Milošević case as early as in October 2002.⁸ It is therefore hardly conceivable that the Prosecution was not aware of the existence of his evidence. In particular, the Chamber has already heard in this case witnesses who previously gave evidence in the Milošević case and it admitted into evidence, at the request of the Prosecution, portions of the transcript of that case. The Prosecution submits that it was informed about the part of Slobodan Lazarević's testimony pertaining to Mile Mrkšić only in mid-May by another Prosecution team.⁹ In view of the above considerations, the Chamber is not persuaded by this assertion. The Prosecution is about to conclude its case, which commenced more than seven months ago. The Prosecution failed to demonstrate that during this entire period it was not in a position to become cognisant of the proposed evidence. On the contrary, this evidence was easily accessible from the Milošević case, which was clearly a subject of the Prosecution's interest while gathering material for the present case.

6. Therefore, even though the nature of the proposed testimony does not appear to be such as to necessitate excessively demanding preparations on the part of the Defence, the proximity of the close of the Prosecution case and the Prosecution's failure to provide a convincing explanation for its inability to seek the addition of Slobodan Lazarević to its list of witnesses earlier, speak against the requested amendment to the Prosecution's witness list.

7. For the foregoing reasons, the Chamber **DENIES** the Motion.

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



Judge Kevin Parker
Presiding

Dated this sixth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Response, para 11.

⁸ Response, para 6; Motion, para 5.

⁹ Reply, para 6.