



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-03-67-T

Date: 16 June 2008

Original: English

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 16 June 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION FOR LEAVE TO AMEND ITS
WITNESS LIST AND EXHIBIT LIST**

Office of the Prosecutor

Ms. Christine Dahl
Mr. Daryl Mundis

The Accused

Mr. Vojislav Šešelj

I. INTRODUCTION

1. **TRIAL CHAMBER III** (“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”) is seised of the “Prosecution’s Motion for Leave to Amend its Witness List and Exhibit List”, filed 7 April 2008 (“Motion”)¹ and the *addendum* to the Motion filed 15 May 2008 (“Motion *addendum*”).²

2. In the Motion, the Prosecution requests leave of the Trial Chamber to: (1) remove Miodrag Panić, VS-022 and Ljubica Došen from its Rule 65*ter* witness list filed 29 March 2007 (“Witness List”);³ (2) replace designated expert witness Ivan Grujić with Višnja Bilić; (3) add Dr. Vesna Bosanac as a witness to the Witness List; and (4) add documents to its Rule 65*ter* exhibit list filed 25 June 2007 (“Exhibit List”).⁴

3. The Accused filed his response to the Motion on 29 April 2008 (“Response”)⁵ stating that he: (1) does not object to the removal of Miodrag Panić, VS-022 and Ljubica Došen from the Witness List; (2) objects to the replacement of designated expert witness Ivan Grujić with Višnja Bilić; (3) does not object to adding Dr. Vesna Bosanac to the Witness List but insists that she be called *viva voce*; and (4) does not object to adding the said documents to the Exhibit List.

4. In the Motion *addendum*, the Prosecution requests that Anna-Maria Radić also be added in replacement of Ivan Grujić as a designated expert witness and that her *curriculum vitae*, as well as three recently received English translations of Serbian documents, be added to the Exhibit List.⁶

5. The Accused received a BCS translation of the Motion *addendum* on 23 May 2008⁷ but did not file a response.

¹ Original in French entitled “Requête du parquet aux fins de modification de la liste des témoins et de la liste des pièces à conviction”, with Annexes (public and confidential), 7 April 2008 (English translation dated 15 April 2008).

² Original in French entitled “Addendum à la requête du parquet aux fins de modification de la liste des témoins et de la liste des pièces à conviction”, with Annexes (public), 15 May 2008.

³ Prosecution’s Submission of Revised Final Witness List, with Annex A (confidential), 29 March 2007.

⁴ Prosecution Notice of Filing Exhibit List Pursuant to Rule 65*ter*, with Annex (confidential and *ex parte*), 25 June 2007.

⁵ Original in BCS with an English translation entitled “Professor Vojislav Šešelj’s Reply to the Prosecution’s Motion for Leave to Amend its Witness List and Exhibit List”, submitted 23 April 2008 and filed 29 April 2008. The Trial Chamber notes that although the submission is titled a “reply”, it is actually a “response” to the Motion.

⁶ In the Motion, the Prosecution noted its intent to seek leave to add Anna-Maria Radić as an additional replacement expert witness in lieu of Ivan Grujić once it received certain supplementary information, including her *curriculum vitae*. Motion, paras. 14, 29, footnote 12. In his Response, the Accused indicated that he would also object to this additional replacement. Response, pp. 3-6, 9.

⁷ Procès-verbal of reception of BCS translation, filed 30 May 2008, and signed by the Accused.

II. APPLICABLE LAW

6. A Trial Chamber may grant a motion seeking leave to amend a Rule 65ter witness or exhibit list if it is satisfied that it is in the interests of justice to do so.⁸ In view of the rights of the Accused to a fair and expeditious trial, and to adequate time and facilities for the preparation of his defence, the Trial Chamber must ensure that the Accused will not be prejudiced as a result of the addition of the witness or exhibit.⁹

7. The Trial Chamber may also take into account additional criteria, including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused and whether good cause for amending the witness or exhibit list is established.¹⁰

III. DISCUSSION

A. Removal of three witnesses from the Witness List

8. The Prosecution notes that, given the time it was allocated to present its case and the Trial Chamber's decisions regarding the presentation of evidence, it has chosen to reduce the number of witnesses testifying on the events in Vukovar.¹¹ In an attempt to save several days of hearing, the Prosecution seeks leave to remove Miodrag Panić, VS-022 and Ljubica Došen from the Witness List.¹²

9. The Accused does not object to the Prosecution's request to remove these three witnesses from the Witness List.¹³

10. The Trial Chamber considers that the removal of these three witnesses from the Witness List would not unfairly prejudice the Accused.

⁸ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, Decision on Prosecution's Motion to Amend Rule 65ter Witness List and on Related Submissions, 22 April 2008, para. 9 (as regards amendments to a Rule 65ter witness list) ("*Lukić Decision*"); *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65ter Exhibit List, 8 May 2008, confidential, para. 5 (as regards amendments to a Rule 65ter exhibit list). See also Rule 73bis(F) of the Rules of Procedure and Evidence.

⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Leave to Add and Withdraw Witnesses from the 65ter Witness List, confidential, 3 October 2007, para. 10.

¹⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to Amend Rule 65ter Witness List and Rule 65ter Exhibit List, confidential, 6 December 2006, p. 7.

¹¹ Motion, para. 3, referring to the Order on the Time Allocated to the Prosecution Pursuant to Rule 73bis of the Rules of Procedure and Evidence, dated 15 November 2007, the Decision on the Prosecution's Consolidated Motion Pursuant to Rules 89(F), 92bis, 92ter and 92quarter of the Rules of Procedure and Evidence, dated 7 January 2008, and the Decision on the Evidence of Witness Vilim Karlović Pursuant to Rule 92ter of the Rules of Procedure and Evidence, dated 10 March 2008.

¹² Motion, paras. 4-5.

¹³ Response, pp. 2, 3. The Accused adds that he may call Miodrag Panić as a defence witness during the presentation of his defence case.

B. Replacement of a designated expert witness

11. The Prosecution states that, given the allegations of false testimony regarding Ivan Grujić in domestic legal proceedings in Croatia, it no longer intends to call him,¹⁴ but rather requests leave to “partially replace expert witness Grujić with Ms. Bilić”.¹⁵

12. The Prosecution submits that Višnja Bilić is a qualified expert in the field of mass graves, exhumation and the identification of persons as well as in the field of detained and missing persons.¹⁶ The Prosecution states that Višnja Bilić will submit a written report pursuant to Rule 94bis of the Rules of Procedure and Evidence (“Rules”), which should be very similar to that presented by Ivan Grujić as the two are colleagues at the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity and have the same data at their disposal.¹⁷

13. The Prosecution contends that this replacement will not cause prejudice to the Accused given that it does not intend to present evidence on subjects other than those covered by Ivan Grujić. The Prosecution also pledges not to call Višnja Bilić to testify immediately before the Tribunal so as to enable the Accused to have sufficient time to prepare for cross-examination.¹⁸

14. The Prosecution notes, however, that unlike Ivan Grujić, Višnja Bilić is not qualified to testify on displaced persons and refugees. Following communications with the Government of Croatia, the Prosecution has identified Anna-Maria Radić from the Department of Displaced Persons and Refugees as an expert capable of testifying on these matters.¹⁹ In its Motion *addendum*, the Prosecution submits Anna-Maria Radić’s *curriculum vitae* and requests leave to substitute her as an additional expert witness in lieu of Ivan Grujić.²⁰

15. The Accused objects to the replacement of Ivan Grujić by Višnja Bilić and Anna-Maria Radić.²¹ He states that he has been preparing for Ivan Grujić as an expert witness from the outset of the proceedings against him and that it would violate his fair trial rights to replace Ivan Grujić with two other expert witnesses at this stage.²² In particular, he claims that he has spent vast amounts of resources obtaining information that discredits and undermines the credibility of Ivan Grujić and

¹⁴ Motion, para. 6.

¹⁵ *Id.*, para. 29.

¹⁶ *Id.*, para. 8; *see also Id.*, Annex A (confidential); *Id.*, Annex B (public).

¹⁷ *Id.*, paras. 8, 9. Ivan Grujić’s report was filed by the Prosecution on 14 July 2006. *See* Prosecution’s Submission of the Expert Report of Colonel Ivan Grujić Pursuant to Rule 94bis and Motion for the Admission of Transcripts Pursuant to Rule 92bis(D), with Annexes, 14 July 2006.

¹⁸ *Id.*, para. 11.

¹⁹ *Id.*, para. 13.

²⁰ *Id. addendum*, para. 8.

²¹ Response, pp. 3-6, 9.

that this work will now become of no avail.²³ He also states that, given the limited time and resources available to him, he would be unable to uncover similar information regarding the credibility of Višnja Bilić and Anna-Maria Radić.²⁴

16. The Accused further submits that the Prosecution's two new proposed expert witnesses would, in essence, be submitting Ivan Grujić's expert report in his stead. He notes that the Prosecution admits that Višnja Bilić and Anna-Maria Radić will largely testify to the same matters as Ivan Grujić.²⁵ He contends that reports and testimony by expert witnesses must be manifestations of a personal and original work and that the two new proposed expert witnesses are merely convenient vehicles through which to present Ivan Grujić's own expert report.²⁶

17. As a preliminary remark, the Trial Chamber notes that the Prosecution's decision to withdraw Ivan Grujić as an expert witness was originally sparked by the Accused's challenges to the witness' impartiality; it is therefore surprising that the Accused is now raising objections against the withdrawal of this witness. Moreover, the Trial Chamber recalls that while the Prosecution had designated Ivan Grujić as an expert witness,²⁷ the Trial Chamber had yet to verify his qualifications and designate him as an expert witness.²⁸ Further, the Motion and Motion *addendum*'s requests to replace Ivan Grujić as an expert witness with Višnja Bilić and Anna-Maria Radić are best understood as: (i) a request to withdraw designated expert witness Ivan Grujić from the Witness List; (ii) a request to add Višnja Bilić and Anna-Maria Radić as designated expert witnesses to the Witness List; and (iii) a request that the Trial Chamber qualify Višnja Bilić and Anna-Maria Radić as expert witnesses.

18. First, as regards the Prosecution's request to withdraw designated expert witness Ivan Grujić from the Witness List, the Trial Chamber recalls that it is for each party, subject to the Trial Chamber's control, to decide which witnesses to call to prove its case.²⁹ That the Accused has spent considerable resources preparing for designated expert Ivan Grujić is not a sufficient reason to compel the Prosecution to call him as a Prosecution witness. Further, given that the Accused's challenges regarding Ivan Grujić are the very reason why the Prosecution asks that he be replaced, the Accused cannot now insist that he be called as a Prosecution witness. The Trial Chamber

²² *Id.*, pp. 3-6.

²³ *Id.*, pp. 3-5.

²⁴ *Id.*, p. 6.

²⁵ *Id.*, pp. 4, 6

²⁶ *Id.*, p. 6.

²⁷ See Prosecution's Submission of Revised Final Witness List, 29 March 2007, Annex A (confidential), p. 22.

²⁸ See, e.g., "Deuxième décision relative à la requête consolidée de l'accusation en vertu des articles 89(f), 92bis, 92ter et 92quater du règlement de procédure et de preuve", 27 February 2008, para. 5.

²⁹ *Lukić* Decision, para. 11.

considers that the removal of Ivan Grujić from the Prosecution's Witness List would not unfairly prejudice the Accused.

19. Second, as regards the Prosecution's request to add Višnja Bilić and Anna-Maria Radić as designated expert witnesses to the Witness List, the Trial Chamber is cognisant of its duty to ensure that the Accused has adequate time and facilities for the preparation of his defence. The Trial Chamber notes that the evidence to be presented by Višnja Bilić and Anna-Maria Radić will be confined to the material covered by Ivan Grujić's report, which the Accused received on 9 February 2007.³⁰ This overlap should minimise the additional time needed by the Accused to prepare for the substance of Višnja Bilić and Anna-Maria Radić's reports. Further, the Prosecution has undertaken to ensure that the timing of the presentation of the two new proposed expert witnesses' evidence causes no prejudice to the Accused.

20. In addition, the Trial Chamber recalls that, pursuant to Rule 94bis of the Rules, the Accused can indicate whether he "accepts an expert witness statement and/or report; or [...] wishes to cross-examine the expert witness; and [...] challenges the qualifications of the witness as an expert or the relevance of all or parts of their statement and/or report and, if so, which parts." The Accused will thus have the opportunity to respond to the two new proposed expert witnesses' reports in full and to then question their credibility during cross-examination, as well as the information presented in their reports.

21. Moreover, the Trial Chamber considers that the evidence to be presented by Višnja Bilić and Anna-Maria Radić — concerning the exhumation and identification processes in Croatia and the issue of displaced persons and refugees, respectively — is *prima facie* relevant to the charges against the Accused. The Trial Chamber finds that the addition of Višnja Bilić and Anna-Maria Radić to the Witness List as designated expert witnesses would not unfairly prejudice the Accused. The Trial Chamber notes that their combined testimony must last no longer than three hours, the amount of time apportioned for Ivan Grujić.³¹

22. Finally, the Trial Chamber will defer its determination as to whether Višnja Bilić and Anna-Maria Radić qualify as expert witnesses pending reception of their reports and/or statements.³²

³⁰ See Procès-Verbal of Reception of BCS Translation of "Prosecution's Submission of Colonel Ivan Grujić Pursuant to Rule 94bis and Motion for the Admission of Transcripts Pursuant to Rule 92bis(D)", 13 February 2007.

³¹ See Prosecution's Submission of Revised Final Witness List, 29 March 2007, Annex A (confidential), p. 22.

³² The Trial Chamber also considers that it no longer needs to determine whether Ivan Grujić qualifies as an expert or whether to admit the transcripts of his prior testimony in other cases before this Tribunal given its decision to grant the Prosecution's request to remove him from the Witness List.

C. Addition of Dr. Vesna Bosanac to the Witness List

23. The Prosecution seeks to add Dr. Vesna Bosanac, the director of the Vukovar hospital as of 25 July 1991, as a witness to the Witness List.³³ It claims that her testimony will help demonstrate that “the persons whose bodies were found in Ovčara are the same persons who were removed from the Vukovar hospital on 20 November 1991 by Serbian forces, taken to the Yugoslav Army barracks and then to Ovčara where they were executed on the night of 20-21 November 1991”.³⁴ The Prosecution adds that, though not the principal object of her testimony, Dr. Vesna Bosanac might also testify on a number of other subjects related to the events in Vukovar.³⁵

24. The Prosecution contends that adding Dr. Vesna Bosanac to the Witness List will better enable it to adjust to the time constraints in the present case.³⁶ Further, the Prosecution submits that Dr. Vesna Bosanac’s testimony is “relevant with real probative value”, and that her admission to the Witness List is “essential for an efficient and expeditious showing of the truth” and in the interest of justice pursuant to Rule 73bis(F) of the Rules.³⁷

25. The Prosecution states that adding Dr. Vesna Bosanac to the Witness List is not likely to cause prejudice to the Accused given that it pledges not to call her immediately before the Trial Chamber.³⁸ It adds that the Accused will have sufficient time to prepare his defence based on the testimony and evidence she previously gave before this Tribunal, which has been partially disclosed to the Accused.³⁹ The Prosecution further notes that the addition of Dr. Vesna Bosanac to the Witness List would not change the number of hours it has been allocated to present its case, as it intends to present this evidence pursuant to Rule 92ter.⁴⁰

³³ Motion, paras. 15, 29.

³⁴ *Id.*, para. 15; *see also Id.*, para. 16, citing Dr. Vesna Bosanac’s testimony in *Prosecutor v. Mrkšić et al.* (“Mrkšić case”).

³⁵ Motion, para. 20, stating that her testimony may also concern : (i) the suspension of the bombing of the Vukovar hospital on 17 November 1991 and the influx of people seeking refuge at the hospital; (ii) the negotiations carried out to evacuate the sick, the wounded and the civilians; (iii) the absence of any representatives from the European Community Monitoring Mission (“ECMM”) or the International Committee of the Red Cross (“ICRC”) on 18 November 1991; (iv) her being banned by Colonel Mrkšić from talking to representatives from the ECMM; (v) the transport of civilians to Velepromet on 19 November 1991 despite her protests to Major Šljivančanin; (vi) the arrival on 19 November 1991 of an ICRC representative accompanied by Major Šljivančanin and the former’s intention to return the next day; and (vii) her being held by force in the JNA barracks during the day of 20 November 1991.

³⁶ *Id.*, para. 18.

³⁷ *Id.*, para. 19.

³⁸ *Id.*, para. 21.

³⁹ *Ibid.* Dr. Vesna Bosanac provided testimony and evidence in *Prosecutor v. Mrkšić et al.* and *Prosecutor v. Dokmanović*. The Prosecution does not specify which portion of that testimony or evidence was disclosed to the Accused.

⁴⁰ Motion, para. 22.

26. The Accused does not contest the addition of Dr. Vesna Bosanac to the Witness List but objects to her being heard pursuant to Rule 92ter.⁴¹ In addition to his opposition in principle to Rule 92ter witness testimony,⁴² he claims that Dr. Vesna Bosanac is “an important witness for the Prosecution, but she is also important for Professor Vojislav Šešelj, not only as a witness, but also as a person who could be indicted for what she did at the hospital in Vukovar”.⁴³ Given her importance as a witness, he thus insists that Dr. Vesna Bosanac testify *viva voce* before the Trial Chamber.

27. The Trial Chamber notes that the Accused does not contest the addition of Dr. Vesna Bosanac to the Witness List.⁴⁴ The Trial Chamber recalls that the Accused has generally contested the facts alleged by the Prosecution in its Final Pre-Trial Brief regarding the events in Vukovar,⁴⁵ including the status and number of victims.⁴⁶ The Trial Chamber finds that, as director of the Vukovar hospital during the period covered in the Indictment,⁴⁷ her testimony is *prima facie* relevant to the charges against the Accused. The Trial Chamber finds that her addition as a witness to the Witness List would not unfairly prejudice the Accused.

28. While the Trial Chamber is not presently seised of a motion to admit Dr. Vesna Bosanac’s testimony pursuant to Rule 92ter, it nonetheless wishes to note that she should appear as a *viva voce* witness before the Trial Chamber. Dr. Vesna is a primary eye-witness who can testify to her dealings with many of those in the upper echelons of the hierarchical structure at Vukovar.⁴⁸ Further, as the Prosecution itself argues, Dr. Vesna Bosanac’s testimony will focus on “a crucial point”,⁴⁹ namely whether individuals taken from the Vukovar hospital on 20 November 1991 were later found in the Ovčara mass grave. The Trial Chamber considers that Dr. Vesna Bosanac is in a unique position to provide significant evidence regarding the events in Vukovar and that the use of Rule 92ter would be inappropriate in these circumstances. The Trial Chamber recalls that whether

⁴¹ Response, p. 6.

⁴² *Id.*, pp. 6-7.

⁴³ *Id.*, p. 8.

⁴⁴ *Id.*, p. 6.

⁴⁵ Prosecution’s Final Pre-Trial Brief and Corrigendum to Final Pre-Trial Brief, 1 August 2007, paras. 68-69 (regarding the alleged murder of individuals removed from the Vukovar hospital and executed in Ovčara).

⁴⁶ Original in BCS with an English translation entitled “Professor Vojislav Šešelj’s Pre-Trial Submission”, submitted 2 November 2007 and filed 3 December 2007, pp. 44-45 (contesting the Prosecution’s factual submissions regarding the events in Vukovar).

⁴⁷ Third Amended Indictment, 7 December 2007.

⁴⁸ See footnote 33 *supra* detailing the potential scope of Dr. Vesna Bosanac’s testimony.

⁴⁹ Motion, para. 17.

or not to allow witness testimony pursuant to Rule 92ter is a matter ultimately left to its discretion.⁵⁰

D. Addition of documents to the Exhibit List

29. The Prosecution also seeks leave to add the following documents to the Exhibit List.⁵¹

i) Višnja Bilić's *curriculum vitae*;⁵²

ii) Three documents pertaining to the link between the patients in the Vukovar hospital and the victims identified at Ovčara;⁵³

iii) 45 documents that correspond to other exhibits introduced by, or shown to, Dr. Vesna Bosanac in the *Mrkšić* case;⁵⁴

iv) Three recently received English translations of Serbian documents, which could be commented on by Višnja Bilić,⁵⁵ as well as Anna-Maria Radić's *curriculum vitae*.⁵⁶

30. The Prosecution argues that all of the documents which it seeks to add to the Exhibit List are *prima facie* relevant. Further, it contends that the Accused will not be prejudiced by their addition given that they "will not be used by the Prosecution right away, thus giving him the necessary time to examine them".⁵⁷

31. The Accused does not object to the addition of documents identified in paragraphs 29(i), (ii) and (iii) but asks that he be allowed to present his opinion on their relevance, authenticity and probative value prior to their admission into evidence.⁵⁸ The Accused did not respond to the Motion

⁵⁰ See "Deuxième décision relative à la requête consolidée de l'accusation en vertu des articles 89(f), 92bis, 92ter et 92quater du règlement de procédure et de preuve", 27 February 2008, para. 12.

⁵¹ Motion, paras. 28, 29.

⁵² *Id.*, para. 23; *Id.*, Annex B (public).

⁵³ *Id.*, para. 25; *Id.*, Annex C (confidential).

⁵⁴ *Id.*, para. 26; *Id.*, Annex D (confidential).

⁵⁵ Motion *addendum*, para. 8; *Id.*, Annex B (public). In the Motion, the Prosecution had specified that it would file, as an *addendum* to the Motion, a similar request for three additional documents upon reception of their translation into English. Motion, para. 28, citing the list provided at Annex E (confidential) to the Motion. These three documents, filed as Annex B (public) to the Motion *addendum*, are: (1) a methodology and activity report from the office for missing persons and detainees; (2) updated information from the official records of the administration for detained and missing persons regarding the names of the victims at the Ovčara farm; and (3) a list of identified persons whose remains have been exhumed from the Ovčara mass grave.

⁵⁶ The Prosecution submits Anna-Maria Radić's *curriculum vitae* as Annex A (public) to the Motion *addendum* but does not expressly seek leave to add it to the Exhibit List. The Trial Chamber nonetheless considers the request to be implicit in the Motion *addendum* and its Annex A (public).

⁵⁷ Motion, para. 27.

⁵⁸ Response, pp. 3, 9.

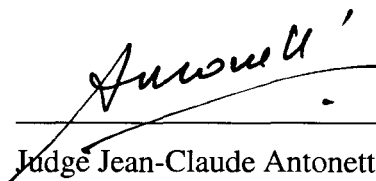
addendum or otherwise indicate his position with respect to the requested addition of the documents identified in paragraph 29(iv).

32. The Trial Chamber finds that all of the documents which the Prosecution seeks to add to the Exhibit List, both in the Motion and Motion *addendum*, are *prima facie* relevant to the charges against the Accused. The Trial Chamber finds that their addition to the Exhibit List at this stage would not unfairly prejudice the Accused and notes that he will be allowed to present his position on their relevance, authenticity and probative value prior to their admission into evidence.

IV. DISPOSITION

33. Accordingly, the Trial Chamber, pursuant to Rules 54, 65*ter* and 73*bis* of the Rules, hereby **GRANTS** the Motion and the Motion *addendum*.

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



Judge Jean-Claude Antonetti
Presiding

Dated this sixteenth of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]