



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-95-5/18-T
Date: 18 November 2010
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 18 November 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S REQUEST FOR POSTPONEMENT OF TESTIMONY OF
CHARLES KIRUDJA**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 (“Tribunal”) is seised of the Accused’s “Request for Postponement of Testimony of Charles Kirudja”, filed on 26 October 2010 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused requests that the Trial Chamber direct the Office of the Prosecutor (“Prosecution”) to delay the testimony of Mr. Charles Kirudja (“Witness”) until the commencement of the municipalities component of its case. The Accused submits that he has not yet had adequate time to prepare for the municipalities phase of the Prosecution’s case and that, furthermore, he has requested a three-month recess prior to the start of the municipalities component as a result of violations by the Prosecution of its disclosure obligations.¹ Additionally, the Accused submits that the Witness is an important witness and his testimony involves a “huge amount of documentary evidence”, including 157 associated exhibits tendered through his testimony in six prior cases at the Tribunal, which total over a thousand transcript pages.² Finally, the Accused asserts that the Prosecution has not completed its disclosure of reports authored by the Witness during the conflict in Bosnia and Herzegovina and that there are likely to be hundreds of additional documents yet to be disclosed.³ He states that he already directly asked the Prosecution to reschedule the Witness’s testimony, but was advised that it intended to proceed with his testimony in November 2010 because the Witness is scheduled to testify in the *Stanišić & Simatović* case at that time.⁴ The Accused therefore requests that the Trial Chamber intervene to postpone the Witness’s testimony in order to preserve his right to a fair trial.⁵

2. On 2 November 2010, the Prosecution filed the “Prosecution’s Response to Request for Postponement of Testimony of Charles Kirudja” (“Response”), opposing the Motion. The Prosecution submits that the Accused fails to show good cause to postpone the Witness’s testimony, arguing that he has had sufficient time and facilities to prepare for the cross-examination of the Witness and the postponement of his evidence is not necessary to ensure a fair trial.⁶ First, the Prosecution asserts that it provided the Accused with adequate notice of its

¹ Motion, paras. 1, 5.

² Motion, para. 7.

³ Motion, para. 8.

⁴ Motion, paras. 3, 9.

⁵ Motion, para. 9.

⁶ Response, paras. 1, 6–8.

intention to call the Witness in November 2010, by notifying him two months in advance of his revised date of testimony. The Prosecution submits that it first notified the Accused on 13 September 2010 that it may call the Witness in November 2010,⁷ and that on 1 October 2010, and again on 22 October 2010, it confirmed that the Witness would testify on the fixed date of 17 November 2010.⁸ The Prosecution argues that the fact that the Witness may be an important witness is not a reason to postpone his testimony and, regardless, the Witness's evidence is limited in scope.⁹ The Prosecution further asserts that the proposed scheduling of the Witness's testimony does not represent a substantial change to the presentation of its case, as the Accused was put on notice that the Sarajevo phase was likely to be completed in December 2010. Moreover, at the time the Response was filed, only eight witnesses relating to the Sarajevo component of the Prosecution's case were left to testify after the Witness. The Prosecution notes that the Witness's evidence relates to the subsequent phases of its case, namely the hostages and municipalities components, and argues that Accused should be prepared for these forthcoming phases, originally scheduled to commence as early as December 2010.¹⁰

3. In responding to the Accused's assertion that he has not had adequate time and facilities to prepare his cross-examination of the Witness due to the volume of prior testimony and documents associated with the Witness, the Prosecution first submits that the Accused has been in possession of the Witness's statements and transcripts of prior testimony for over a year, with the exception of one two-page statement.¹¹ The Prosecution also indicates that on 25 May 2009, it disclosed all but seven of the 150 associated exhibits it originally sought to tender through the Witness, and it has "significantly" reduced the number of associated exhibits since that time.¹² Moreover, the Prosecution argues that the Accused's statement that "hundreds" of additional documents authored by the Witness have yet to be disclosed to him is unfounded. It notes that, at the time of the Response, Rule 70 clearance was pending for 60 documents, for which it expected to receive a response on 9 November 2010.¹³ It highlights, generally, that a broad request pursuant to Rule 66(B), made by the Accused on 21 June 2010, for all documents

⁷ The Prosecution submits that it first notified the Accused on 13 September 2010 that the Witness may testify in November 2010 in a footnote reference in its Consolidated Response to Karadžić's Thirteenth and Fifteenth Motions for Finding of Disclosure Violations and for Remedial Measures, 13 September 2010. Response, para. 2.

⁸ Response, para. 2.

⁹ Response, paras. 3-4.

¹⁰ Response, para. 5.

¹¹ The Prosecution states that the two-page statement was disclosed to the Accused on 27 August 2010, and that this disclosure was determined to be non-prejudicial by the Trial Chamber in the Decision on Accused's Eleventh and Fifteenth Motions for Finding of Disclosure Violation and for Remedial Measures, filed on 24 September 2010. Response, para. 6, fn. 16.

¹² Response, para. 6.

¹³ Response, para. 7.

authored by each Prosecution witness which relate to their evidence requires a detailed review of a considerable amount of material and, moreover, “results in disclosure which is of marginal relevance”.¹⁴

4. Furthermore, the Prosecution argues that the Accused fails to articulate why he has not had adequate time to prepare for the cross-examination of the Witness and that, in fact, it appears he has deferred his preparation for the Witness until the resolution of the Motion. It asserts that the Accused should not be allowed to dictate the order of witnesses by claiming time or resource limitations, without regard to “whether he has used the time and resources available to him in an effective manner”.¹⁵ Finally, the Prosecution argues that the Witness’s request that his testimony in all proceedings before the Tribunal be completed in November 2010 should be accommodated by the Trial Chamber. The Prosecution aims to minimise the burden, inconvenience, and disruption to the Witness, who has travelled long distances over the past seven years to testify in six prior proceedings, and requests the Trial Chamber to consider his personal circumstances in scheduling his testimony.¹⁶

III. Discussion

5. On 3 November 2010, the Trial Chamber issued an oral ruling in relation to the Accused’s “Twenty-Sixth Motion for Finding of Disclosure Violation and for Remedial Measures”,¹⁷ in which it held that it was in the interests of justice for the proceedings to be suspended for one month in light of prior disclosure violations by the Prosecution, and to allow the Accused and his team time to review and incorporate a large volume of potentially exculpatory documents recently disclosed to him into “his ongoing cross-examination of the Prosecution witnesses and preparations for the Defence phase of the case”.¹⁸

6. The Trial Chamber’s order to suspend the proceedings for a period of one month from 5 November 2010, in conjunction with the fact that the Prosecution did not include the Witness in its revised witness notification list for November and December 2010, renders the Motion, and the Accused’s request to postpone the Witness’s testimony therein, moot.¹⁹

¹⁴ Response, para. 7.

¹⁵ Response, para. 8.

¹⁶ Response, para. 9.

¹⁷ Accused’s Twenty-Sixth Motion for Finding of Disclosure Violation and for Remedial Measures, 28 October 2010.

¹⁸ Hearing, T. 8907–8908 (3 November 2010).

¹⁹ See Prosecution’s Submission of Revised Order of Witnesses and List of Exhibits for November and December 2010 with Appendix A, 15 November 2010.

7. The Chamber notes, nonetheless, that the Accused should be prepared for the Witness's testimony at this point in the case. While the Witness was not originally scheduled to testify during the Sarajevo phase of the Prosecution's case, and the hearing of his testimony was moved forward by the Prosecution, the Chamber is concerned that the Accused considers himself to be insufficiently prepared for the upcoming phase of the Prosecution's case, namely the municipalities phase, which had been anticipated to begin as early as December 2010.

8. In addition to this general concern about the manner in which the Accused is organising his resources on an ongoing basis, the Chamber considers that he has been provided with the necessary material to prepare for the testimony of this Witness in a timely manner. The Chamber understands from the Prosecution's submission that all of the associated exhibits to the Witness's proposed Rule 92 *ter* evidence have been disclosed to the Accused, the majority having been disclosed on 25 May 2009. The Chamber further understands that the only remaining items to be disclosed are 60 documents which the Accused requested pursuant to Rule 66(B) of the Tribunal's Rules of Procedure and Evidence ("Rules"), for which Rule 70 clearance was pending at the time the Response was filed. In light of the Prosecution's submission that it expected a response regarding these 60 documents on 9 November 2010, the Chamber anticipates that all, or the large majority, of these documents have also been disclosed to the Accused by now. In light of the provision of this material, and the transcripts of the Witness's prior testimony, to him, the Accused should be planning his time and deploying his resources properly to prepare for his cross-examination of the Witness, as well as other upcoming witnesses.

IV. Disposition

9. Accordingly, pursuant to Rule 54 of the Rules, the Trial Chamber hereby **DISMISSES** the Motion as moot.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]