



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: 20 January 2012

Original: English

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**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:** 20 January 2012

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON ACCUSED'S MOTION TO RECALL TWELVE MUNICIPALITIES  
WITNESSES**

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**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 “Motion to Recall Twelve Municipalities Witnesses”, filed on 2 December 2011 (“Motion”), and hereby issues its decision thereon.

### I. Submissions

1. The Accused requests an order for 12 witnesses who testified with respect to the municipalities component of the case (together, “Witnesses”) to be recalled for further cross-examination.<sup>1</sup> He asserts that for each of the Witnesses the Office of the Prosecutor (“Prosecution”) was found by the Chamber to have violated its disclosure obligations under the Tribunal’s Rules of Procedure and Evidence (“Rules”) by failing to disclose exculpatory material before their testimony.<sup>2</sup> He asserts that recalling the Witnesses would allow him to question them about the previously undisclosed documents.<sup>3</sup> The Accused also argues that since he is entitled to have the Chamber consider this evidence at the Rule 98 *bis* stage of the case, he should not be required in his defence case to deal with material that he could not elicit from witnesses when they first testified because of the late disclosure stemming from the Prosecution’s disclosure violations.<sup>4</sup>

2. More specifically, the Accused seeks to recall witnesses Eset Muračević, KDZ020, Ramiz Mujkić, Sulejman Crnčalo, Tihomir Glavaš, Nedeljko Prstojević, KDZ064, KDZ555, KDZ340, KDZ029, KDZ240, and Dragan Vidović.<sup>5</sup> He also identifies documents which he will seek to use with the Witnesses to either elicit favourable information or to confront them about information in the documents which contradicts their testimony.<sup>6</sup> The Accused intends to use four documents with Eset Muračević (“Muračević Documents”), two documents with KDZ020 (“KDZ020 Documents”),<sup>7</sup> two documents with Ramiz Mujkić (“Mujkić Documents”),<sup>8</sup> one

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<sup>1</sup> Motion, para. 1.

<sup>2</sup> Motion, para. 1 and Annex A referring to Decision on Accused’s Forty-Third to Forty-Fifth Disclosure Violation Motions, 8 April 2011 (“Forty-Third to Forty-Fifth Decision”); Decision on Accused’s Forty-Seventh Motion for Finding of Disclosure Violation and for Further Suspension of Proceedings, 10 May 2011 (“Forty-Seventh Decision”); Decision on Accused’s Forty-Ninth and Fiftieth Disclosure Violation Motions, 30 June 2011 (“Forty-Ninth and Fiftieth Decision”); Decision on Accused’s Fifty-Fifth Disclosure Violation Motion, 19 August 2011 (“Fifty-Fifth Decision”); Decision on Accused’s Fifty-Ninth Disclosure Violation Motion, 14 October 2011 (“Fifty Ninth Decision”).

<sup>3</sup> Motion, para. 1.

<sup>4</sup> Motion, para. 12.

<sup>5</sup> Motion, Annex A.

<sup>6</sup> Motion, Annex A.

<sup>7</sup> The Chamber observes that the KDZ020 Documents are the same as two of the Muračević Documents.

<sup>8</sup> The Chamber observes that the Mujkić Documents are the same as two of the Muračević Documents.

document with Sulejman Crnčalo (“Crnčalo Document”), one situation report with Tihomir Glavaš and Nedeljko Prstojević (“Situation Report”), and one statement with KDZ064, KDZ555, KDZ340, KDZ029, KDZ240, and Dragan Vidović (“Statement”) (together the “Documents”).<sup>9</sup>

3. The Accused refers to the Decision on Accused’s Motion to Recall Eleven Sarajevo Witnesses (“Sarajevo Decision”) issued on 5 October 2011 in which the Chamber denied a similar request to recall witnesses.<sup>10</sup> He contends that the Chamber in the Sarajevo Decision denied his request principally on the grounds that there were other means of eliciting the evidence such as through bar table motions.<sup>11</sup> He submits that in contrast, the Motion primarily relates to “witness interviews which are not amenable to admission by the bar table” and that he would only be able to elicit that information in his defence case if the Witnesses are not recalled.<sup>12</sup>

4. On 16 December 2011, the Prosecution filed the “Prosecution Response to Motion to Recall Twelve Municipalities Witnesses” (“Response”) in which it submits that the Motion should be dismissed due to the Accused’s failure to show good cause for his request.<sup>13</sup> The Prosecution first seeks leave to exceed the word limit for responses by approximately 600 words given the “number of witnesses and documents which need to be addressed”.<sup>14</sup>

5. On the substance, it contends that the evidence the Accused seeks to elicit from the Witnesses “does not have considerable probative value and is cumulative of other evidence in the trial record” and that the Documents are not significant to assessing an important part of the Witnesses’ evidence.<sup>15</sup> In addition, the Prosecution argues that the Accused already had information about the issues contained in the Documents when he cross-examined the Witnesses but does not justify why he failed to elicit evidence from them at the time.<sup>16</sup> It further argues that neither the Documents nor the evidence the Accused seeks to elicit are material to any Rule 98 *bis* application given that they do not demonstrate that “there is *no evidence* capable of supporting a conviction” on a count in the Third Amended Indictment.<sup>17</sup> The Prosecution also

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<sup>9</sup> Motion, Annex A.

<sup>10</sup> Motion, para. 13.

<sup>11</sup> Motion, para. 13.

<sup>12</sup> Motion, para. 13.

<sup>13</sup> Response, para. 1.

<sup>14</sup> Response, para. 3.

<sup>15</sup> Response, para. 1.

<sup>16</sup> Response, para. 1.

<sup>17</sup> Response, para. 2.

observes that the Accused retains the ability to elicit the favourable information contained in the Documents during his defence case.<sup>18</sup>

6. With respect to some of the Documents, the Prosecution observes that the Chamber has already found that their content was not of such importance or significance that the Accused was prejudiced by the timing of the disclosure.<sup>19</sup> For others, the Prosecution contends that “similar information”<sup>20</sup> or even relevant sections of the Documents themselves had been disclosed to the Accused before he cross-examined the affected witness and, he either failed to use these documents with the affected witnesses or had already pursued the issue through his cross-examination.<sup>21</sup>

7. The Prosecution further contends that the Chamber found that the Accused had already cross-examined witnesses, in a manner consistent with the allegedly exculpatory information contained in some of the Documents.<sup>22</sup> For one of the Documents, the Chamber already found that the Accused would have an opportunity to tender it pursuant to Rule 92 *quater*.<sup>23</sup>

## **II. Applicable Law**

8. Pursuant to Rule 89(B) of the Rules, a Chamber shall apply “rules of evidence which best favour a fair determination of a matter before it and are consonant with the spirit of the Statute and the general principles of law”. Rule 90(F) of the Rules provides that:

The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (i) make the interrogation and presentation effective for the ascertainment of the truth; and
- (ii) avoid needless consumption of time.

<sup>18</sup> Response, para. 6, referring to one of the Muračević Documents and citing Forty-Third to Forty-Fifth Decision, para. 33; Response, para. 16, referring to Crnčalo Document.

<sup>19</sup> Response, paras. 4–5 referring to the Muračević Documents and citing Forty-Third to Forty-Fifth Decision, paras. 33, 35; Forty-Ninth and Fiftieth Decision, para. 47; Fifty-Fifth Decision, para. 12; Response, para. 8 referring to KDZ020 Documents; Response, para. 12, referring to Mujkić Documents; Response, para. 15, referring to Crnčalo Document and citing Forty-Third to Forty-Fifth Decision, para. 35; Response, para. 20, referring to Statement and citing Fifty Ninth Decision, para. 11.

<sup>20</sup> Response, para. 4, referring to two of the Muračević Documents and citing Fifty-Fifth Decision, para. 12; Response, para. 7 referring to KDZ020 Documents; Response paras. 11–14, referring to Mujkić Documents; Response, para. 12, referring to Situation Report.

<sup>21</sup> Response, paras. 7, 9–10, referring to one of the KDZ020 Documents; Response, paras. 17–19, referring to Situation Report and citing Forty-Seventh Decision, para. 17; Response, paras. 23, 26–27, referring to Statement and citing Fifty-Ninth Decision, para. 11.

<sup>22</sup> Response, para. 5, referring to Muračević Documents and citing Forty-Third to Forty-Fifth Decision, paras. 33, 35; Forty-Ninth and Fiftieth Decision, para. 47; Fifty-Fifth Decision, para. 12; Response, para. 8, referring to KDZ020 Documents; Response, paras. 13–14, referring to Mujkić Documents; Response para. 15, referring to Crnčalo Document and citing Forty-Third to Forty-Fifth Decision, para. 35.

<sup>23</sup> Response, para. 6, referring to one of the Muračević Documents and citing Forty-Third to Forty-Fifth Decision, para. 33.

9. In order to determine a request to recall a witness, the Chamber must consider whether the requesting party has demonstrated good cause to recall that witness.<sup>24</sup> In doing this, the Chamber must take into consideration the purpose of the evidence that the requesting party expects to elicit from the witness, as well as the party's justification for not eliciting that evidence when the witness originally testified.<sup>25</sup> Furthermore, the right to be tried without undue delay as well as concerns for judicial economy demand that a request to recall a witness "should not be granted lightly and only when the evidence is of significant probative value and not cumulative in nature".<sup>26</sup> If the witness is to be recalled in order to show inconsistencies between the witness's testimony and his or her subsequent statements, the requesting party must demonstrate that prejudice was sustained due to its inability to put inconsistencies to the witness.<sup>27</sup> The witness will not be recalled if there is no need for the witness's explanation of the inconsistency because it is minor or its nature is self-evident.<sup>28</sup>

### **III. Discussion**

10. Given the number of witnesses and documents addressed in the Motion, the Prosecution was granted leave to exceed the word limit for the Response.<sup>29</sup>

#### *Preliminary observations*

11. The Documents were disclosed late in violation of the Prosecution's disclosure obligations.<sup>30</sup> Therefore, the Accused has a legitimate justification for not having elicited the evidence contained therein when the Witnesses first testified given that he did not possess the Documents at the time. The Chamber notes that this observation does not apply to one of the KDZ020 Documents given that the relevant portions were disclosed to the Accused before his cross-examination of KDZ020.<sup>31</sup> Notwithstanding this conclusion, a witness will only be

<sup>24</sup> Decision on Accused's Requests in Relation to Notes Taken by Witness Adrianus Van Baal, 17 February 2011 ("Van Baal Decision"), paras. 7–8; Decision on Accused's Motion to Recall Harry Konings for Further Cross-examination, 11 February 2011, para. 8 ("Konings Decision"); *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Reasons for Decision to Recall Witness JF-047, 31 March 2011 ("Stanišić and Simatović Decision"), para. 6; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution Motion to Recall Marko Rajčić, 24 April 2009 ("Gotovina Decision"), para. 10; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-examination, 19 September 2005 ("Bagosora Decision"), para. 2.

<sup>25</sup> Van Baal Decision, para. 8; Konings Decision, para. 8; *Stanišić and Simatović* Decision, para. 6; *Gotovina* Decision, para. 10; *Bagosora* Decision, para. 2.

<sup>26</sup> *Gotovina* Decision, para. 10; *Bagosora* Decision, para. 2.

<sup>27</sup> Van Baal Decision, para. 8; Konings Decision, para. 8; *Bagosora* Decision, para. 3.

<sup>28</sup> *Bagosora* Decision, para. 3.

<sup>29</sup> Decision on Accused's Motion to Reject Prosecution Responses, 6 January 2012, paras. 8, 10.

<sup>30</sup> Forty-Third to Forty-Fifth Decision, paras. 32, 34; Forty-Ninth and Fiftieth Decision, para. 38; Forty-Third to Forty-Fifth Decision, para. 34; Forty-Seventh Decision, para. 16.

<sup>31</sup> Response, paras. 7, 9, referring to one of the KDZ020 Documents.

recalled when the evidence in question has considerable probative value and is not cumulative in nature. The Chamber notes that the Accused mischaracterises the Sarajevo Decision, where the ability to elicit the evidence through other means (such as a bar table motion) was only one of the factors considered and not the principal ground on which the request to recall the witnesses was denied by the Chamber.<sup>32</sup> In this Decision, the Chamber also considered the content of the Documents cited by the Accused, the questions asked of the relevant witnesses during cross-examination, the availability of documents containing similar information at the time of cross-examination, and the previous assessment of whether the Accused was prejudiced by the late disclosure.<sup>33</sup> The Chamber also noted that good cause to recall a witness has been found when the additional material was “significant for assessing an important part of the witness’s evidence” and examined whether the documents referred to in the Motion met that standard.<sup>34</sup> The Chamber will now examine each of the Documents in turn.

### *Muračević Documents*

12. The Muračević Documents were found to have been disclosed in violation of the Prosecution’s disclosure obligations.<sup>35</sup> However, the Chamber had previously reviewed the Muračević Documents and found that “they were not of such significance that the Accused’s approach to cross-examination” was prejudiced.<sup>36</sup> In reaching that conclusion, the Chamber found that the Accused had already conducted his cross-examination of witnesses, including Muračević, in a manner consistent with the allegedly exculpatory information contained in two of the Muračević Documents.<sup>37</sup> The Chamber had also found that one of the Muračević Documents could be tendered pursuant to Rule 92 *quater*.<sup>38</sup>

13. With respect to one of the Muračević Documents, the Chamber was mindful of the Prosecution’s submission that the Accused “had access to similar information regarding general denials of crimes in Vogošća from other sources”.<sup>39</sup> In light of these previous conclusions and given the absence of new information, the Chamber is not convinced that the Muračević Documents would be significant to assessing an important part of Muračević’s evidence.

<sup>32</sup> Sarajevo Decision, paras. 9–16, 19–20.

<sup>33</sup> Sarajevo Decision, paras. 9–20.

<sup>34</sup> *Stanišić and Simatović* Decision, para. 7.

<sup>35</sup> Forty-Third to Forty-Fifth Decision, paras. 32, 34; Forty-Ninth and Fiftieth Decision, para. 38.

<sup>36</sup> Forty-Third to Forty-Fifth Decision, paras. 33, 35; Forty-Ninth and Fiftieth Decision, para. 47.

<sup>37</sup> Forty-Third to Forty-Fifth Decision, paras. 33, 35, referring to T. 12708–12713, 12718, 12720 (1 March 2011); T. 12745–12750 (2 March 2011).

<sup>38</sup> Forty-Third to Forty-Fifth Decision, para. 33.

<sup>39</sup> Fifty-Fifth Decision, para. 12.

14. For example in one of the Muračević Documents, the President of the Vogošća Municipality, Rajko Koprivica, spoke about Muračević who was in jail and stated that “he was arrested when he was transporting missiles of the 120 millimetres from *Pretis*, and allegedly—and don’t take this for granted, like, hundred percent—I heard this from MUP—and that those mortars, they supplied themselves”.<sup>40</sup> The same document indicates the volume of weapons found in Muračević’s village of Svarke and that as far as Koprivica knew the people arrested and detained in the camps were not harmed.<sup>41</sup> These statements are not unequivocal and do not provide direct information when it comes to the issue of why Muračević was arrested, the extent to which the village of Svarke was armed and the treatment of detainees. The second Muračević Document includes similarly equivocal opinions expressed by a Vogošća police official that he thought criminals were running the bunker detention facility and that he did not think the State functioned.<sup>42</sup> In the third Muračević Document, the former commander of a detention facility in Vogošća said that in the year he worked there, he was good to the prisoners and they were well treated.<sup>43</sup>

15. Considering these observations, the Chamber finds that confronting Muračević with the content of the Muračević Documents would add little to the questions already asked by the Accused in challenging his testimony regarding the transportation of a mortar, his involvement in the Territorial Defence of Svarke, the extent to which his village was armed, the conditions of his detention and the mistreatment of detainees.<sup>44</sup> Any inconsistencies between the content of the Muračević Documents and the testimony of Muračević as identified above are of a minor nature and the Chamber does not consider it necessary to hear his explanations in that regard in light of the cross-examination already conducted by the Accused. The Chamber therefore finds that the Accused has not demonstrated good cause to recall Muračević.

#### *KDZ020 Documents*

16. The Chamber found that the Prosecution violated its disclosure obligations with respect to the KDZ020 Documents.<sup>45</sup> However, the Chamber had previously reviewed the KDZ020

<sup>40</sup> Forty-Fourth Motion for Finding of Disclosure Violation and for Admission of Statement of Rajko Koprivica pursuant to Rule 92 *quater*, 8 March 2011 (“Forty-Fourth Motion”), Annex A, p. 130.

<sup>41</sup> Forty-Fourth Motion, Annex A, pp. 102–103.

<sup>42</sup> Forty-Fifth Motion for Finding of Disclosure Violation and for Remedial Measures (Batch 576), 16 March 2011, confidential Annex C.

<sup>43</sup> Forty-Ninth Motion for Finding of Disclosure Violation and for Sanctions (May 2011), 1 June 2011, Annex B.

<sup>44</sup> T. 12692, 12694, 12707, 12710–12714, 12717–12721, 12723–12724 (1 March 2011); T. 12745–12754, 12757–12773, 12779–12781 (2 March 2011). See also P2361 (Witness statement of Eset Muračević dated 24 February 2011), paras. 11–12, 20–33, 49–61.

<sup>45</sup> Forty-Third to Forty-Fifth Decision, para. 32; Fifty-Fifth Decision, paras. 10–11. The Chamber notes that the KDZ020 Documents are the same as two of the Muračević Documents.

Documents and held that their content was not of such significance that their late disclosure had a detrimental impact on the Accused's cross-examination of witnesses.<sup>46</sup> In reaching that conclusion the Chamber was mindful of the Prosecution's submission that the Accused "had access to similar information regarding general denials of crimes in Vogošća from other sources".<sup>47</sup> Despite possessing this information, the Accused did not cross-examine KDZ020 on the issue of expulsions from Vogošća.

17. With respect to one of the KDZ020 Documents, the Chamber recalls that the page referred to by the Accused regarding the erection of barricades in Vogošća had been disclosed to him well before KDZ020's testimony and yet the Accused did not refer to it during his cross-examination.<sup>48</sup> In addition, the Chamber found that the Accused had already conducted his cross-examination of other witnesses in a manner consistent with the allegedly exculpatory information contained in one of the KDZ020 Documents.<sup>49</sup> The Chamber had also found that one of the KDZ020 Documents could be tendered pursuant to Rule 92 *quater*.<sup>50</sup>

18. Given these previous conclusions and the absence of new information, the Chamber is not convinced that the KDZ020 Documents would be significant to assessing an important part of KDZ020's evidence. Similarly any inconsistencies between the content of the KDZ020 Documents and the testimony of KDZ020 are of a minor nature and the Chamber does not consider it necessary to hear his explanations in that regard. For example while one of the KDZ020 Documents suggests that the erection of barricades in Vogošća was spontaneous, the Chamber observes that this was the opinion of the person being interviewed<sup>51</sup> and is not necessarily inconsistent with the testimony of KDZ020 that barricades were erected at four locations, were manned by 10 to 15 people and that they "had radio communication".<sup>52</sup> Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall KDZ020.

### *Mujkić Documents*

19. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Mujkić Documents.<sup>53</sup> The Chamber had previously concluded that

<sup>46</sup> Forty-Third to Forty-Fifth Decision, para. 33; Fifty-Fifth Decision, para. 12.

<sup>47</sup> Fifty-Fifth Decision, para. 12.

<sup>48</sup> Forty-Third to Forty-Fifth Decision, para. 33.

<sup>49</sup> Forty-Third to Forty-Fifth Decision, para. 33.

<sup>50</sup> Forty-Third to Forty-Fifth Decision, para. 33.

<sup>51</sup> Forty-Fourth Motion, Annex A, p. 99.

<sup>52</sup> P2344 (Witness statement of KDZ020 dated 17 February 2011), para. 53 (under seal).

<sup>53</sup> Forty-Ninth and Fiftieth Decision, para. 38; Fifty-Fifth Decision, paras. 10–11. The Chamber notes that the Mujkić Documents are the same as two of the Muračević Documents.



the Accused had suffered no prejudice by these violations as the content of the Mujkić Documents was not of such significance that the late disclosure had a detrimental impact on the Accused's cross-examination of witnesses.<sup>54</sup> In reaching that conclusion the Chamber was mindful of the Prosecution's submission that the Accused "had access to similar information regarding general denials of crimes in Vogošća from other sources".<sup>55</sup> The Chamber also noted that the Accused already cross-examined Mujkić on the mistreatment of detainees and that any further cross-examination by reference to the Mujkić documents on this issue would be cumulative.<sup>56</sup> Given these conclusions and the absence of new information, the Chamber is not convinced that the Mujkić Documents would be significant to assessing an important part of Mujkić's evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Mujkić.

#### *Crnčalo Document*

20. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Crnčalo Document.<sup>57</sup> However, the Chamber had previously reviewed the Crnčalo Document and found that it was not of such significance that the Accused's approach to the cross-examination of witnesses had been prejudiced by its late disclosure.<sup>58</sup> In addition the Chamber found that the Accused had already conducted his cross-examination of witnesses in a manner consistent with the allegedly exculpatory information contained in the Crnčalo Document.<sup>59</sup> The Chamber also observes that Crnčalo was already cross-examined by the Accused on the voluntary nature of the departure of Muslims from Pale.<sup>60</sup> Given these conclusions and the absence of new information, the Chamber is not convinced that the Crnčalo Document would be significant to assessing an important part of Crnčalo's evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Crnčalo.

#### *Situation Report*

21. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Situation Report.<sup>61</sup> However, the Chamber having reviewed the

<sup>54</sup> Forty-Ninth and Fiftieth Decision, paras. 47–48; Fifty-Fifth Decision, para. 12.

<sup>55</sup> Fifty-Fifth Decision, para. 12.

<sup>56</sup> T. 12411–12413 (25 February 2011).

<sup>57</sup> Forty-Third to Forty-Fifth Decision, para. 34.

<sup>58</sup> Forty-Third to Forty-Fifth Decision, para. 35.

<sup>59</sup> Forty-Third to Forty-Fifth Decision, para. 35.

<sup>60</sup> T. 1259–1262 (15 April 2010).

<sup>61</sup> Forty-Seventh Decision, para. 16.

Situation Report concluded that the Accused suffered no prejudice as a result of this violation.<sup>62</sup> In reaching that conclusion, the Chamber was satisfied that the Accused already possessed and used a number of documents which suggested that the Bosnian Serb leadership in Pale had difficulties controlling local authorities.<sup>63</sup> Given that the newly disclosed document added nothing new to material already available to the Accused, the Chamber concluded that even if it was potentially exculpatory it was “hard to conclude that his cross-examination of witnesses or the development of his overall defence strategy has been negatively affected or that this has resulted in prejudice”.<sup>64</sup>

22. The Chamber also notes that the Accused has already cross-examined Prstojević regarding the control of the Bosnian Serb leadership over local authorities and finds that any further cross-examination by reference to the Situation Report on this issue would be cumulative.<sup>65</sup> In addition the Chamber confirmed that in accordance with the Prosecution’s submission, the Accused did not refer to the Situation Report during his cross-examination of the recipient of the report, who testified after the document was disclosed.<sup>66</sup> Given these previous conclusions and the absence of new information, the Chamber is not convinced that the Situation Report would be significant to assessing an important part of Glavaš’s or Prstojević’s evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Glavaš or Prstojević.

### *Statement*

23. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Statement.<sup>67</sup> However, the Chamber having reviewed the Statement concluded that the Accused suffered no prejudice as a result of this violation given that its content was not of such significance and that its late disclosure did not have a detrimental impact on his cross-examination of witnesses.<sup>68</sup> In reaching that conclusion the Chamber noted that the “Accused has already cross-examined witnesses regarding the arming of Muslims in Zvornik” and that he had an opportunity to elicit the favourable information contained in the Statement through another witness but failed to do so.<sup>69</sup> The Chamber has also observed that five of the six witnesses have already testified or been questioned about the extent to which

<sup>62</sup> Forty-Seventh Decision, para. 17.

<sup>63</sup> Forty-Seventh Decision, para. 17.

<sup>64</sup> Forty-Seventh Decision, para. 18.

<sup>65</sup> T. 13752–13753, 13758–13759 (21 March 2011).

<sup>66</sup> Response, para. 19.

<sup>67</sup> Fifty-Ninth Decision, para. 10.

<sup>68</sup> Fifty-Ninth Decision, para. 11.

<sup>69</sup> Fifty-Ninth Decision, para. 11.

Muslims in Zvornik were armed or being armed and that the sixth witness was not questioned by the Accused on this issue.<sup>70</sup> The Chamber therefore finds that any further cross-examination by reference to the Statement on this issue would be cumulative. Given these previous conclusions and the absence of new information, the Chamber is not convinced that the Statement would be significant to assessing an important part of the evidence of KDZ064, KDZ555, KDZ340, KDZ029, KDZ240 or Vidović. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall these witnesses.

### *Conclusion*

24. Having considered the factors outlined above, the Chamber is not satisfied that the material contained in the Documents has considerable probative value or that it is not cumulative. In addition, having reviewed the Documents in the context of the Witnesses' testimony, the Chamber is not convinced that any of the documents would be significant to assessing an important part of the Witnesses' evidence. In reaching that conclusion, the Chamber also observed that the Accused possessed information similar to that contained in the Documents before his cross-examination of the Witnesses and had already covered the issues raised in his cross-examination or chosen not to do so. Similarly, any purported inconsistencies between the content of the Documents and the testimony of the Witnesses are of a minor nature and the Chamber does not consider it necessary to hear the explanations of the Witnesses in that regard. For the foregoing reasons, the Chamber finds that there is no good cause to recall the Witnesses.

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<sup>70</sup> KDZ029, T. 17585 (22 August 2011) (closed session); KDZ064, T. 1331–1333 (21 April 2010); prior testimony of KDZ240, P2935 (Transcript from *Prosecutor v. Krajišnik*, Case No. IT-00-39), T. 6759–6760 (under seal); KDZ340, T. 17500–17503 (19 August 2011); testimony of KDZ555, T. 17334–17336 (17 August 2011).

**IV. Disposition**

25. For these reasons, pursuant to Rules 54, 89 and 90(H) of the Rules, the Chamber hereby **DENIES** the Motion.

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



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Judge O-Gon Kwon  
Presiding

Dated this twentieth day of January 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**