UNITED NATIONS

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: 25 February 2013

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: **25 February 2013**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO SUBSTITUTE WITNESS

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 Substitute Witness", filed on 11 February 2013 ("Motion"), and hereby issues its decision thereon.

1. In the Motion, the Accused moves for an order pursuant to Rule 73 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules") to vary his 65 *ter* witness list.[1] Specifically, the Accused wishes to substitute Slavko Kralj for Slavko Novaković.[2]

2. The Accused states that he originally intended to call Novaković, a former member of the Drina Corps who worked on issues related to UNPROFOR and humanitarian convoys, as a witness in his defence case.[3] The Accused states, however, that he "subsequently learned" that Kralj, who worked in the VRS Main Staff on the same issues, was willing and available to testify.[4] The Accused submits that he then reviewed Kralj's testimony in the *Prosecutor v. Vujadin Popović et al.* case, Case No. IT-05-88 ("*Popović* case"), and determined that Kralj's testimony would be more useful than that of Novaković. In effect, Kralj, due to his position in the Main Staff, has a "broader scope of knowledge" about humanitarian convoys. Furthermore, his *Popović* testimony may be tendered pursuant to Rule 92 *ter*, whereas a defence team investigator would be required to travel to Sweden to interview Novaković and review relevant documents with him after which a statement would have to be drawn up.[5] Finally, the Accused argues that Novaković's replacement by Kralj would benefit the Office of the Prosecutor ("Prosecution"), which has already cross-examined Kralj in the *Popović* case and the *Prosecutor v. Zdravko Tolimir* case, Case No. IT-05-88/2 ("*Tolimir* case").[6]

3. In the "Prosecution Response to Defence Motion to Substitute Witness", filed on 12 February 2013 ("Response"), the Prosecution does not oppose the Motion.[7] The Prosecution contends, however, that the Motion does not provide any reason why the Accused did not make the necessary determination about Kralj's evidence before the 27 August 2012 deadline to file his Rule

[1] Motion, paras. 1, 9.
[2] Motion, paras. 1, 9.
[3] Motion, para. 5.
[4] Motion, para. 5.
[5] Motion, para. 6.
[6] Motion, para. 7.
[7] Response, para. 2.

65 *ter* witness list, especially in light of the fact that Kralj testified in the *Popović* case in December 2008 and in the *Tolimir* case in January 2012.[8]

4. The Chamber has recently stated the applicable law relating to orders pursuant to Rule 73 *ter* and will not again repeat it here.[9] It suffices to reiterate that the Chamber may grant a defence motion to vary its 65 *ter* witness list when it is in the interests of justice.[10]

5. Having reviewed Kralj's testimony in the *Popović* case, the Chamber is satisfied as to the *prima facie* relevance and probative value of Kralj's anticipated evidence, given its relation to the issue of humanitarian convoys as alleged in the Third Amended Indictment ("Indictment").[11] It is also satisfied as to the importance of Kralj's anticipated evidence to the Accused's case, and considers that the probative value of the anticipated evidence is not substantially outweighed by the need to ensure a fair trial. The Chamber also considers that, given the stage of this trial,[12] the fact that the Prosecution does not oppose the Motion, and the fact that Kralj's testimony in the *Popović* case is already available to the Prosecution, the addition of Kralj would not negatively affect the Prosecution's right to have adequate time to prepare its cross-examination. The Chamber has some reservations about the validity of the Accused's reasons for not originally including Kralj on his Rule 65 *ter* list, given that his testimony in both the *Popović* and *Tolimir* cases was already available to the Accused before the deadline to file his Rule 65 *ter* witness list. At the same time, however, the Chamber notes that the Accused proposes to substitute Kralj for a witness who was already listed on his Rule 65 *ter* witness list to give evidence of the same nature, and thus granting the Motion would not cause an undue delay to these proceedings nor should it require an extension of the 300 hours of time allocated to the Accused for the presentation of his defence case.

6. Thus, taking all of the above factors into account, the Chamber considers that it is in the interests of justice that Kralj be added to the Accused's 65 *ter* witness list in place of Novaković, who shall be removed.

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[8] Response, para. 2.

[9] *See* Decision on Accused's Motion to Vary List of Witnesses, 21 February 2013, para. 5.

[10] *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Čermak Defence's Second and Third Motions to Add a Witness to Its Rule 65 *ter* (G) Witness List, 22 September 2009 ("*Gotovina* Decision"), para. 7; *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Decision on Stanišić Defence Motion to Add Witness DST-081 to Its Rule 65 *ter* Witness List, 20 October 2011 ("*Stanišić* Decision"), para. 4.

[11] *See* Indictment, paras. 14(j), 57, 74.

[12] The Chamber notes that the Defence phase of the case began on 16 October 2012 and that, as of 1 February 2013, the Accused had spent about 68 hours of the 300 hours he has been given for the presentation of his defence case.

7. Accordingly, the Chamber, pursuant to Rules 54 and 73 *ter* of the Rules, hereby:

a) **GRANTS** the Motion; and

b) **ORDERS** the Accused to file an updated 65 *ter* witness list by 4 March 2013.

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

Judge O-Gon Kwon
Presiding

Dated this twenty-fifth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]