

**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-09-92-T
Date: 12 August 2014
Original: English

4-09-92-T
D 81043 - D 81040
K August 2014

81043
KO.

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 12 August 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO AMEND WITNESS
LIST**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey
Ms Camille Bibles

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 10 July 2014, the Defence filed a motion requesting leave to add three witnesses to its witness list ("Motion").¹ On 15 July 2014, the Prosecution responded to the Motion ("Response"), partly objecting to it.²

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that all three witnesses were inadvertently omitted from its final witness list filed on 19 May 2014.³ For one of the witnesses, Mendeljev Djurić, the Defence submits that he was included in the Defence's original list but then removed by mistake.⁴ The Defence submits that it does not seek an increase of the time granted to present its case-in-chief.⁵

3. The Prosecution does not object to the addition of one of the witnesses ("Witness X").⁶ In relation to Predrag Drinić and Mendeljev Djurić, the Prosecution submits that they were Prosecution witnesses in this case and that the Chamber previously instructed the Defence to refrain from putting Prosecution witnesses on its witness list but rather to make applications to recall such witnesses.⁷

III. APPLICABLE LAW

4. Pursuant to Rule 73 *ter* (D) of the Rules of Procedure and Evidence ("Rules"), the Defence may, after commencement of the defence case, file a motion to vary the decision as to which witnesses may be called. The Chamber may grant any motion for an amendment to the Defence's Rule 65 *ter* witness list if satisfied that it is in the interests of justice.⁸ In this respect, the Chamber must balance the Accused's right to present the available evidence during his defence case with the right of the Prosecution to have adequate time and facilities to prepare.⁹ The Chamber will consider the burden placed on the Prosecution by the late addition of a witness to the Rule 65 *ter* witness list.¹⁰ The Chamber will also consider whether the proposed evidence is *prima facie* relevant and of

¹ Defence Motion to Amend Witness List, 10 July 2014 (Confidential), para. 2.

² Prosecution Response to Defence Motion to Amend its Witness List, 15 July 2014 (Confidential), paras 1-2.

³ Motion, para. 2.

⁴ Motion, para. 6.

⁵ *Ibid.*

⁶ Response, para. 1.

⁷ Response, para. 2.

⁸ See *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Čermak Defence's Fourth Motion to Amend the Rule 65 *ter* (G) Witness List, 15 October 2009, para. 3 and sources cited therein.

⁹ *Ibid.*

¹⁰ *Ibid.*

probative value.¹¹ The Chamber will further consider whether the Defence has shown good cause why it did not seek to add the witness to the list at an earlier stage of the proceedings.¹² Good cause may exist where witnesses have only recently become available to give evidence or where the relevance of the evidence has only recently become apparent.¹³

IV. DISCUSSION

5. In relation to Djurić and Drinić, the Chamber has compared the information provided by the Defence in the Motion with the evidence given by witnesses Djurić and Drinić. Based on this comparison, the Chamber is satisfied that the Defence's suggested witnesses are Prosecution witnesses who already gave evidence in this case. The Chamber gave clear guidance that in such instances the Defence should refrain from putting Prosecution witnesses on its witness list and instead make applications to recall such witnesses.¹⁴ The Chamber will therefore deny the Motion as it pertains to Djurić and Drinić. The Chamber notes that any application to recall these two witnesses, because their evidence was admitted under Rule 92 *bis* of the Rules, would need to demonstrate that reconsideration of the Chamber's decision admitting these witnesses' evidence under Rule 92 *bis* is warranted, so that upon the witnesses' appearance the Defence may question the witnesses pursuant to Rule 90 (H) (i) of the Rules.¹⁵

6. In relation to Witness X, the Chamber notes the Defence's submission that this witness was inadvertently omitted from its witness list. The Defence makes no further submissions in this regard failing to show good cause. The Chamber has further reviewed the Rule 65 *ter* summary for Witness X. Witness X would testify about an alleged conversation between Momir Nikolić and Vujadin Popović in the morning of 12 July 1995 in front of Hotel Fontana as well as his own presence there. Under these circumstances, the Chamber finds the proposed testimony to be *prima facie* relevant and of probative value. The Chamber also notes the Prosecution's non-objection to the addition of Witness X to the Defence witness list, indicating that it would not be prejudiced by the addition. For the foregoing reasons, the Chamber considers that it is in the interests of justice to grant the addition of Witness X to the Defence witness list.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ See T. 20977, 20989-20990.

V. DISPOSITION

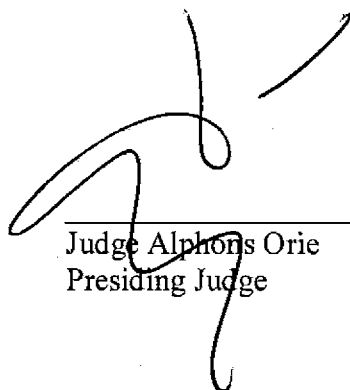
7. For the foregoing reasons, pursuant to Rule 73 *ter* (D) of the Rules, the Chamber

GRANTS the Motion **IN PART**;

ALLOWS the addition of Witness X to the Defence's witness list; and

DENIES the remainder of the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this Twelfth day of August 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ See also Decision on Prosecution Motion to Supplement Rule 92 *bis* Evidence and Change Status of D352 and on Defence Request for Reconsideration, 19 December 2013.