

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 11 October 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annex

MOTION TO VARY LIST OF WITNESSES:
SREBRENICA & MUNICIPALITIES COMPONENTS

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic moves, pursuant to Rule 73 *ter* (D), for an order allowing him to vary his list of witnesses. He seeks leave to add two witnesses related to the Srebrenica component of the case to his list. At the same time, he provides notice of his intention to withdraw 98 municipalities-related witnesses who previously appeared on his list of witnesses.

2. Rule 73 *ter* (D) provides that:

After commencement of the defence case, the defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called.

3. In its *Decision on Prosecution's Motion to Substitute Witness* (4 May 2010), the Trial Chamber noted that a request to vary a party's witness list involves a balancing of the party's duty to present available evidence against the potential prejudice to the opposing party.¹

4. According to the Trial Chamber, the factors to be considered are the relevance and probative value of the evidence and whether the probative value of the evidence is substantially outweighed by the need to insure a fair trial.²

Relevance and Probative Value

Vladimir Matovic

5. The following information is contained in the Dutch NIOD report:

Vladimir Matovic, a former journalist and advisor to Cosic, was asked to go to Srebrenica since he was most familiar with the local situation. He also knew Karadzic and Mladic from the time that Cosic was still president. Matovic first went to the bureau of the Republika Srpska in Belgrade. The staff there knew nothing. It therefore seemed more useful to proceed directly to Bratunac and Srebrenica. On 12 July, Matovic managed to reach Potocari. What he saw here was enough: Muslims were lined up on one side of the road, VRS soldiers on the other. There was general confusion among both the VRS troops and their Dutchbat counterparts. The situation reminded Matovic of the film he had seen about the evacuation of Saigon. There were plenty of people and soldiers milling around, but there was no political figure in charge. The senior Muslim representatives had left and there was no sign of any agreements having been reached. Matovic attempted to contact the VRS and the Muslim leaders. He wished to arrange talks with the VRS commanders before reporting back to

¹ para. 4

² para. 5

Belgrade on exactly what was happening here. However, he did not get to meet Mladic or any of his generals.

Matovic travelled on to Pale where he was able to meet with Karadzic and the ministers of the interior and defence, but these had no ready answers either. Matovic gained the impression that Karadzic was genuinely unaware of what was happening in and around Srebrenica. Rather than providing answers, Karadzic was asking questions. Matovic then decided to return to Belgrade. He arrived there in the early morning of 14 July, whereupon it was decided that the patriarch Pavle and former president Cosic would each write a letter to Mladic and Karadzic.

Matovic rushed to the monastery where Pavle lay on his sickbed and explained what the group had decided. Pavle proceeded to write to Mladic and Karadzic. Cosic did likewise. Although worded differently, the letters had the same general intent, pointing out that the situation was likely to lead to a full-scale crisis. They incited Mladic, as Commander of the Armed forces, to display civilized behaviour with regard to the ABiH prisoners of war. In his letter, Cosic referred to Serbian military traditions. With the letters, Matovic departed once more for Bratunac where he arrived on the evening of 14 July. He was again unable to find Mladic, but met with another VRS General, Dordje Djukic, responsible for logistics.

Matovic explained the views of the Belgrade group and that he was going to visit Karadzic to deliver the letter. Karadzic told him later that he had obtained no further information since Matovic's earlier visit. In fact, he claimed to gain all his information from watching CNN.

6. Mr. Matovic has been located in Belgrade, has confirmed this information, and has agreed to testify.

7. His testimony is highly relevant to the issue of Dr. Karadzic's knowledge of the crimes which took place following the fall of Srebrenica. The probative value of the testimony is high since Mr. Matovic was a respected member of the Serbian political establishment and gave this information in 1999.

8. Overall, any prejudice to the prosecution is outweighed by the relevance and probative value of the testimony, as well as the time savings when considering it in the context of the witnesses proposed to be withdrawn.

Vidoje Blagojevic

8. Colonel Vidoje Blagojevic was Commander of the Bratunac Brigade during the Srebrenica events. He has been convicted at this Tribunal. He will testify, *inter alia*, that

he was never informed by Momir Nikolic of a plan to execute the prisoners on the evening of 12 July as claimed by Nikolic in his testimony.

9. His testimony is highly relevant to the issue of whether Nikolic is telling the truth when he claimed that a plan existed to kill the men from the morning of 12 July 1995. Dr. Karadzic contends that the executions began spontaneously after the incident of the Kravica warehouse on the evening of 13 July 1995. The lack of an advance plan to execute the men makes it less likely that Dr. Karadzic had any involvement or knowledge of those executions and makes it less likely that the executions were committed with the intent to destroy the Bosnian Muslims as a group.

10. The probative value of Colonel Blagojevic's testimony is high because he was personally involved in these events and was specifically named by Nikolic as a person who he informed about the alleged plan on 12 July. While the fact of his conviction may impact on Colonel Blagojevic's credibility, such issues are more related to the weight of his evidence rather than the probative value of his testimony to the important issues of the trial.

Reasons for Varying the Witness List

Vladimir Matovic

11. Vladimir Matovic was not included on Dr. Karadzic's witness list filed on 27 August 2012. It was only on 24 September 2013 that Dr. Karadzic learned that Mr. Matovic had information relevant to his case. This occurred when Dr. Karadzic's Legal Advisor finally had time to read the 3200 page NIOD report on Srebrenica during a recess in the trial and discovered the above quoted text.

12. While the information was in the public domain as of 27 August 2012, Dr. Karadzic was simply unaware of it. Given the fact that over 2 million pages of information relevant to his case has been disclosed to him so far, and hundreds of thousands of additional pages are in the public domain, it is not surprising that Dr. Karadzic and his team would miss something, despite spending virtually all out of court time searching and reading material.

13. It is respectfully contended that, given the volume of material in this case, the failure to discover Mr. Matovic's information earlier should not serve as a bar to adding him to the witness list and deprive the Chamber of hearing this relevant evidence. Dr.

Karadzic is prepared to delay Mr. Matovic's testimony until after the first of the year in order to ensure that the prosecution has adequate time to prepare.

Vidoje Blagojevic

14. Vidoje Blagojevic was included on Dr. Karadzic's witness list filed on 27 August 2012. At the time he was serving his ICTY sentence. On 22 November 2012, Dr. Karadzic included him on a list of witnesses who he no longer intended to call, as he believed it unlikely that Colonel Blagojevic would agree to testify while serving his sentence.³ On 4 December 2012, the Trial Chamber granted the motion to vary the witness list.⁴

15. Colonel Blagojevic was subsequently granted early release and returned to Bosnia in December 2012. His testimony assumed more importance to Dr. Karadzic's case when other witnesses, such as Drago Nikolic and Vinko Pandurevic subsequently declined to testify. When contacted by Dr. Karadzic's defence team on 18 September 2013, Colonel Blagojevic agreed to testify. The prosecution was notified by e-mail on the very next day of Dr. Karadzic's intention to ask that he be reinstated to the witness list.

Municipalities Witnesses to be Withdrawn

16. The list of witnesses to be withdrawn is listed in Confidential Annex "A". They are all from the municipalities component of the case, from municipalities other than the seven which are the subject of Count One.

17. Dr. Karadzic would have liked to have called these witnesses to testify, but has recognized that it is impossible to do so in the time allotted to him to present his case. In order to provide the Trial Chamber with a clearer picture of the remaining witnesses that he hopes to call in the allotted time, Dr. Karadzic believes that it is beneficial to all concerned that he withdraw these witnesses at this time.

Conclusion

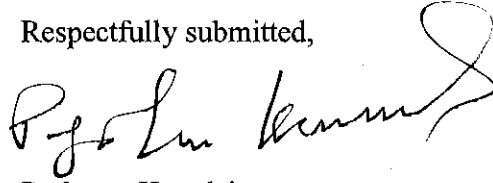
18. It is respectfully requested that Dr. Karadzic be allowed to vary his witness list by adding the two witnesses to his witness list and withdrawing the 98 others.

³ *Motion to Vary List of Witnesses* (22 November 2012), Annex "C".

⁴ T30892

Word count: 1932

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic