

IT-95-5/18-T
D79182-D79177
04 OCTOBER 2013

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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: 4 October 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annex

MOTION TO VARY LIST OF WITNESSES:
SARAJEVO COMPONENT

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 Sarajevo component of the case to his list. At the same time, he provides notice of his intention to withdraw 32 Sarajevo-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

5. Dr. Karadzic's decision to seek to add the two witnesses, while removing others, is an effort to streamline his defence to the Sarajevo allegations by focusing on witnesses whose testimony is more targeted to disputed issues and not cumulative to testimony already presented.

Relevance and Probative Value

Prvoslav Davnic

6. Prvoslav Davnic served as the head of the United Nations Center for Disarmament Affairs in New York from 1992-95. He will testify to information he received at UN headquarters that cast doubt upon the allegation that the Bosnian Serbs were responsible for the shells which landed on the Markale market on 28 August 1995.

7. Mr. Davnic will also testify to a conversation he had with Dr. Karadzic in which Dr. Karadzic asserted that he had been informed by the VRS that they had not fired those shells.³

¹ para. 4

² para. 5

³ The statement of Mr. Davnic can be found in e-court at 65 *ter* #1D09816

8. The relevance of Mr. Davinic's testimony is that it refutes the prosecution's allegation in scheduled incident G19 that the Bosnian Serbs were responsible for the shelling of the market and it provides support for Dr. Karadzic's lack of *mens rea* for the crimes charged in Counts 9 and 10 regardless of which side ultimately fired the shells.

9. The probative value of Mr. Davinic's evidence is high since he occupied an important position within the United Nations and had personal contact with Dr. Karadzic. Witness C⁴

10. Witness C served as a member of the team of bodyguards for President Alija Izetbegovic. He will testify to overhearing discussions in which President Izetbegovic and others made plans to ensure that the Bosnian Serbs were blamed for shelling civilians in order to obtain international intervention on the side of the Bosnian Muslims. This was done by deliberately firing from civilian areas and hospitals to draw return fire and firing shells from areas where the Bosnian Serbs would be blamed as the party which fired the shells.⁵

11. The relevance of Witness C's evidence is that it raises doubts about whether the Bosnian Serbs were in fact responsible for the shelling incidents charged in the indictment.

12. The probative value of Witness C's evidence is high since he occupied a unique position which gave him direct insider access to the highest levels of the Bosnian government.

13. Overall, any prejudice to the prosecution is outweighed by the relevance and probative value of the testimony, as well as the time savings in presenting this evidence in lieu of witnesses proposed to be withdrawn.

Reasons for Varying the Witness List

14. Dr. Karadzic did not include the two witnesses on his original witness list filed in August 2012. Mr. Davinic refused to be interviewed until August 2013 because he was the subject of criminal charges in Serbia. Witness C was unknown to Dr. Kardazic's defence team until earlier this year when his information was brought to the

⁴ The witness is referred to as Witness C because he requires protective measures. If this motion is granted, he will receive a KW number and a motion for protective measures will be filed.

⁵ The statement of Witness C can be found in e-court at 65 *ter* #1D23231

attention of Goran Petronijevic, a member of Dr. Karadzic's defence team in Belgrade, who subsequently took his statement in August 2013.

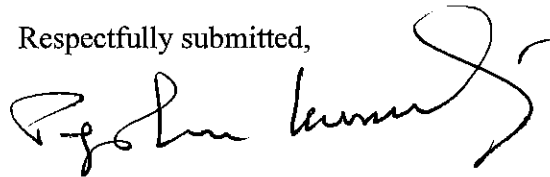
15. The list of witnesses to be withdrawn if this motion is granted is listed in Confidential Annex "A".

Conclusion

16. 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 32 others.

Word count: 988

Respectfully submitted,

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

Radovan Karadzic