
International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

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

Date: 18 June 2015

IN TRIAL CHAMBER III

Before:

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

Registrar:

Mr John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO NINTH MOTION TO RE-
OPEN DEFENCE CASE: RADOMIR BJELANOVIĆ
STATEMENT**

The Office of the Prosecutor:

Mr Alan Tieger
Ms Hildegard Uertz-Retzlaff

The Accused:

Mr Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

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

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO NINTH MOTION TO RE-OPEN DEFENCE
CASE: RADOMIR BJELANOVIĆ STATEMENT**

I. INTRODUCTION

1. The Prosecution opposes the Accused's 11 June 2015 Motion¹ for leave to re-open his case in order to tender a witness statement ("Statement")² from Radomir Bjelanović. The Statement is of minimal probative value under Rule 89(D) of the Tribunal's Rules of Procedure and Evidence ("Rules"), such that it does not warrant the delay that re-opening his case would inevitably cause at this "very advanced stage"³ of the trial. The Trial Chamber should therefore deny the Motion.

¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Ninth Motion to Re-Open Defence Case: Radomir Bjelanović, 11 June 2015 ("Motion"). All further references to filings and decisions relate to this case unless otherwise stated.

² See Motion, Annex A.

³ Decision on Accused's First Motion to Re-Open Defence Case, 12 September 2014 ("Decision on Accused's First Motion to Re-Open"), paras.8,12; Decision on Accused's Third Motion to Re-Open Defence Case, 17 December 2014 ("Decision on Accused's Third Motion to Re-Open"), para.14; Decision on Accused's Seventh Motion to Re-Open Defence Case, 20 April 2015 ("Decision on Accused's Seventh Motion to Re-Open"), para.15.

II. DISCUSSION

A. *The Motion should be denied because the evidence has minimal probative value for the Defence case*

2. As the Trial Chamber has already held on two occasions,⁴ whether there has been an alleged disclosure violation⁵ is irrelevant to the determination of whether exceptional circumstances exist which would warrant the Chamber to exercise its discretion to re-open the case in the interests of justice. Instead, what is pertinent to this determination is the Statement's lack of probative value for the Defence case.

3. Evidence that Bjelanović, while serving as Chief of Police for Vlasenica, saved the lives of some Muslim families in Vlasenica in early May 1992⁶ may tend to show that Bjelanović was not in favour of crimes against Bosnian Muslims. However, it does not support the Accused's more general claim that "Republika Srpska authorities were not in favour of crimes against Bosnian Muslims."⁷ The Prosecution does not allege that every single Republika Srpska ("RS") municipal official authority supported such crimes. Moreover, Bjelanović explained that, in spite of being Chief of Police, he had to resign to protect himself from threats he received for fulfilling his duties by protecting the lives of Vlasenica Muslims. This indicates that Bjelanović's stance towards Muslims in Vlasenica was not shared by other RS authorities who apparently took no steps to support his efforts to protect Muslims or protect him from retaliation. While the Accused points to the evidence that Mićo Stanišić subsequently appointed Bjelanović as the Milići Police Chief,⁸ there is no indication that Stanišić was aware of Bjelanović's alleged acts to protect Muslims, and even if Stanišić had been aware of this, his action appointing Bjelanović would not materially alter any conclusions about Stanišić's participation as a JCE member, which has been the subject of considerable evidence in this case.⁹ In sum, the appointment of one local official who may have taken at least one protective action in favour of Bosnian Muslim civilians does not allow broad conclusions to be drawn about "Republika Srpska authorities" in general.

⁴ See Decision on Accused's Third Motion to Re-Open, para.13; Decision on Accused's Seventh Motion to Re-Open, para.13.

⁵ See Motion, paras.6-7 (alleging disclosure violation).

⁶ Motion, para.2; Statement, paras.35-36.

⁷ Motion, para.5.

⁸ Motion, para.2; Statement, para.38.

⁹ See, e.g., Prosecution Final Trial Brief, 29 August 2015, paras.92-95,147,194,242,325-327,332,334-335,342,345,350,351-352,356-357,359,465,471,489,717.

4. The Accused fails to explain how evidence of Muslim arming before the war and crimes committed by Muslims during the war tends to show that arming of Serbs before the war in Vlasenica was not done for the purpose of expelling Muslims.¹⁰ In any event the evidence in the Statement of arming of Muslims in Bosnia and Herzegovina at the end of 1991¹¹ is both general and limited in scope,¹² while covering an aspect of the case on which the Chamber has already received extensive evidence and argument from the parties,¹³ including specifically with respect to Vlasenica.¹⁴ Likewise, although the Accused describes the Statement as containing “considerable information” about the killing of civilians by Bosnian Muslims from Srebrenica during the war,¹⁵ in reality each of these claims is based on information Bjelanović was told by other unnamed individuals, not his own personal observations.¹⁶ In addition, the Accused has made extensive arguments on this topic based on evidence he has already tendered,¹⁷ and the comments in the Statement add little substance to these prior arguments.

5. In evaluating probative value in the context of re-opening the case pursuant to Rule 89(D), “it is only in exceptional circumstances where the justice of the case so demands that a party should be permitted to re-open its case to present new evidence.”¹⁸ As such, in light of the minimal probative value of the evidence the

¹⁰ Motion, para.5.

¹¹ Statement, para.25.

¹² The Statement’s evidence on this point pertains only to two 1991 letters the witness said contained instructions for arming, and which did not relate specifically to Vlasenica, the municipality about which the witness had personal knowledge. *See* Statement, para.25.

¹³ *See, e.g.*, Defence Final Trial Brief, 29 August 2015, paras.43-44,63-64,72,142,147,1395,1412,1429,1442,1487,1509,1532,1658,1678,1760-1761,1800; Prosecution Final Trial Brief, 29 August 2015, paras.227,228,275 and Appendix A municipality narratives.

¹⁴ *See, e.g.*, Defence Final Trial Brief, 29 August 2015, para.1426; Prosecution Final Trial Brief, 29 August 2015, Appendix A, Vlasenica Municipality, paras.2-3.

¹⁵ Motion, para.2.

¹⁶ *See* Statement, paras.44-49, describing incidents “allegedly” perpetrated by Muslims and describing information Bjelanović “was told” or “heard.”

¹⁷ *See, e.g.*, Defence Final Trial Brief, 29 August 2015, paras.553,1081,1304,1319,1323,1430-1431,1545,1679,1789-1792,1797,1804.

¹⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04074-T, Decision on the Petković Defence Motion to Reopen the Case, 23 November 2010 (English translation distributed on 3 December 2010), para.24; *Prosecutor v. S.Milošević*, Case No. IT-02-54-T, Decision on Application for a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex, 13 December 2005, paras.37-38; *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para.288; *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Decision on the Prosecution’s Alternative Request to Reopen the Prosecution’s Case, 19 August 1998 (“*Čelebići* Trial Decision”), para.27. *See also* Decision on Accused’s Second Motion to Re-Open Defence Case, 30 October 2014 (“Decision on Accused’s Second Motion to Re-Open”), paras.14,17; Decision on Accused’s Third Motion to Re-Open, paras.13-14.

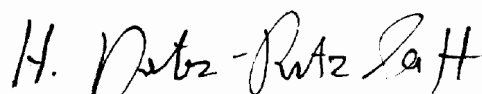
Accused seeks to tender, the Trial Chamber should exercise its discretion to decline to re-open the case in the interests of justice without regard to other factors.¹⁹

6. Even if such other factors are considered, the Trial Chamber should still deny the re-opening request. The Chamber has discretion pursuant to Rule 89(D) to deny re-opening if the probative value of the evidence is so low that it is outweighed by factors such as the advanced stage of the trial and the delay that re-opening would likely cause.²⁰ When considering whether to allow a party to re-open its case, “the later in the trial that the application is made, the less likely the evidence will be admitted.”²¹ The Trial Chamber has already held on prior occasions that this trial is at a “very advanced stage.”²² Thus, the Motion should also be denied in light of the evidence’s minimal probative value for the Defence case and the even more advanced stage of the proceedings.

III. CONCLUSION

7. For the foregoing reasons, the Trial Chamber should deny the Motion.

Word Count: 1297



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Senior Trial Attorney

Dated this 18th day of June 2015
At The Hague
The Netherlands

¹⁹ See Decision on Accused’s Second Motion to Re-Open, para.17.

²⁰ See Decision on Accused’s First Motion to Re-Open, paras.5-6; Decision on Prosecution Motion to Re-open Its Case and Prosecution Motion for Protective Measures for Witness KDZ614, 20 March 2014, para.11.

²¹ *Čelebići* Appeal Judgement, para.280; *Čelebići* Trial Decision, para.27.

²² Decision on Accused’s First Motion to Re-Open, paras.8,12; Decision on Accused’s Third Motion to Re-Open, para.14; Decision on Accused’s Seventh Motion to Re-Open, para.15.