



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-04-84-R77.4

Date: 29 May 2008

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Decision of: 29 May 2008

PROSECUTOR

v.

**ASTRIT HARAQIJA
and
BAJRUSH MORINA**

PUBLIC

**DECISION ON HARAQIJA AND MORINA REQUESTS FOR
RECONSIDERATION OF SCHEDULING ORDER AND
FOR CERTIFICATION FOR APPEAL**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. David Re
Mr. Stefan Wäspi

Counsel for the Accused:

Mr. Karim A. A. Khan for Astrit Haraqija
Mr. Jens Dieckman for Bajrush Morina

TRIAL CHAMBER I (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED OF the “Astrit Haraqija’s Request for Reconsideration of the Scheduling Order Regarding Commencement of Trial Dated 20 May 2008” filed publicly with confidential annexes A-D on 26 May 2008, and Bajrush Morina’s joinder thereto,¹ (jointly referred to as “Reconsideration Motion”) whereby the Defence seeks that the Trial Chamber (i) reconsider the “Scheduling Order Regarding Commencement of Trial” rendered by the Pre-Trial Judge on 20 May 2008 (“Scheduling Order”), (ii) allow the parties to make submissions on the issue of commencement of trial and (iii) set the start of trial for a date commencing after the summer judicial recess;²

ALSO BEING SEISED OF “Astrit Haraqija’s Request for Certification for Appeal of Scheduling Order Regarding Commencement of Trial Dated 20 May 2008” filed publicly with confidential annexes A-D on 26 May 2008, and Bajrush Morina’s joinder thereto,³ (jointly referred to as “Certification Request”), whereby the Defence requests a certificate to appeal the Scheduling Order;

NOTING that the Trial Chamber has inherent discretionary power to reconsider a previous decision if there has been a clear error of reasoning or if particular circumstances exist that justify reconsideration in order to prevent an injustice,⁴ and that such circumstances may include new facts or arguments that have arisen since the issuance of a decision;⁵

CONSIDERING that the concerns raised by the Defence in the Reconsideration Motion are touching upon the issue of the right of the accused to adequate time to prepare a defence;⁶

FINDING that, in view of the arguments and circumstances raised by the Defence, the Trial Chamber deems it appropriate to reconsider the dates of the commencement of the trial and the dates for filing of the Defence Pre-Trial Brief and Defence 65^{ter} witness and exhibit lists;

¹ Bajrush Morina’s Joinder in “Astrit Haraqija’s Request for Reconsideration of the Scheduling Order Regarding Commencement of Trial Dated 20 May 2008 with Confidential Annexes A-D”, 27 May 2008.

² Reconsideration Motion, para. 20.

³ Bajrush Morina’s Joinder in “Astrit Haraqija’s Request for Certification for Appeal of Trial Chamber’s Scheduling Order Regarding Commencement of Trial Dated 20 May 2008” with Confidential Annexes A-D, 27 May 2008.

⁴ See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, Confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, fn. 40.

⁵ See *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on the Prosecution’s Motion for Reconsideration of the Chamber’s Decision on Admission of Documentary Evidence, 13 February 2008, para. 9; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Second Decision on the Admission of Documentary Evidence submitted by the Prosecution (Dretelj and Gabela), 12 December 2007, p. 4 fn. 4 with further references.

⁶ Reconsideration Motion, paras 3, 16-19.

FINDING that the Certification Request is therefore moot;

PURSUANT to Rules 54 and 65*ter* of the Rules

HEREBY grants the Reconsideration Motion; and

ORDERS as follows:

1. The Scheduling Order Regarding Commencement of Trial rendered on 20 May 2008 is vacated;
2. The Prosecution shall file, not later than 21 July 2008:
 - a. a Pre-trial Brief, including a summary of the evidence which the Prosecution intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused. This brief which shall not exceed 5000 words, shall include any admissions by the parties and a statement of matters which are not in dispute, as well as a statement of contested matters of fact and law;
 - b. the list of witnesses the Prosecution intends to call. This list shall include the name or pseudonym of each witness, a summary of the facts on which each witness will testify, the points in the Indictment as to which each witness will testify, the total number of witnesses, an indication of whether the witness will testify in person or pursuant to Rules 92*bis*, 92*ter* or 92*quater*, the estimated length of time required for each witness and the total time estimated for presentation of the Prosecution's case;
 - c. the list of exhibits the Prosecution intends to offer;
3. The Defence shall file, not later than 11 August 2008:
 - a. a Pre-trial Brief that shall not exceed 5000 words and which shall address the factual and legal issues and include a written statement setting out in general terms and the nature of the Accused's defence, the matters with which the Accused takes issue in the Prosecution's Pre-trial Brief and, in the case of each such matter, the reason why the Accused takes issue with it;
 - b. the list of witnesses the Defence intends to call. This list shall include the name or pseudonym of each witness, a summary of the facts on which each witness will testify, the points in the Indictment as to which each witness will testify, the total number of witnesses, an indication of whether the witness will testify in person or pursuant to Rules 92*bis*, 92*ter*

or *92quater*, the estimated length of time required for each witness and the total time estimated for the presentation of the Defence case;

c. the list of exhibits the Defence intends to offer;

4. The trial shall take place between 8 and 12 September 2008, at a time and venue to be announced in due course.

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

Dated this twenty-ninth day of May 2008

At The Hague

The Netherlands



**Judge Alphons Orie
Presiding**

[Seal of the Tribunal]