

UNITED
NATIONS

7-04-83-7
① 7029 - ① 7027
05 July 2007

7029
45.



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-04-83-PT

Date: 5 July 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 5 July 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR
SUSPENSION OF THE COMMENCEMENT OF TRIAL
AND ALL RELATED PROCEEDINGS**

The Office of the Prosecutor

Ms. Carla del Ponte
Mr. Daryl A. Mundis

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

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 the former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED of the “Prosecution Motion for Suspension of the Commencement of Trial and All Related Proceedings” (“Motion”), filed on 5 July 2007, whereby the Prosecution requests the Trial Chamber to suspend the commencement of the trial and all related proceedings on the basis that:

[a]s a result of the Trial Chamber’s Decision to limit the number of witnesses and time available for the Prosecution to present its case, the Prosecution will have insufficient time to lead evidence relating to charges concerning Maline/Bikoši [...] the practical effect of this decision is that the Prosecution’s case will be cut significantly. Consequently, the scope of the case as it exists after the Rule 73 *bis* (C) Decision now renders the case eligible for transfer pursuant to Rule 11 *bis*;¹

NOTING that the Prosecution informs the Trial Chamber that it has filed a motion before the President and the Referral Bench under Rule 11 *bis* to refer the present case to the authorities of Bosnia and Herzegovina;²

NOTING the “Defence Response to Prosecution Motion for Suspension of the Commencement of Trial and All Related Proceedings” (“Response”), filed on 5 July 2007, whereby the Defence requests the Trial Chamber to deny the Motion;

CONSIDERING that in making its decision under Rule 73 *bis* (C) the Trial Chamber fully considered the Prosecution’s Rule 65 *ter* Witness List;

CONSIDERING that the Prosecution argument that the scope of the case has been reduced by the Trial Chamber’s Rule 73 *bis* (C) decision, is without merit, as the Trial Chamber did not reduce the scope of the case, but rather the number of witnesses and hours in light of the considerable cumulation which the Trial Chamber found present in the Prosecution’s 65 *ter* Witness List and the limited number of counts in the Indictment;³

CONSIDERING furthermore, that the Trial Chamber did not issue any decision requiring the Prosecution to reduce its case pursuant to Rule 73 *bis* (D);

CONSIDERING that the Trial Chamber has already assessed that 55 witnesses and 170 hours is ample for the Prosecution to present its entire case;⁴

¹ Motion, para. 1.

² Motion, para. 2.

³ Hearing, 2 July 2005, T.179-180.

⁴ Hearing, 2 July 2005, T.179-180, T. 183-184.

CONSIDERING furthermore, that the Trial Chamber finds no merit in the Prosecution argument that it cannot present evidence relating to the charges concerning Maline/Bikoši as the Prosecution is at liberty to choose which 55 witnesses from its 65 *ter* Witness List it wishes to include as part of its case and the Trial Chamber finds no reason why witnesses who will testify as to events in Maline/Bikoši should not be included among these witnesses;

RECALLING that Rule 73 *bis* (F) provides that after the commencement of the trial the Prosecutor may file a motion to vary the number of witnesses that are to be called or for additional time to present evidence;

CONSIDERING that the Prosecution could have filed a request for leave to appeal the Trial Chamber's 73 *bis* (C) decision, and that the current Motion is not the appropriate manner for the Prosecution to express its objection to the Trial Chamber's decision;

CONSIDERING that the trial in the present case is due to commence on Monday 9 July 2007;

CONSIDERING that it would not be in the interests of justice to suspend the trial at the present stage of the case and that it would affect the expeditiousness of the trial;

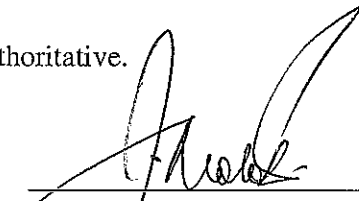
CONSIDERING furthermore, that the Trial Chamber considers the present Motion to be inappropriate;

PURSUANT to Articles 20 and 21 of the Statute of the Tribunal and Rule 54 of the Rules,

HEREBY

DENIES the Motion.

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



Judge Bakone Justice Moloto
Presiding

Dated this fifth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]