



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-T
Date: 10 October 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: 10 October 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON DEFENCE MOTION REQUESTING
TIME TO PREPARE CASE**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Kyle Wood
Mr. Aditya Menon

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 “Defence Motion Requesting Time to Prepare Case”, filed on 27 September 2007 (“Motion”) by counsel for Rasim Delić (“Defence”) and of the “Supplement to Defence Motion Requesting Time to Prepare Case”, filed by the Defence on 9 October 2007 with confidential Annex A (“Supplement to the Motion”), whereby the Defence “invites the Trial Chamber to order, pursuant to Rule 54, a reduction in the days that the Chamber sits each week to four days per week”;¹

NOTING that the Defence claims that the present court schedule adversely impacts on the Accused’s right to have adequate time for the preparation of his defence pursuant to Article 21(4)(b) of the Statute, and advances the following arguments in support:

- 1) The present case is undisputedly complex and involves a large amount of documents with the consequence that the Defence for each witness “must spend significant time carrying out enquiries into the Prosecution exhibits” and “has been experiencing difficulties keeping up with the pace of the witnesses”;²
- 2) Because of the speed of the trial, the Tribunal’s Conference and Language Services Section (“CLSS”) has not been able to process many of the documents submitted for translation by the Defence, and “the Defence has been required to make a selection of only the highest priority documents for translation”;³
- 3) As there is only one accused in this case, the Defence is required to cross-examine a witness almost every day;⁴
- 4) The current pace of the trial has an adverse impact on the health of the Defence team and the Defence wishes “to avoid a situation whereby team members become sick and unavailable for work”;⁵

¹ Motion, para. 11.

² Motion, paras 4-5. In the Supplement to the Motion, the Defence further submits that “it has not had time to review and analyse the Prosecution’s PT documents in relation to all of the Prosecution witnesses” due to the fact that “the trial began at an earlier date than anticipated and that the Prosecution has added 14 new witnesses to its original Rule 65 ter Witness List”, Supplement to the Motion, para. 5. *See also* Supplement to the Motion, paras 6-7.

³ Motion, para. 6, also noting that concerning large documents, “CLSS will often agree to translate only the most important part, which is not always a satisfactory solution”. In the Supplement to the Motion, the Defence submits that in some cases, “it is only once the Defence has received the list of PT documents to be used that it can make a determination as to what documents are needed and make the final submission of documents for translation”, Supplement to the Motion, para. 10. *See also* Supplement to the Motion, paras 11-12.

⁴ Motion, para. 7.

- 5) The Defence would need additional time to consolidate the evidence already heard to prepare for the remainder of the case;⁶

NOTING that the Prosecution in its oral response of 28 September 2007 submitted that:

- 1) In the event the Motion is granted, the reduction of sitting days should not be allowed to have any impact on the amount of time available to the Prosecution to present its case;
- 2) The Prosecution supports the Motion insofar as the current trial schedule would have a detrimental effect on the health or medical conditions of any member of the Defence team with a negative impact on the conduct of the proceedings in this case;
- 3) If the Motion is granted, the Prosecution would find it convenient if Monday was the day without a court sitting;⁷

RECALLING that pursuant to Article 20(1) of the Statute, the Trial Chamber shall ensure that a trial is fair and expeditious, that pursuant to Article 21(4)(b) of the Statute the Accused has a right to have adequate time for the preparation of his defence, and that pursuant to Article 21(4)(c) of the Statute the Accused has a right to be tried without undue delay;

CONSIDERING that the Trial Chamber's duty to ensure the fairness and expeditiousness of proceedings often entails a delicate balancing of interests and requires the evaluation of the particular situation of each case;⁸

NOTING that the current case is no more complex than other cases currently before the Tribunal;

NOTING that the present case involves only one accused and that a defence team is generally expected to keep up with the pace of the proceedings on the basis of a five-day court week;

CONSIDERING that the Trial Chamber is not persuaded that the issue of document translation is necessarily related to the question of whether the trial should sit only four days a week;

⁵ Motion, para. 8. *See also* Confidential Annex to the Supplement to Motion.

⁶ Motion, para. 10.

⁷ Hearing 28 September 2007, Transcript pages (T.) 3227-3229.

⁸ *See Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, 6 February 2007, para. 16. The Appeals Chamber also held that the right to be tried without undue delay imposes upon a Trial Chamber an obligation "to ensure [...] that the trial is completed within a reasonable time which is recognised as a fundamental right of due process under international human rights law." *See Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006, p. 4.

NOTING however the Defence argument that the current pace of the trial would be detrimental to the health of the members of the Defence team;

NOTING the circumstances of the Lead Defence Counsel that the Defence has brought to the Trial Chamber's attention;⁹

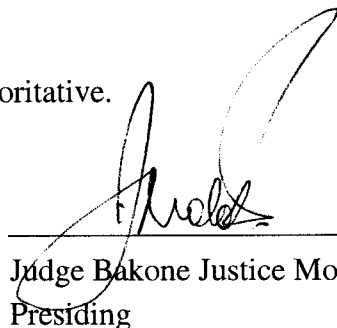
CONSIDERING that it is appropriate to avoid a situation where the deterioration of Lead Counsel's health adversely affects the conduct of the proceedings, and would risk jeopardising both the rights of the Accused and the expeditiousness of the trial;

PURSUANT to Rule 54 of the Rules,

HEREBY GRANTS the Motion and orders the revision of the trial schedule as follows:

- 1) The Trial Chamber will sit each week for four days beginning with the week of 29 October 2007. The Trial Chamber instructs the Registry to set, whenever possible, the Monday of each week as the day without a court sitting;
- 2) This schedule does not apply to situations where the current trial schedule already provides for four sitting days per week;
- 3) The Trial Chamber reserves the right to further revise the present schedule as the need arises.

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



Judge Bakone Justice Moloto
Presiding

Dated this tenth day of October 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

⁹ See Confidential Annex to the Supplement to the Motion.