

**UNITED
NATIONS**



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

Case No. IT-04-75-T
Date: 5 June 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 5 June 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION REQUEST
FOR ADDITIONAL TIME TO PRESENT EVIDENCE OF GH-023**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović
Mr. Christopher Gosnell

1. **THIS 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”) is seised of the “Prosecution Request for Additional Time to Present the *Viva Voce* Evidence of GH-023”, filed confidentially with a confidential annex on 17 May 2013 (“Motion”). The Defence confidentially filed the “Response to Prosecution Request for Additional Time to Present the *Viva Voce* Evidence of GH-023” on 30 May 2013 (“Response”).

A. Submissions

2. In the Motion, the Prosecution requests that the Trial Chamber grant it an additional two hours for the presentation of its case-in-chief.¹ The Prosecution argues that this additional time is required to adduce the evidence of GH-023 as a result of a decision by the Chamber requiring the witness to be led *viva voce*.² The Prosecution explains that its initial assessment of the number of hours required to present its case-in-chief did not include the time that is now necessary to lead the evidence of GH-023.³ The Prosecution submits that the additional time is required to fully present the evidence of the witness, which is comprised of (a) evidence contained in his Rule 92 *ter* statement and (b) other *viva voce* evidence, some of which relates to issues discovered during proofing in March 2013, as set out in a revised Rule 65 *ter* witness summary and proofing note.⁴ In the view of the Prosecution, it would be unduly prejudiced in the presentation of its case-in-chief without a minimum of five hours of direct examination time to lead the evidence of GH-023.⁵

3. In the Response, the Defence opposes the Motion.⁶ The Defence argues that the proofing note does not significantly enlarge information already communicated by way of the Rule 65 *ter* summary, which, it submits, was the basis upon which the Trial Chamber made its initial decision to allot the Prosecution three hours to adduce the evidence of GH-023 as a *viva voce* witness.⁷

B. Applicable Law

4. Article 20(1) of the Statute of the Tribunal (“Statute”) states in relevant part that Trial Chambers “shall ensure that a trial is fair and expeditious and that proceedings are conducted in

¹ Motion, paras 1-2 (pp. 1-2), 3-5. The Chamber notes that the Motion contains two paragraphs numbered “2” and will, therefore, indicate the relevant page number(s) in addition to the paragraph number when citing these two paragraphs.

² Motion, paras 1, 3, 5. *See also* Decision on Prosecution Motion for Admission of Evidence of GH-023 Pursuant to Rule 92 *ter* (confidential), 8 May 2013 (“Rule 92 *ter* Decision”).

³ Motion, paras 2 (pp. 1-2), 3.

⁴ Motion, paras 1, 2 (p. 2), 3, confidential Annex A. For the Rule 65 *ter* summary, see Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-023) (confidential), 5 April 2013 (“Rule 92 *ter* Motion”), confidential Annex A, pp. 1-2.

⁵ Motion, para. 3.

⁶ Response, para. 1.

accordance with the [Rules], with full respect for the rights of the accused”. Article 21 of the Statute sets forth the general fair trial rights of a person tried by the Tribunal, including, *inter alia*, the right to adequate time and facilities to prepare a defence, and the right to be tried without undue delay.⁸

5. Rule 73 *bis* (C)(ii) provides that a Trial Chamber, after having heard the Prosecution, shall determine the time available to the Prosecution for presenting evidence. Rule 73 *bis* (F) provides in relevant part that the Prosecution, after commencement of the trial, may file a motion for additional time to present evidence and that the Trial Chamber may grant the Prosecution’s request if satisfied that this is in the interests of justice. In allocating time for the duration of a party’s case at trial, a Trial Chamber must justify its decision, but it need not “specifically itemise and justify” all of the reasons for its decision.⁹

C. Discussion

6. The Prosecution initially designated GH-023 as a Rule 92 *ter* witness and indicated that it would use three hours of court time to lead his evidence pursuant to that Rule.¹⁰ However, the Chamber determined that his evidence should be led *viva voce* and that three hours would be sufficient in order to do so.¹¹ The Trial Chamber notes that it reviewed the revised Rule 65 *ter* material during its deliberations on the Rule 92 *ter* motion for this witness and agrees with the submission of the Defence that the proofing note submitted with the Motion does not significantly enlarge the information already communicated by way of the witness’s Rule 65 *ter* summary. The Chamber sees no reason to depart from its finding that the evidence of the witness can be adduced within three hours and is of the view that it would not be in the interests of justice to allocate the Prosecution an additional two hours for the presentation of its case-in-chief.

⁷ Response, para. 2.

⁸ Statute, Articles 21(4)(b)-(c). See *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.10, Decision on Appeal From Decision on Duration of Defence Case, 29 January 2013 (“*Karadžić Decision*”), para. 8; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Use of Time, 9 October 2006, p. 2.

⁹ *Karadžić Decision*, para. 10.

¹⁰ Rule 92 *ter* Motion, confidential Annex A, p. 1.

¹¹ Rule 92 *ter* Decision, para. 7.

D. Disposition

7. Based on the foregoing, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute and Rule 73 *bis* of the Rules, hereby **DENIES** the Motion.

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

Done this fifth day of June 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]