



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-95-5/18-T

Date: 26 April 2012

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 26 April 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**SCHEDULING ORDER ON CLOSE OF THE PROSECUTION CASE, RULE 98 *BIS*
SUBMISSIONS, AND START OF THE DEFENCE CASE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 Accused’s “Submission on Commencement of Defence Case” filed on 11 April 2012 (“Submission”), and hereby issues this order in relation thereto.

I. Background and Submissions

1. On 17 April 2012, the Office of the Prosecutor (“Prosecution”) stated that it would call its last witness during the week of 4 May 2012.¹ On 21 March 2012, the Accused’s legal advisor confirmed that the Accused would present a motion for a judgement of acquittal pursuant to Rule 98 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and on 26 March 2012 stated that he and the Accused would need one week to prepare for these submissions.²

2. In the Submission, the Accused requests that he be allowed to start the presentation of his case in March 2013 to give him adequate time to prepare.³ In support, the Accused first submits that this ten month time period is warranted in light of the volume of evidence admitted during the Prosecution case thus far, including the number of witnesses whose evidence was presented to the Chamber, both orally and in writing, the number of adjudicated facts of which the Chamber has taken judicial notice, and the number of Prosecution exhibits admitted.⁴ The Accused also argues that resources at his disposal have been insufficient to prepare for the Defence case while the Prosecution case was ongoing. In particular, the Accused notes that during that time all five members of his defence team have been involved in the preparations for cross-examination, that the adjournments granted by the Chamber to remedy the impact of the disclosure practice by the Prosecution have not been sufficient to enable his preparations for the Defence case, and that on 31 January 2012, the President of the Tribunal (“President”) ruled that the Accused and his defence team were not sufficiently funded during the Prosecution case, consequently increasing the number of remunerable hours available to them.⁵ The Accused also submits that the breadth of preparations which are necessary for him to be in a position to identify potential witnesses and prepare witness statements require a ten month preparation period.⁶ The Accused further argues that equality of

¹ T. 27529–27530 (April 2012).

² T. 26545–26546 (21 March 2012); T. 26811(26 March 2012).

³ Submission, paras. 1, 20.

⁴ Submission, paras. 2–6.

⁵ Submissions, paras. 7–10, 12, referring to Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 (“President’s Decision on Funding”).

⁶ Submission, paras. 11, 13–15.

arms considerations require that he be granted adequate time, having regard to the 14 months granted to the Prosecution before the trial commenced in October 2009.⁷ Finally, the Accused notes the time periods granted to Slobodan Milošević and Zdravko Tolimir to prepare their cases and points out that he intends to call a greater number of witnesses than those two accused.⁸

3. The Prosecution filed the “Prosecution’s Response to Karadžić’s Submission on Commencement of Defence Case” on 25 April 2012 (“Response”). In the Response, the Prosecution does not take a specific position on the appropriate timing of the commencement of the Defence case but submits that the Submission is based largely on misconceptions and mischaracterisations.⁹ More specifically, the Prosecution argues that the Accused erroneously interprets the equality of arms principle,¹⁰ and improperly asserts that the Chamber’s prior decisions on adjournment are unfair.¹¹ The Prosecution further submits that the Accused has not used the resources available to him efficiently.¹² The Prosecution also asserts that the Accused improperly seeks a remedy from the Chamber in relation to the President’s Decision on Funding.¹³ Finally, the Prosecution submits that the Accused’s comparisons with other cases are unhelpful.¹⁴

II. Discussion

A. Close of Prosecution case

4. With regard to the close of the Prosecution case, the Chamber notes that the last Prosecution witness is scheduled to be called by 4 May 2012. The Chamber notes however that a number of evidence-related motions filed by the Prosecution are currently pending before the Chamber.¹⁵ The Chamber considers that the Prosecution case can only be deemed closed once the Chamber has ruled on all evidence-related motions filed by the Prosecution. Consequently, if the Prosecution intends to file any additional evidence-related motions, it shall do so no later than Friday 4 May 2012.

⁷ Submission, para. 18.

⁸ Submission, para. 19.

⁹ Response, para. 1.

¹⁰ Response, paras. 2–4.

¹¹ Response, paras. 5–8.

¹² Response, paras. 9–11.

¹³ Response, para. 12.

¹⁴ Response, para. 13.

¹⁵ See for instance, Prosecution’s Bar Table Motion for the Admission of Documents Related to the Hostages Component with Appendix A, 18 April 2012; Prosecution’s First Bar Table Motion for the Admission of Intercepts with Public Appendix A and Confidential Appendix B, 19 April 2012; Prosecution’s Second Bar Table Motion for the Admission of Intercepts with Public Appendix A and Confidential Appendix B, 23 April 2012.

B. Rule 98 *bis* proceedings

5. Rule 98 *bis* of the Rules is entitled “Judgement of Acquittal” and provides that “[a]t the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction”.

6. In light of the scope of the Indictment in this case and the volume of Prosecution evidence admitted thus far, the Chamber considers that the Accused’s request for one week, following the close of the Prosecution case, in which to prepare his Rule 98 *bis* submissions is reasonable. The Chamber shall therefore grant this request. Following the Accused’s Rule 98 *bis* submissions, the Prosecution shall have a full day in which to prepare its response and shall thus present its response on the second day after the Accused’s Rule 98 *bis* submissions.

7. As to the substance of the Accused’s Rule 98 *bis* submissions, the Chamber notes that it will not entertain any general or broad challenges to the Indictment or to the counts therein, especially if these are presented without any argumentation in support. The Chamber expects the Accused to present specific challenges and to provide specific arguments as to the basis for these challenges. In return, the Prosecution is expected to respond in a detailed and precise manner by reference to specific documents or witness testimonies.

C. Commencement of the Defence case

8. Turning to the arguments set forth by the Accused in requesting that he be allowed to commence the presentation of his Defence case in March 2013, the Chamber recalls that Articles 20 and 21 of the Statute of the Tribunal (“Statute”) bestow on the Chamber the duty to ensure the fair and expeditious conduct of the proceedings and to provide adequate time and facilities for the preparation of the Accused’s defence.

9. The Chamber first notes that it has been firmly established in the Tribunal’s jurisprudence that

it is the obligation of the accused to have been planning for and preparing the presentation of their case based upon all the charges in the Indictment, and not simply upon the ones that may survive the Chamber’s decision upon the Rule 98 *bis* motions. Such preparation necessitates that the majority of the work will have already taken place prior to the rendering of the Rule 98 *bis* decisions, and indeed dating back to the pre-trial phase of the proceedings.¹⁶

¹⁶ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007, para. 4; referred to in *Prosecutor v. Prlić et al.*, Case

It is therefore incumbent on all accused persons to prepare for their defence cases throughout the trial proceedings. Notwithstanding, in considering the time to grant to the Accused to prepare for his defence, the Chamber also takes in consideration the specificities of this case, as further detailed below.

10. The Chamber notes the scope of the Indictment which covers four distinct joint criminal enterprises over a period of four years and includes 114 scheduled incidents in 20 municipalities. Thus far, the Chamber has heard from 338 witnesses,¹⁷ including 144 witnesses whose evidence was admitted in writing. The Chamber has also admitted approximately 5,000 exhibits tendered by the Prosecution, and has taken judicial notice of 2,378 adjudicated facts. The time granted to the Accused to prepare for his defence will necessarily have to reflect the breadth of this case.

11. In terms of the adequacy of the resources available to the Accused during the Prosecution case, it is sufficient, for the purposes of this Scheduling Order, for the Chamber to recall the President's Funding Decision wherein the President found that the earlier President's decision on remuneration issued on 19 February 2010 "did not sufficiently consider the scope and complexity of Karadžić's trial, and thus erred by granting too limited an allocation of remunerable hours per month to Karadžić's defence team".¹⁸ The President ordered "the Registrar to provide Karadžić's defence team an additional 270 remunerable hours per month during the trial".¹⁹ In total, this amounts to a backlog of approximately 5,000 hours which are to be paid to the Accused and his defence team. In determining the time to grant to the Accused to prepare for this defence, the Chamber therefore takes into consideration the President's finding of the adequacy of the Accused's resources during the Prosecution case.

12. As for the Accused's equality of arms argument, the Chamber recalls the Appeals Chamber's jurisprudence that considerations of judicial economy should never impinge on the rights of the parties to a fair trial.²⁰ In addition, the Appeals Chamber has also held that while equality of arms is a "principle of basic proportionality, rather than a strict principle of mathematical equality [...] a Trial Chamber must also consider whether the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his

No. IT-04-74-T, Decision on Motion for Extension of time for the Commencement of the Defence Case and Adopting a New Schedule, 28 January 2008, p. 6.

¹⁷ This figure counts Tomasz Blaszczyk who has testified on three separate occasions as one witness.

¹⁸ President's Funding Decision, para. 44, referring to Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010.

¹⁹ President's Funding Decision, para. 45.

²⁰ *Prosecutor v. Prlić et al.* Case No. IT-04-74-AR73.7, Decision on Defendants Appeal Against 'Decision Portant Attribution du Temps a la Défense pour la Présentation des Moyens a Décharge', 1 July 2008, para. 16.

rights”.²¹ In this respect, while the Chamber does not consider itself bound by decisions of other Trial Chambers, it notes that the self-represented accused Slododan Milošević and Zdravko Tolimir were granted approximately five months and four months respectively to prepare for the presentation of their cases.²²

13. Having taken all of the above factors into account, the Chamber considers that it is reasonable for the Accused to make his opening statement, should he so wish, on 16 October 2012, and to call his first witness immediately thereafter.

IV. Disposition

14. Accordingly, the Chamber, pursuant to Articles 20 and 21 of the Statute and Rules 54, 65 *ter*, 94 *bis*, and 98 *bis* of the Rules, hereby **GRANTS** the Submission in part and **ORDERS** as follows:

Close of the Prosecution case

15. The Prosecution shall call its last witness during the week of 4 May 2012.

16. The Prosecution shall file any additional evidence-related motions no later than 4 May 2012.

17. The Prosecution case shall be considered closed on the day that the Chamber issues its decision on the last pending evidence-related motion filed by the Prosecution.

Rule 98 *bis* proceedings

18. The Accused shall present his Rule 98 *bis* submissions a week after the close of the Prosecution case as identified in paragraph 17 above.

19. The Accused shall have one regular sitting day in which to present his Rule 98 *bis* submissions.

²¹ *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, paras. 7–8.

²² *Prosecutor v. Slobodan Milošević*, Case IT-02-54-T, Further Scheduling Order on Defence Case, 12 February 2004, p. 3; *Prosecutor v. Slobodan Milošević*, Case IT-02-54-T, Omnibus Order on Matters to be Dealt with at the Pre-Defence Conference, 17 June 2004, para (17) (a); *Prosecutor v. Zdravko Tolimir*, Case No. IT-IT-05-88/2-2, Order Regarding the Scheduling of the Defence Case and Related Matters, 20 September 2011, p. 4, considering “that the Accused is representing himself and requires additional time because he does not speak English and the documentation to be reviewed in the preparation of the Defence case can be expected to be voluminous”.

20. The Prosecution shall present its response to the Accused's Rule 98 *bis* submissions on the second day after the Accused's Rule 98 *bis* submissions and shall have one regular sitting day in which to do so.

21. The parties shall present their submissions in accordance with the guidelines set out in paragraph 7 above.

Defence Rule 65 *ter* submissions

22. No later than 27 August 2012, the Accused shall file a list of witnesses he intends to call including:

- i) the name or pseudonym of each witness;
- ii) a summary of the specific facts on which each witness will testify;
- iii) the points in the Indictment as to which each witness will testify;
- iv) the total number of witnesses and the number of witnesses who will testify on each count;
- v) an indication as to whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
- vi) the estimated length of time required for each witness and the total time estimated for the presentation of the Defence case.

23. No later than 27 August 2012, the Accused shall file a list of exhibits he intends to offer in his case, stating where possible whether the Prosecution has any objection as to authenticity, and shall serve on the Prosecution copies of the exhibits so listed.

24. No later than 27 August 2012, the Accused shall file a list of expert witnesses he intends to call during his Defence case, and shall serve upon the Prosecution and the Chamber copies of the *curricula vitae* and reports of these expert witnesses.

25. No later than 27 August 2012, the Accused shall file any motion for the admission of evidence under Rule 92 *bis* or *quater* he wishes to file.

Start of the Defence case

26. A Status Conference shall be held on 3 September 2012 to review the progress made during the course of the preparations of the Defence case.
27. The Pre-Defence Conference shall be held on 15 October 2012.
28. The Accused shall make his opening statement on 16 October 2012, should he so wish, and call his first witness immediately thereafter.
29. The Chamber hereby informs the parties that it shall sit neither on 25 October 2012 nor during the week of 19 November 2012.
30. The Chamber **DENIES** the Submission in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-sixth day of April 2012
At The Hague
The Netherlands

[Seal of the Tribunal]