



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: 9 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: 9 July 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON URGENT OMNIBUS MOTION FOR
RECONSIDERATION AND POSTPONEMENT OF
COMMENCEMENT OF TRIAL**

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 Prosecution’s “Urgent Omnibus Motion for Reconsideration and Postponement of Commencement of Trial”, filed on 6 July 2007 (“Motion”), whereby the Prosecution requests the Trial Chamber:

1. to reconsider its decision under Rule 73 *bis* (C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and allow the Prosecution to call 70 witnesses, and to allot 110 hours for the direct examination of these witnesses,
2. to urgently adjudicate all outstanding pre-trial motions,
3. to postpone its deadline for the Prosecution to submit a revised witness list, and
4. to postpone the commencement of the trial until the Prosecution has had the opportunity to “reorganise” the presentation of its case in light of the above requirements;

NOTING that the Prosecution requests the Trial Chamber to postpone the commencement of the trial in the present case until after the Referral Bench has rendered its decision on the “Motion by the Prosecutor for Referral of the Indictment Pursuant to Rule 11 *bis*” of July 5 2007 (“Referral Motion”), and decided whether to refer the present case to the authorities of Bosnia and Herzegovina;¹

NOTING the Defence “Response to Urgent Omnibus Motion for Reconsideration and Postponement of Commencement of Trial”, filed on 9 July 2007 (“Response”), whereby the Defence opposes the Motion in its entirety;

RECALLING the Oral Order of the Trial Chamber of 2 July 2007 pursuant to Rule 73 *bis* (C) of the Rules, whereby the Trial Chamber set the time available to the Prosecution for the presentation of evidence at 170 hours and the number of witnesses to be called by the Prosecution at 55;²

NOTING that a Trial Chamber may reconsider a previous ruling under its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice;³

¹ Motion by the Prosecutor for Referral of the Indictment Pursuant to Rule 11 *bis*, 5 July 2007.

² Pre-Trial Conference, 2 July 2007, Transcript pages 179–180.

³ See, e.g., *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203.

RECALLING the Trial Chamber's "Decision on Prosecution Motion for Suspension of the Commencement of Trial and All Related Proceedings" filed on 5 July 2007, whereby the Trial Chamber rejected the "Prosecution Motion for Suspension of the Commencement of Trial and All Related Proceedings" ("Motion for Suspension") on the grounds that, *inter alia*:

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; [...]

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;⁴

NOTING that as of today, all outstanding pre-trial motions listed in the Motion have been decided upon by the Trial Chamber;⁵

NOTING that the trial in the present case is scheduled to commence at 14:15 on Monday, 9 July 2007;

CONSIDERING that it would not be in the interests of justice to postpone the commencement of the trial at the present stage of the case, and that to do so would affect the expeditiousness of the trial and the rights of the Accused;

CONSIDERING that pursuant to Rule 73 *bis* (F) the Prosecution may, after the commencement of the trial, file a motion to vary the number of witnesses that are to be called or for additional time to present evidence, and the Trial Chamber would entertain such a motion provided that such a motion is properly motivated;

CONSIDERING that the Prosecution has not demonstrated good cause that it requires more time and a higher number of witnesses to prove its case, and therefore, reconsideration of the Trial Chamber's Oral Order on Rule 73 *bis* (C) is not warranted;

⁴ Decision on Prosecution Motion for Suspension of the Commencement of Trial and All Related Proceedings, 5 July 2007, p. 3.

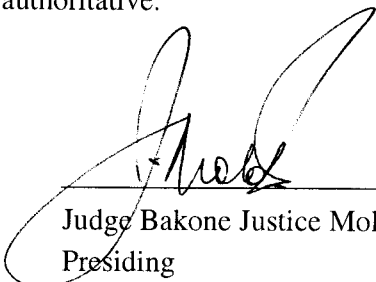
⁵ See Decision on Motion for Leave to Amend the Prosecution's Witness and Exhibit Lists, 9 July 2007; Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Joint Motion Concerning Agreed Facts, 9 July 2007; Decision on Prosecution's Motion for Admission of Documentary Evidence Pursuant to Rule 94(B), 9 July 2007.

PURSUANT to Articles 20 and 21 of the Statute, and Rules 54 and 73 *bis* (C) of the Rules,

HEREBY

DENIES the Motion.

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



Judge Bakone Justice Moloto
Presiding

Dated this ninth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]