

**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: 2 June 2014
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 2 June 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR THREE WEEKS NOTICE OF
FIRST FIVE DEFENCE WITNESSES**

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 Motion for Three Weeks Notice of First Five Defence Witnesses” filed on 20 May 2014 (“Motion”). The Defence confidentially filed a “Consolidated Response to Prosecution Motions to Extend the Period of Notice of Witnesses’ Appearance” on 21 May 2014 (“Response”).

A. Submissions

2. In the Motion, the Prosecution asks the Chamber to direct the Defence to provide to the Prosecution, on or before 3 June 2014, the names of the first five witnesses to be called by the Defence.¹ The Prosecution asserts that this three week notice will enable it to more effectively prepare the cross-examination of the first Defence witnesses.² The Prosecution asserts that there are “numerous omissions, errors and inconsistencies contained in the Defence Rule 65*ter* materials” which impair its ability to adequately prepare for cross-examination of those witnesses.³ It further argues that the timing of the Rule 65 *ter* filings in relation to the start of the Defence case has constrained the Prosecution’s ability to assemble and review materials that may be relevant to conducting an effective cross-examination.⁴ In contrast, the Prosecution argues, the Defence had the Prosecution’s Rule 65 *ter* material for over three months prior to the start of trial and thus had ample time and opportunity to prepare its cross-examination.⁵ The Prosecution submits that, as a courtesy, it provided the names of the first five witnesses to be called to the Defence 18 days before the start of the Prosecution case.⁶

3. In the Response, the Defence recognises that its Rule 65 *ter* filings are “not perfect” but asserts that the filings are “thorough and transparent” and that the witness summaries are sufficiently detailed.⁷ The Defence notes that it will not call any witnesses in the first two weeks of its case for whom there is “any arguably significant deficiency” in the summary provided in its Rule 65 *ter* filings.⁸ The Defence submits that the Chamber has already addressed the issue of the period of notice that the Defence should give in respect of its first five witnesses.⁹ It asserts that this notice period, 12 days, is longer than the 7-day notice that the Prosecution was required to provide

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, para. 5.

⁴ Motion, para. 6.

⁵ Motion, para. 6.

⁶ Motion, para. 2.

⁷ Response, para. 3.

⁸ Response, para. 3.

⁹ Response, para. 2, *referring to* Scheduling Order for Preparation and Commencement of Defence Case, 20 February 2014 (“Scheduling Order”).

to the Defence of its first witnesses.¹⁰ The Defence asserts that neither the alleged deficiencies in its Rule 65 *ter* filings, nor the volume of the filings, justify departing from the procedure already set out by the Chamber for the notification of witnesses.¹¹ Further, the Defence argues that the Prosecution must meet the standard for reconsideration in order to vary the notice period set out in the Scheduling Order.¹²

B. Discussion

4. In an order of 18 July 2013, the Chamber indicated that the Defence case would commence four months after the Trial Chamber's decision on the Defence's Rule 98 *bis* motion and that the Defence was to comply with various pre-Defence case responsibilities described therein at least six weeks prior to the commencement of its case.¹³ On 20 February 2014, the Chamber set 24 June 2014 as the date on which the Defence case was to commence and ordered the Defence to provide its list of witnesses for the first two week period on 12 June 2014, in accordance with paragraph 10 of the Guidelines.¹⁴ The Guidelines also require that the Defence indicate, *inter alia*, the order of the testimony of the witnesses and the documents or materials it intends to use during the examination-in-chief of those witnesses.¹⁵ On 30 May 2014, the Chamber issued an amended scheduling order in which it set 3 July 2014 as the new date for the commencement of the Defence case ("Amended Scheduling Order") without altering any other dates or deadlines set out in the Scheduling Order, including the 12 June deadline.¹⁶

5. In the Motion, the Prosecution is requesting a list of the first five witnesses to be called by the Defence, not necessarily the witnesses who will testify during the first two week period of the Defence case. The Chamber does not consider, therefore, that the relief sought by the Prosecution entails a reconsideration of the Scheduling Order and the requested relief, if granted, will not vary the obligations of the Defence as set out in the Guidelines or Scheduling Order. Rather, it would be an additional notification obligation. The Chamber therefore finds that the Prosecution need not meet the standard for reconsideration, but must demonstrate good cause in relation to its request for relief.

¹⁰ Response, para. 2, *referring to* Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, ("Guidelines") Annex, para. 10.

¹¹ Response, paras 3, 4.

¹² Motion, para. 8, *referring to* Scheduling Order, para. 4(e).

¹³ Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Preparation and Commencement of Defence Case, 18 July 2013 ("18 July 2013 Order"), paras 9-11, 12(e)-(f).

¹⁴ Scheduling Order, para. 4(e); Guidelines, Annex, para. 10.

¹⁵ Guidelines, Annex, para. 10.

¹⁶ Amended Scheduling Order, paras 5-6.

6. In the Scheduling Order, as well as the 18 July 2013 Order, the Chamber provided for the Prosecution to have six weeks from the filing of the Defence's Rule 65 *ter* material to prepare for the start of the Defence case and the cross-examination of Defence witnesses. On 19 May 2014, the Prosecution filed a motion in which it asserts that there are numerous omissions, errors, and inconsistencies in the Defence's Rule 65 *ter* material.¹⁷ The Defence filed a corrigendum to its Rule 65 *ter* filings on 23 May 2014 in which it corrects inconsistencies as to the mode of testimony and estimated time for direct examination of witnesses and adds details which have become available in relation to some witnesses.¹⁸ Given the date of the corrigendum, the Prosecution has been deprived of 10 days during which time it should have had this information. The remaining challenges put forward by the Prosecution in the motion of 19 May 2014 as to the adequacy of the Defence's Rule 65 *ter* filings will be addressed in the Chamber's forthcoming decision on that motion. The Chamber further notes, with concern, that multiple issues have arisen out of filings related to other pre-Defence case obligations which have required time and resources to resolve.¹⁹

7. The Chamber recalls however that the Amended Scheduling Order, while setting 3 July 2014 as the new date for the commencement of the defence case, did not change the obligation of the Defence to provide on 12 June 2014 its list of witnesses for the first two week period of its case, the order of the testimony of those witnesses, and the documents or materials it intends to use during the examination-in-chief of those witnesses.²⁰ As a result, the Prosecution will now receive the list of Defence witnesses for the first two week period 20 days in advance of the start of the Defence case. The Chamber considers therefore that the Prosecution will have sufficient time to effectively prepare for the cross-examination of the first Defence witnesses.

¹⁷ In the "Prosecution Motion Directing the Defence to Submit a Revised Rule 65 *ter* Witness List and Witness Summaries and for Disclosure in Accordance with Rule 67(A)(ii) and the Trial Chamber's Orders" filed on 19 May 2014, the Prosecution asserts that (a) the Defence has not provided adequate witness summaries, (b) the stated modes of witness testimony and estimated length of witness testimony are often contradictory, (c) required details such as the date of birth or father's name of some witnesses are missing, (d) the stated total time estimated for the presentation of the Defence case is inconsistent, (e) the Defence has not identified the points in the Indictment to which each witness will testify, and (f) the Defence has not disclosed witness statements for all witnesses it has indicated it will call pursuant to Rule 92 *ter*.

¹⁸ Corrigendum and Addendum to Rule 65 *ter* Filings, 23 May 2014.

¹⁹ See Email from Legal Officer to Defence, Documents missing in relation to the "Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*", 22 May 2014; Email from Legal Officer to Defence, Documents missing in relation to the "Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater*", 22 May 2014; Prosecution Motion to Strike DGH-080 from the Defence's Rule 65 *ter* Witness List, 16 May 2014; Email from Legal Officer to Prosecution, Request for extension to file response to the Defence omnibus Rule 92 *bis* and Rule 92 *quater* motions, 23 May 2014; Corrigendum and Addendum to Rule 65 *ter* Filings, 23 May 2014; Addendum to Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 26 May 2014.

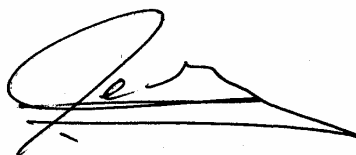
²⁰ Amended Scheduling Order, para. 6.

C. Disposition

8. Accordingly, the Trial Chamber, pursuant to Rules 54 of the Rules, hereby **DISMISSES** the Motion.

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

Done this second day of June 2014,
At The Hague,
The Netherlands.

A handwritten signature in black ink, appearing to read 'G. Delvoic', written over a horizontal line.

Judge Guy Delvoic
Presiding

[Seal of the Tribunal]