

**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: 24 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: 24 June 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON THE APPLICATION OF RULE 73 *ter* (E)
AND ON DEFENCE MOTION TO MODIFY THE TRIAL
SCHEDULE DURING THE TESTIMONY OF MR. HADŽIĆ**

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”) hereby issues this decision on (i) the allocation of time to the Defence for its case-in-chief, pursuant to Rule 73 *ter* (E) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and (ii) the confidential Defence “Motion to Modify the Trial Schedule During the Testimony of Mr. Hadžić”, filed on 20 June 2014 (“Motion”).¹ On 20 June 2014, the Prosecution confidentially filed the “Prosecution Response to Confidential Motion to Modify the Trial Schedule During the Testimony of Mr. Hadžić” (“Response”).

A. Time allocation to Defence

2. In its Rule 65 *ter* (G) filings and at the Pre-Defence Conference held on 17 June 2014, the Defence indicated that it would require 140 hours of hearing time for the oral presentation of its case-in-chief.² The Prosecution made no submissions on this issue.³

3. The Trial Chamber recalls that the Prosecution was allocated 185 hours of hearing time for the oral presentation of its case-in-chief.⁴

4. Rule 73 *ter* (E) of the Rules provides that a Trial Chamber, after having heard the Defence, shall determine the time available to the Defence for presenting its evidence. In light of the information provided by the Defence, as well as the Trial Chamber’s own calculations, the Trial Chamber considers that the Defence should be allotted a total of 140 hours in which to present its case-in-chief, including the direct examination and re-examination, if any, of the witnesses it intends to call.

5. A system for monitoring the use of time shall be established, as it was for the Prosecution case, by the Registry which will be responsible for recording time used during the evidence of each witness: (a) by the Defence for its examination-in-chief; (b) by the Prosecution for cross-examination; (c) by the Defence for re-examination; (d) by the Judges of the Trial Chamber as a result of putting questions to the witnesses; and (e) for all other matters, including procedural and administrative matters. Regular reports on the use of time shall be compiled by the Registry in conjunction with the Trial Chamber, which shall be provided periodically to the parties. The Trial

¹ The Chamber notes the Defence submission that the Motion reaffirms and supplements the oral application made by the Defence at the Pre-Defence Conference. *See* Pre-Defence Conference, 17 June 2014, T. 9262.

² Corrigendum and Addendum to Rule 65 *ter* Filings, 23 May 2014 (“Defence Rule 65 *ter* Filings”), confidential Annex A, pp. 1-3; Pre-Defence Conference, 17 June 2014, T. 9259.

³ Pre-Defence Conference, 17 June 2014, T. 9259.

⁴ Decision on Prosecution Motion for Additional Time for Completion of its Case-in-Chief, 24 April 2013, paras 13-14. *See also* Decision on the Application of Rule 73 *bis*, 15 October 2012, paras 3, 5(a).

Chamber shall continually monitor the use of time by the parties and may make further orders, as it considers necessary.

B. Case sitting schedule

6. On 30 May 2014, the Trial Chamber postponed the start of the Defence case from 24 June 2014 until 3 July 2014 due to scheduling issues related to Judges of the Chamber.⁵ In order to account for this postponement, the Chamber determined that it would sit five days per week during the months of July and August 2014, save for the period of the Tribunal's summer recess.⁶ At the Pre-Defence Conference, the Defence made an oral request for the Chamber to revert to a four day sitting week during the testimony of its first witness, the Accused, Goran Hadžić.⁷

7. In the Motion, the Defence reiterates its request for the Chamber to sit four days per week for the duration of Hadžić's testimony.⁸ In addition, the Defence requests that Hadžić not be required to testify for more than 80 minutes in any single sitting.⁹ The Defence submits that this amended sitting schedule is required so as not to impose a substantial physical burden on Hadžić that would not be in the interests of justice or truth-finding.¹⁰ The Defence submits that given the extent and nature of Hadžić's expected testimony it should be given under "the most serene conditions possible".¹¹

8. At the Pre-Defence Conference, the Prosecution observed that the testimony of an accused is not a reason in and of itself to modify the court schedule.¹² In the Response, the Prosecution takes no position with respect to the Defence request to sit four days per week, but submits that the Chamber should adhere to the daily sitting schedule that it has applied throughout the case thus far and reject the Defence request that single sittings be limited to 80 minute sessions.¹³ According to the Prosecution, the Defence request implies that Hadžić enjoys a special status as a witness, entitling him to preferential treatment not afforded to Prosecution witnesses; a suggestion it opines as "baseless".¹⁴

9. At the time the Chamber issued the Amended Scheduling Order, it had not yet been notified that Goran Hadžić, who is expected to testify for 30 hours in examination-in-chief, would be the

⁵ Amended Scheduling Order for Preparation and Commencement of Defence Case, 30 May 2014 ("Amended Scheduling Order"), paras 5, 7.

⁶ Amended Scheduling Order, para. 5.

⁷ Pre-Defence Conference, 17 June 2014, T. 9262.

⁸ Motion, para. 1.

⁹ Motion, para. 1.

¹⁰ Motion, para. 1.

¹¹ Motion, paras 2-4.

¹² Pre-Defence Conference, 17 June 2014, T. 9262.

¹³ Response, para. 3.

first Defence witness.¹⁵ Hadžić's testimony is expected to last for at least three sitting weeks, during which period the Chamber anticipates that the use of court time will be more efficient than with multiple witnesses. The Chamber will therefore sit four days per week, from Mondays through Thursdays, for the duration of Hadžić's testimony. The Chamber will however sit on Friday, 4 July 2014. The Chamber will monitor the use of court time and may alter the sitting schedule at the end of Hadžić's testimony.

10. With respect to the daily sitting schedule for the Defence case the Chamber notes that the schedule it has set, which mirrors that used for the Prosecution case, consists of one 90 minute session and two 75 minute sessions per day.¹⁶ The Chamber does not consider this overly burdensome for witnesses, even those who may testify for a relatively lengthy period, including the Accused. The Defence request in this regard will be denied.

11. Accordingly, the Trial Chamber, pursuant to Rules 54 and 73 *ter* (E) of the Rules, hereby:

- (a) **DECIDES** that the Defence shall lead its evidence within a total time of 140 hours;
- (b) **DIRECTS** the Registry to establish and maintain a system for monitoring and recording time used during the evidence of each witness in this case in accordance with the provisions of paragraph 5 of this decision;
- (c) **GRANTS** the Motion in part;

¹⁴ Response, para. 3.

¹⁵ Defence Rule 65 *ter* Filings, confidential Annex A, p. 2.

¹⁶ Pre Defence Conference, 17 June 2014, T. 9262.

- (d) **DECIDES** that the Chamber will sit four days per week for the duration of the testimony of Goran Hadžić; and
- (e) **DENIES** the Motion in all other respects.

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

Done this twenty-fourth day of June 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]