



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-05-87-T
Date: 23 May 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 23 May 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

DECISION ON JOINT DEFENCE MOTION TO POSTPONE TRIAL SCHEDULE

Office of the Prosecutor

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Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 an “Urgent Joint Defence Request to Reschedule the Timetable for the Filing of Rule 65 *ter* Submissions, the Pre-Defence Conference, and the Commencement of the Defence Case,” filed 21 May 2007 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Defence requests a delay in the dates upon which it is to accomplish its Rule 65 *ter* filings, the pre-defence conference is to be held, and the Defence case is to commence.¹ These postponements are requested upon the basis that the foregoing dates were dependent upon the representation from the Prosecution that it would rest its case on 23 March 2007 and the Chamber’s expectation that the Rule 98 *bis* proceedings would ensue during the week of 26 March 2007,² both of which did not occur upon those dates due to the interlocutory appeal of the Wesley Clark decision³ and matters relating to the evidence of Zoran Lilić.⁴ The Defence generally complains that it has not had adequate time simultaneously to prepare for the cross-examination of Prosecution witnesses, for its Rule 98 *bis* submissions, and for the Defence case and that the Accused’s right to a fair trial is therefore being violated.⁵

2. The Prosecution responds that it is not opposed to the Defence request in general for additional time, but does oppose the request to the extent that the proposed dates reduce the amount of time currently available to the Prosecution between the filing of the Rule 65 *ter* witness and exhibits lists and the commencement of the Defence case.⁶

3. The Chamber recalls that, in its Order of 5 March 2007, it noted that it is the obligation of the Accused to have been planning for and preparing the presentation of their evidence based upon all the charges in the Indictment, and not simply upon those that may survive the Chamber’s decision upon the Rule 98 *bis* motions, and that such preparation necessitates that the majority of the work will have already taken place prior to the rendering of the Rule 98 *bis* decision, and

¹ Motion, para. 3, p. 8.

² See Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007 (“Order of 5 March 2007”); see also Order on Prosecution Motion to Postpone Close of Case-in-Chief, Pre-Defence Conference, and Commencement of Defence Case, 23 March 2007.

³ See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR73.1, Decision on Interlocutory Appeal Against Second Decision Precluding the Prosecution from Adding General Wesley Clark to its 65*ter* Witness List, 20 April 2007.

⁴ Decision on Cross-Motions in Relation to Evidence of Zoran Lilić, 27 April 2007.

⁵ Motion, paras. 6–9.

⁶ Prosecution Response to Urgent Joint Defence Request to Reschedule the Timetable, 22 May 2007.

indeed dating back to the pre-trial phase of the proceedings.⁷ In that Order, the Chamber also noted that several extended recesses had been incorporated into the trial schedule, during which preparations should have continued.⁸ Finally, the Chamber recalls that it initially had in mind an interval *substantially shorter* than that proposed by the Defence, but decided to order a longer period between the Prosecution and Defence cases because of the particular circumstances affecting this trial.⁹

4. At the time that the Chamber was making decisions upon the factors relied upon by the Defence in its Motion, the Chamber had considered and taken into account all the circumstances of this case, including the dates set for the Defence Rule 65 *ter* filings, the pre-defence conference, and the commencement of the Defence case. These have all been actively in the mind of the Chamber throughout the events of the past few months. Moreover, the Chamber has been responsive to the needs of the parties throughout the trial and has consulted the parties when setting dates and deadlines affecting the parties. The Chamber recognises that there have been instances where Defence preparations for cross-examination may have diverted some attention away from other matters and therefore finds it appropriate to make an alteration in the date upon which the Defence case shall commence, but does not find it appropriate to grant the Motion in its entirety. The Chamber will continue to address the needs of the parties as the proceedings continue in order to ensure that no unfairness occurs.

5. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54, 65 *ter*, and 73 *ter* of the Rules of Procedure and Evidence, hereby GRANTS the Motion, in part, and ORDERS as follows:

- a. The Defence shall file its Rule 65 *ter* submissions on or before 15 June 2007, in accordance with paragraph 8(d)–(g) of the Order of 5 March 2007.
- b. The Chamber shall, on 22 June 2007, hold a Pre-Defence Conference, at which the Chamber, after having heard the parties, may determine, *inter alia*, the time available to the Accused for the presentation of their evidence.

⁷ Order of 5 March 2007, para. 4 (citing T. 221–223 (26 April 2006) (Pre-Trial Judge stating, at Rule 65 *ter* conference, that Defence should be preparing and reviewing material on rolling basis); *Prosecutor v. Martić*, Case No. IT-95-11-T, T. 5799–5800 (19 June 2006); *Prosecutor v. Krajišnik*, Decision on Defence Motion to Further Delay the Commencement of the Defence Case, 28 September 2005, p. 3).

⁸ Order of 5 March 2007, para. 4.

⁹ *Ibid.*

c. On 6 August 2007, the Defence case shall commence.

6. The Trial Chamber may issue further orders in relation to the above in due course, as appropriate and necessary in order to ensure the fair and expeditious conduct of the proceedings.

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



Judge Tsvetana Kamenova

Dated this twenty-third day of May 2007
At The Hague
The Netherlands

[Seal of the Tribunal]