



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: 20 June 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: 20 June 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON DEFENCE MOTIONS FOR EXTENSION OF TIME
TO FILE REPORTS OF EXPERT WITNESSES**

Office of the Prosecutor

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Counsel for the Accused

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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 seized of (a) “General Ojdanić’s Motion for Extension of Time to File Reports of Expert Witnesses”, filed 13 June 2007 (“Ojdanić Motion”), (b) the “Request for Time Extension to File Expert Report on Cultural Heritage”, filed by the Milutinović Defence on 13 June 2007 (“Milutinović Motion”), and (c) “Streten Lukić’s Motion for Extension of Time to Disclose Report of Expert Witness”, filed on 15 June 2007 (“Lukić Motion”), and hereby renders its decisions thereon.

1. In the Ojdanić Motion, the Ojdanić Defence requests the Trial Chamber to extend until 6 August 2007 the time by which it must file the expert reports of three expert witnesses, namely Zoran Stanković, a forensic historian; Miodrag Prsić, a military historian; and Radovan Radinović, General Ojdanić’s military expert witness. The Ojdanić Defence explains that it shares the Chamber’s concern about coordination of Defence efforts to prevent duplication of witnesses and exhibits, and argues, in support of its Motion, that the Defence teams have had insufficient time to coordinate and consider the anticipated testimony of these three witnesses, particularly Stanković and Prsić.

2. With respect to witness Radinović, the Ojdanić Defence argues that the late disclosure by the Prosecution of a large number of exhibits and its continuing ongoing disclosure of information have caused Radinović to have had insufficient time to fully examine and consider certain exhibits and information. Additionally, the Ojdanić Defence has submitted six requests to the Government of the Republic of Serbia to provide documents that should be a part of Radinović’s expert report, and that these documents, if the requests are approved, should be available in two weeks. Finally, the Ojdanić Defence argues that there will be no harm to the Prosecution if the Chamber grants the extension of time, because witnesses Prsić and Stanković will testify at the end of the Defence case, and witness Radinović will testify at the end of Ojdanić’s case.

3. In the Milutinović Motion, the Milutinović Defence requests an extension of 45 days, until 30 July 2007, to file the expert report on cultural heritage being prepared by the joint expert witness Branimir Jokić. It argues, in support of its Motion, that the preparation of the report by Jokić has been delayed because he has recently received two important documents/studies in Italian and Russian, both of which require translation. In addition, the Milutinović Defence argues that all the Defence teams have been working on the preparation of their respective defence cases and have only had limited opportunity to meet with Jokić and among themselves to discuss the preparation of

the expert report. Finally, the Milutinović Defence argues that the extension granted by the Chamber would cause no prejudice to the Prosecution, because Jokić will testify as a joint expert witness at the end of the Defence case.

4. In the Lukić Motion, the Defence requests the Chamber to extend until 15 August 2007 the time by which it must file its expert witness report. Lukić states in the Motion that the consultant who had agreed to prepare an expert report on the organisation structure, command, and regulation of the MUP refused to provide such report as late as last week, due to the shortened time he would have for the preparation of his report and due to personal issues. The Defence states, however, that it is in the process of locating and attempting contacts with other potential witnesses, and hopes that it will be in a position to disclose its report in sufficient time to allow the Prosecution to respond and to prepare, considering that the Lukić defence case should only begin at the end of this year.

5. The Lukić Defence further argues that it has been using its whole capacities and resources as of 17 May 2007, the date Lukić states the Rule 98 *bis* Decision was rendered, to provide Rule 65 *ter* summaries and related exhibits, and that it had less than one month for final preparation of all its Rule 65 *ter* submissions, because such preparation could only be completed after the Chamber's Decision on the Rule 98 *bis* Motion was delivered.

6. On 14 June 2007, the Prosecution filed its "Prosecution's Response to Defence Requests for Extension of Time to File Expert Reports" ("Response"), and on 18 June 2006 it filed its "Prosecution's Response to Streten Lukić's Motion for Extension of Time to Disclose Report of Expert Witness" ("Second Response"). The Chamber notes that the Prosecution does not oppose generally the granting of additional time to the Defence to file their expert reports, but requests that any extension of time be limited so that disclosure is accomplished at least four weeks prior to the start of the Defence case, that is, no later than 9 July 2007, in order to have time to review and analyse the reports within a reasonable time prior to the start of the Defence case.

7. The Chamber accepts that there are reasonable explanations for the Milutinović and the Ojdanić Defence being unable to file the reports on time, and also finds merit in the Prosecution's request to have the reports filed before the commencement of the Defence case. The Trial Chamber will therefore allow late lodging, but will require the reports to be filed by 30 July 2007.

8. However, the Chamber finds the explanation proffered by the Lukić Defence for its failure to obtain an expert report timeously to lack the basic detail that ought to be provided to a court in support of such a motion.

9. In addition, the Trial Chamber finds some of the arguments related to lack of time for preparation to be unfounded. The Chamber reiterates, once again, that it is the obligation of the Lukić Defence to have been planning for and preparing the presentation of its evidence (in the event that Lukić chooses to mount one) 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 indeed dating back to the pre-trial phase of the proceedings.¹ The Chamber has also noted that several extended recesses had been incorporated into the trial schedule, during which preparations should have continued.² 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.³ As a result, the Chamber completely rejects Lukić's contention that he has not had enough time to prepare his Rule 65 *ter* submissions and expresses its dismay that Lukić is still complaining about inadequate time to prepare his defence case. Future motions made upon this basis may be considered by the Chamber under the provisions of Rule 73(D).

10. Nevertheless, having regard to the delay authorised herein for the filing of the Ojdanić and the Milutinović expert witnesses' reports and, the fact that the Prosecution does not generally oppose the Lukić Motion but rather makes a reasonable request to have the report before the commencement of the Defence case, the Trial Chamber is reluctantly persuaded to grant an extension to the Lukić Defence to the same date as in the case of the Ojdanić and the Milutinović Motions.

11. The Chamber notes that the Milutinović Motion and the Lukić Motion were filed confidentially, without any explanation; moreover, the Chamber cannot discern any confidential information therein. The Prosecution's Response and Second Response were filed confidentially because of the manner in which the coordinate Motions were filed. The Chamber reminds the parties, once again, that submissions filed confidentially must be accompanied by an explanation

¹ Decision on Joint Defence Motion to Postpone Trial Schedule, dated 22 May 2007 (quoting Chamber's 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)).

² Order of 5 March 2007, para. 4.

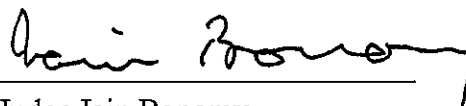
³ *Ibid.*

therefor, especially where the reason for the need for confidentiality is not readily apparent.⁴ These lapses of attention to detail and proper procedure needlessly force the parties, Chamber, and Registry to expend resources to remedy. In the future, the Chamber may consider ordering submissions filed confidentially without an explanation to be refiled in a proper manner before being decided, and any delay will be borne by the offending party.

12. For all the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 65 *ter*, and 127 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Milutinović Motion, GRANTS, in part, the Ojdanić Motion and the Lukić Motion, and ORDERS that the five expert reports shall be filed no later than 30 July 2007.

13. Pursuant to Rules 54 and 78, the Trial Chamber hereby INSTRUCTS the Registry to alter the status of the Milutinović Motion, the Lukić Motion, and the Prosecution Response and Second Response from confidential to public.

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



Judge Iain Bonomy
Presiding

Dated this 20 day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ See, e.g., Decision on Prosecution Motion for Reconsideration of Decision on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K56, 9 November 2006, para. 4 (“The Prosecution must justify filing documents in a confidential and/or *ex parte* manner, if it deems it necessary and appropriate to do so.”); confidential Order Lifting *Ex Parte* Status of Prosecution Ninth Motion for Protective Measures, 19 October 2006; *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision Regarding the Prosecution Motion for Protective Measures and Delayed Disclosure, 8 November 2006; *Prosecutor v. Perišić*, Decision on Prosecution’s Motion for Protective Measures, 10 October 2006; Rule 78 (“All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”).