



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: 5 March 2007  
Original: English

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**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

**Order of:** 5 March 2007

**PROSECUTOR**

v.

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

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**ORDER ON CLOSE OF PROSECUTION CASE-IN-CHIEF,  
RULE 98 *BIS* PROCEEDINGS, AND DEFENCE RULE 65 *TER* FILINGS**

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**Office of the Prosecutor**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused**

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”), *ex proprio motu*, issues this Order to regulate the next phase of the proceedings in the above-captioned matter between the close of the Prosecution case-in-chief and the commencement of the Defence case.

1. The Trial Chamber notes that, on 7 February 2007, the Prosecution informed the Chamber and the Defence that it anticipates closing its case-in-chief in March 2007, earlier than previously envisaged.<sup>1</sup> Moreover, the Prosecution has indicated, more recently, that it will bring its case to a close by 23 March 2007.<sup>2</sup> On 9 February 2007, issues pertaining to the conduct of the next phase of the case were discussed by the parties during a hearing,<sup>3</sup> and, on 14 February 2007, the Lukić Defence made written submissions on these issues.<sup>4</sup>

2. At the end of the hearing on 22 February 2007, the Chamber informed the parties that (1) it was broadly sympathetic to the timetable proposed by the Defence for the interval between the close of the Prosecution case and the commencement of the Defence case, (2) the Rule 98 *bis* submissions would be heard more or less immediately after the completion of the Prosecution case, and (3) each Defence team would most likely be allotted a maximum of two hours to make their submissions, with the Prosecution having perhaps the equivalent time to respond (but it was hoped much less).<sup>5</sup>

3. The Chamber considers that it is therefore appropriate, pursuant to its duty to ensure the fair and expeditious conduct of the proceedings, to set forth herein certain temporal (and other) guidelines for the close of the prosecution case-in-chief, the anticipated Rule 98 *bis* proceedings, and the Defence’s Rule 65 *ter* filings. For the purposes of this Order (and for ease of drafting thereof), the Chamber will assume that there will be Rule 98 *bis* proceedings and also that there will be a Defence case following these proceedings. The Chamber wishes to stress that these assumptions are simply for planning purposes, and do not indicate anything other than that.

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<sup>1</sup> Confidential Prosecution Notice Regarding Scheduling of the Remaining Prosecution Witnesses and Request for Short Recess, 7 February 2007.

<sup>2</sup> Prosecution’s Request for Certification to Appeal the Second Decision Regarding the Addition of General Wesley Clark to the Prosecution’s Witness List, 23 February 2007, para. 21. The Prosecution reaffirmed its estimate that the completion of its case during the week of 19 March 2007 was “still feasible.” T. 10474 (22 February 2007).

<sup>3</sup> T. 10072–10094 (9 February 2007).

<sup>4</sup> Lukić Defence Submission Pursuant to Trial Chamber’s Oral Order of 9 February 2007 Relative to Trial Scheduling, 14 February 2007.

<sup>5</sup> T. 10470–10476 (22 February 2007).

4. The Chamber wishes to note 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 the ones that may survive the Chamber's decision upon the Rule 98 *bis* motions. Such preparation necessitates that the majority of the work will have already taken place prior to the rendering of the Rule 98 *bis* decisions, and indeed dating back to the pre-trial phase of the proceedings.<sup>6</sup> Moreover, several extended recesses have been incorporated into the trial schedule to date, during which preparations should have continued.<sup>7</sup> The Chamber necessarily had in mind an interval substantially shorter than that proposed by the Defence, but has decided to order a longer break between the Prosecution and Defence cases because of the particular circumstances affecting this trial, especially those referred to in the submissions of the parties, and the time at which the move from presentation of the Prosecution case to presentation of the Defence case is occurring.

5. Counsel for the Accused have submitted that the allocation of a longer interval for pre-Defence preparation will lead to a shortening of the Defence case. They intend to coordinate their preparations as far as possible with a view to identifying witnesses in common and shortening their individual witness lists. They have also submitted that a longer preparation period will result in a more focused presentation of the Defence evidence. The Prosecution does not oppose the Defence motion for a minimum period of four months, but seeks an order for the lists and information, set out in Rule 65 *ter* (G), two months before the commencement of evidence for the first Accused. In view of the generally responsible approach to the conduct of their cases taken by counsel for the Accused to date and the reasonable request of the Prosecution for a number of weeks notice of the Rule 65 *ter* lists, the Trial Chamber is sympathetic to the broad thrust of these submissions.

6. However, the date for the commencement of the presentation of the Defence case cannot be finally determined until completion of any full Rule 98 *bis* proceedings. Therefore, the Chamber rules now only upon those matters in respect of which it is necessary to fix the schedule.

7. The Chamber takes this opportunity to note that the Defence should place upon its Rule 65 *ter* witness lists all the names of the witnesses they intend to call during their cases and should not rely upon the Chamber calling any witnesses pursuant to Rule 98 or the success of any motion to

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<sup>6</sup> See, e.g., 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); T. 145–147 (30 March 2006) (Pre-Trial Judge stating, at Rule 65 *ter* conference, that Defence should consider identifying expert witnesses and disclosing their materials prior to close of Prosecution case); see also *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.

<sup>7</sup> The trial has had the following recesses since its commencement upon 10 July 2006: 17 July to 4 August 2006 (three weeks), 2–6 October 2006 (one week), 18 December 2006 to 12 January 2007 (four weeks).

amend their Rule 65 *ter* witness lists. Moreover, the Chamber encourages the Defence to identify expert witnesses whom they can call in common, rather than having several witnesses called upon the same area of expertise.

8. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54, 65 *ter*, 85(C), 94 *bis*, and 98 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

**Close of Prosecution case**

- a. The Prosecution shall close its case-in-chief on or before 23 March 2007.

**Rule 98 *bis* proceedings**

- b. During the week of 26 March 2007, the Chamber shall hear oral submissions pursuant to Rule 98 *bis*. Only oral submissions will be accepted by the Chamber, and the parties are hereby instructed not to attempt to submit anything in writing to the Chamber.
- i. Each Accused shall have two hours to address the Chamber in relation to his motion for a judgement of acquittal.
  - ii. The Prosecution shall, if necessary, have an amount of time equal to that taken by the Defence to address the Chamber in response, but should endeavour not to exceed six hours.
  - iii. There shall be no reply.
- c. The Chamber shall render its oral ruling upon the motions soon thereafter.

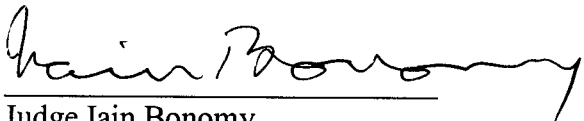
**Defence Rule 65 *ter* submissions**

- d. Each Accused shall, no later than 15 June 2007,
- i. file a list of witnesses he intends to call during his Defence case with:
    - 1. the name or pseudonym of each witness, including the name of the Accused himself, in the event that he decides to testify, pursuant to Rule 85(C);

2. a summary of the facts upon which each witness will testify;
  3. the points in the Indictment as to which each witness will testify;
  4. the total number of witnesses and the number of witnesses who will testify for each Accused and on each count;
  5. an indication of whether the witness will testify in person (either *viva voce* and/or via Rule 92 *ter*) or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
  6. the estimated length of time required for each witness and the total time estimated for presentation of the Defence case; and
- ii. file a list of exhibits he intends to offer in his case. The Accused shall serve upon the Prosecution copies of the exhibits so listed on the same date (translated into English, where necessary). Such exhibits may be uploaded to the eCourt system.
- e. Each Accused shall, no later than 15 June 2007,
- i. file a list of the expert witnesses he intends to call during his Defence case; and
  - ii. serve upon the Prosecution and the Chamber copies of the *curricula vitae* and reports (translated into English, where necessary) of the expert witnesses he intends to call during his Defence case. Such exhibits may be uploaded to the eCourt system.
- f. Each Accused should, to the greatest extent possible, identify upon his Rule 65 *ter* list the witnesses and exhibits he has in common with each of the other Accused.
- g. Throughout the Defence case, on each applicable Thursday, the Accused shall file a list of the witnesses who will be called the following week and the order in which they will be called.

9. 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.

  
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Judge Iain Bonomy  
Presiding

Dated this fifth day of March 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**