



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 March 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

Order of: 23 March 2007

PROSECUTOR

v.

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

**ORDER ON PROSECUTION MOTION TO POSTPONE CLOSE OF CASE-IN-CHIEF,
PRE-DEFENCE CONFERENCE, AND COMMENCEMENT OF DEFENCE CASE**

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”) hereby 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 recalls its “Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings,” issued 5 March 2007 (“Order of 5 March 2007”), in which the Chamber ordered that (a) the Prosecution case-in-chief would close on or before 23 March 2007, (b) the Rule 98 *bis* proceedings would take place during the week of 26 March 2007,¹ and (c) the Defence would file its Rule 65 *ter* submissions no later than 15 June 2007. The Chamber also stated that (a) the date for the commencement of the presentation of the Defence case could not be finally determined until completion of the Rule 98 *bis* proceedings and (b) it may issue further orders in due course, as appropriate and necessary to ensure the fair and expeditious conduct of the proceedings.² Finally, the Chamber made observations about the interval between the Prosecution and Defence cases, which are unnecessary to repeat herein.³

2. On 21 March 2007, after the completion of the evidence of witness Philip Coo, the Prosecution and Defence made submissions upon the timing of the close of the Prosecution’s case-in-chief, and the Chamber adjourned overnight in order to give the parties, especially the Prosecution, an opportunity to consider its ultimate position upon the matter.⁴ The next day, on 22 March 2007, the parties made further submissions, after which the Prosecution filed, at the direction of the Chamber, its “Notification Regarding Closing of Prosecution’s Case,” in which the Prosecution proposed to rest its case 30 days from the Appeal Chamber’s decision upon the “Prosecution’s Interlocutory Appeal of the Second Decision Precluding the Testimony of General Wesley Clark.”⁵ The Prosecution also represented that, during this time period, it would follow-up

¹ 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.

² Order of 5 March 2007, para. 6.

³ Order of 5 March 2007, paras. 4–5. At the end of the hearing on 22 February 2007, the Chamber informed the parties that 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. T. 10470–10476 (22 February 2007).

⁴ T. 12095–12098 (21 March 2007).

⁵ See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR73.1, confidential Prosecution Brief in Interlocutory Appeal of Second Decision Precluding the Testimony of General Wesley Clark, 21 March 2007.

with witnesses Wesley Clark, Shaun Byrnes, and Zoran Lilić and proposed to lead them as witnesses in its case-in-chief.⁶

3. The Defence opposed, arguing, *inter alia*, that the Prosecution had closed its case the previous day and should not be allowed to alter its position. The Defence also argued that, even if the case were not to close due to the interlocutory appeal, it was contrary to the Accused's right to a fair trial under Articles 20 and 21 of the Statute of the Tribunal to allow the Prosecution to call Byrnes and Lilić simply because the Clark appeal had postponed the close of the Prosecution case.⁷

4. After having adjourned to consider the matter, the Chamber reconvened the hearing and delivered the following oral ruling:

JUDGE BONOMOY: The Chamber has determined that yesterday the Prosecution did not close its case. An indication to the effect that the Prosecution rested was given. That was then questioned by the Trial Chamber in light of the outstanding appeal filed in the course of yesterday. The Prosecution reconsidered their position, as invited by the Chamber, and now proposes that closure of the case should be stayed for 30 days -- until 30 days after the appeal is determined.

What we have decided to do is this: We have decided that we will stay closure of the Prosecution case until at least the 16th of April, and in order to give effect to that, we will vacate that part of our order of the 5th of March which specified the 23rd as the deadline.

On the 16th, if the appeal has failed and the Prosecution has available either Byrnes or Lilić, then we would expect these witnesses to be led then, there and then, and in their absence to proceed straight to hear the 98 bis submissions. If the appeal succeeds, we would expect to be told precisely when Wesley Clark would give evidence. We regard the Prosecution motion as a clear statement that they would not request that he give evidence so that they are at dates which would prevent closure of the Prosecution case within 30 days of the determination of the appeal.

Beyond that -- and I'm thinking of the possibility of Byrnes and Lilić or either of them being available at some stage -- we would require to address that as a separate issue on the 16th of April if they were not available on that date to give evidence.⁸

5. The Chamber confirms that it will sit again on 16 April 2007. With the possibility in mind that the Rule 98 *bis* hearing may commence on 16 April 2007, the Chamber expects that the Prosecution will meanwhile review the Indictment to decide whether there are charges upon which there has been no evidence capable of supporting a conviction and which might therefore be withdrawn. The Chamber recalls that it stated in its Order of 5 March 2007 that the date for the commencement of the presentation of the Defence case could not be finally determined until

⁶ The Chamber considers the oral submissions of the Prosecution and its written notice to be a motion to postpone the close of its case-in-chief.

⁷ T. 12108–12116 (22 March 2007).

⁸ T. 12116–12117 (22 March 2007).

completion of the Rule 98 *bis* proceedings. However, as the Chamber alluded to at the hearing, now that the anticipated date for the Rule 98 *bis* proceeding and the close of the Prosecution's case have been postponed as a consequence of the interlocutory appeal, the Chamber is of the view that it is appropriate to set the dates for the Pre-Defence Conference and the commencement of the Defence case, in order to give the Defence as much notice as possible so it can plan and prepare.⁹

6. Regarding the commencement of the Defence case, the Chamber notes that the Accused, pursuant to Rule 84, elected that their opening statements (if any) should be made after the close of the Prosecution case-in-chief and before the presentation of their evidence.¹⁰

7. The Chamber further notes that the Accused undertook to endeavour to the greatest extent possible to coordinate the presentation of their evidence to avoid the adducement of duplicative evidence and the need to call the same witness more than once during the Defence case. The break in the proceedings should enable the Defence to accomplish this goal.

8. The Chamber reminds the parties of the applicability *mutatis mutandis* to the Defence case of the "Order on Procedure and Evidence," issued by the Chamber upon 11 July 2006 and as modified by the "Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence," issued 16 August 2006.

9. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 73 *ter* of the Rules of Procedure and Evidence of the Tribunal, hereby CONFIRMS its oral rulings made during the hearing on 22 March 2007 and ORDERS as follows:

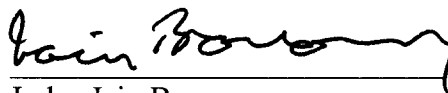
- a. That part of the Order of 5 March 2007 relating to the date for closure of the Prosecution case is vacated.
- b. The trial is adjourned until 16 April 2007, upon which date it will resume.
- c. In the event that the appeal fails, the Prosecution shall lead the evidence of Shaun Byrnes and Zoran Lilić on 16 April 2007. If the Prosecution is not in a position to do so, the Chamber will proceed directly to hear submissions from the parties pursuant to Rule 98 *bis*.

⁹ T. 12122 (22 March 2007).

¹⁰ Dragoljub Ojdanić personally made a statement after the opening statement of the Prosecution, as permitted by Rule 84 *bis*. T. 478-492 (10 July 2006).

- d. In the event that the appeal succeeds, the Prosecution shall, on 16 April 2007, lead the evidence of Shaun Byrnes and Zoran Lilić and shall inform the Chamber and the parties when precisely General Clark would give evidence.
 - e. In any event, the evidence of the remaining witnesses must be completed within 30 days from the appeal decision.
 - f. 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.
 - g. 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.
 - h. On 30 July 2007, the Defence case shall commence.
10. 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 Iain Bonomy
Presiding

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

[Seal of the Tribunal]