



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-04-74-T
Date: 28 January 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 28 January 2008

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION ON MOTION FOR EXTENSION OF TIME FOR THE
COMMENCEMENT OF THE DEFENCE CASE AND ADOPTING A NEW
SCHEDULE**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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”),

SEIZED of the Joint Motion for Extension of Time for the Commencement of the Defence Case, filed by Counsel for the Accused Prlić, Stojić, Praljak, Petković, Čorić and Pušić (“Defence”) on 17 January 2008 and to which two annexes are attached (“Motion”), in which the Defence requests the Chamber to grant an additional three months to the initially planned time between the end of the presentation of the oral arguments pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”) and the commencement of the Defence case,¹

NOTING the Prosecution’s Response to Joint Motion for Extension of Time for the Commencement of the Defence Case, filed by the Office of the Prosecutor (“Prosecution”) on 21 January 2008 (“Response”), in which the Prosecution objects to postponing the date to file lists pursuant to Rule 65 *ter* (G) of the Rules but does not object to a one-month postponement of the commencement of the Defence case, proposing the date of 14 April 2008 instead of 17 March 2008,

NOTING the Second Modified Scheduling Order, rendered by the Chamber on 22 November 2007 (“Second Order”), in which the Chamber scheduled the presentation of the oral arguments pursuant to Rule 98 *bis* of the Rules from 28 January to 6 February 2008, the filing of the 65 *ter* (G) lists on 3 March 2008, the pre-Defence conference provided for in Rule 73 *ter* of the Rules on 13 March and the commencement of the Defence case on 17 March 2008,

CONSIDERING that at the hearing of 23 January 2008, the Prosecution held the same position as in the Response, proposing once again the date of 14 April 2008 for the commencement of the Defence case,²

CONSIDERING that in support of the Motion, the Defence holds that it is necessary to put back by three months all the dates set by the Chamber in the Second Order so

¹ Motion, p. 4.

² Court transcript in French, pp. 26458-26460.

that the presentation of the Defence case would commence on Tuesday, 17 June 2008,³

CONSIDERING that in support of the Motion, the Defence maintains firstly that in order to accommodate the Prosecution, in the Second Order the Chamber granted it additional time for the presentation of its, postponing to 24 January 2008 the closing date of the Prosecution case, which was initially set for 13 December 2007,⁴

CONSIDERING that the Defence notes that this decision by the Chamber had the effect of shortening the time initially allotted to the Defence to prepare its case, extending the Prosecution's time by the same amount, and infringing the right of the Accused to a fair trial,⁵

CONSIDERING that the Defence explains that the schedule set by the Second Order allotted the Defence a total of 39 days to prepare its case, even though it must deal with a very large number of new exhibits stemming from recent decisions on the admission of evidence rendered by the Chamber;⁶ that the admission of thousands of pages of evidence has had the effect of enlarging to the scope and complexity of the case, which is already significant,⁷

CONSIDERING that, for illustrative purposes, the Defence attached an annex to its Motion presenting schedules from other cases from which it appears that longer timeframes were allotted to Counsel for the Accused in other cases to prepare and present the defence case,⁸

CONSIDERING that the Defence finally recalls the difficulties it faces owing to the fact that several potential Defence witnesses are in different countries, on different continents, and that it must examine thousands of documents to select those it will present,⁹

³ Motion, p. 1.

⁴ Motion, para. 1.

⁵ Motion, para. 2.

⁶ Motion, para. 3.

⁷ Motion, para. 4.

⁸ Motion, para. 5 and Annex 2 presenting the timeframe between the closing of the Prosecution case, the 98 *bis* proceedings, the 65 *ter* conference and the commencement of the Defence case in the cases *Milutinović et al.*, No. IT-05-87, *Popović et al.*, No. IT-05-88, *Boškoski and Tarčulovski*, No. IT-04-82 and *Limaj et al.*, No. IT-03-66.

⁹ Motion, para. 6.

CONSIDERING that in its Response, the Prosecution opposes, firstly, a postponement of the date to submit the Rule 65 *ter* lists scheduled for 3 March 2008 by the Second Order on the ground that the right to a fair trial includes the Prosecution receiving the Defence witness and exhibits lists sufficiently in advance in order to be able to prepare and conduct the necessary investigations, and that the Prosecution itself had filed its 65 *ter* lists more than three months before the commencement of the Prosecution case,¹⁰

CONSIDERING that the Prosecution next states that the commencement of the Defence case cannot be postponed three months since this would mean 17 June 2008, i.e. one month before the court summer recess; conversely, the Prosecution is not opposed to granting a one-month extension,

CONSIDERING that the Chamber recalls that the Second Order put back the closing date of the Prosecution case from 13 December 2007 to 24 January 2008, owing to the difficulties encountered by the Prosecution in fitting the hearing of its witnesses into the allotted time,

CONSIDERING that the Chamber also notes that in the months preceding the closing of the Prosecution case, it was seized of a large number of motions requesting the admission of several hundred exhibits as well as written statements and transcripts of witness testimony pursuant to Rule 92 *bis* of the Rules,

CONSIDERING that the Chamber recalls by way of example that in the Prosecution Motion for Admission of Documentary Evidence, filed by the Prosecution on 28 June 2007, modified by the Amended Prosecution Motion for Admission of Documentary Evidence, filed on 27 August 2007, the Prosecution requested the admission of 398 documents relating to the operations, processes, and administrative, military and political structures of the HVO and Herceg-Bosna; that in the Prosecution Motion for Admission of Documentary Evidence (Vareš Municipality), filed by the Prosecution on 5 July 2007, it requested the admission of 58 exhibits relative to the Municipality of Vareš; that in the Prosecution Motion for Admission of Documentary Evidence (Heliodrom Camp), filed by the Prosecution on 15 August 2007, it requested the admission of 973 exhibits related to Heliodrom Camp; that in the Prosecution Motion

¹⁰ Response, paras. 2-5.

for Admission of Documentary Evidence, filed partly confidentially on 21 September 2007, the Prosecution requested the admission of 539 documents also related to the operations, processes, and administrative, military and political structures of the HVO and Herceg-Bosna; that in the Prosecution Motion for Admission of Documentary Evidence by Subject (including Motion for Reconsideration), filed partly confidentially by the Prosecution on 10 December 2007, it requested the admission of 104 documents classified by subject,

CONSIDERING that the Chamber also recalls, further as an example, that in the Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* (A) and (B) (Vareš Municipality), filed partly confidentially by the Prosecution on 27 June 2007, the Prosecution requested the admission of four transcripts of testimonies from witnesses heard in the case *The Prosecutor v. Dario Kordić and Marko Čerkež*,¹¹ as well as eleven written witness statements and related documents; that in the Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* (A) and (B) (Dretelj, Gabela and Generally), filed partly confidentially by the Prosecution on 13 August 2007, it requested the Chamber to admit the written statements of thirteen witnesses; that in the Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* (A) and (B) (Heliodrom and Generally), filed partially confidentially by the Prosecution on 7 September 2007, the Prosecution requested the Chamber to admit the transcript testimony of nineteen witnesses heard in the case *The Prosecutor v. Mladen Naletilić, aka "Tuta" and Vinko Martinović aka "Stela"*¹² as well as the written statements of sixteen witnesses and 123 related documents;

CONSIDERING that the totality of these requests, of which the above lists are far from exhaustive, led the Chamber to render decisions admitting a large number of exhibits,¹³

¹¹ *The Prosecutor v. Dario Kordić and Marko Čerkež*, Case No. IT-95-14/2.

¹² *The Prosecutor v. Mladen Naletilić, aka "Tuta" and Vinko Martinović aka "Stela"*, Case No. IT-98-34.

¹³ See in particular, Decision on Prosecution Motion for Admission of Evidence (Heliodrom Camp), rendered by the Chamber on 5 December 2007; Decision on Prosecution Motion for Admission of Evidence (Vareš Municipality), rendered confidentially on 10 December 2007; Decision on Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO and Herceg-Bosna), dated 11 December 2007; Decision on Prosecution Motion for Admission of Documentary Evidence by Subject (including Motion for Reconsideration, presented by the Prosecution on 23 January 2008; Decision on Prosecution Motion for Admission of Evidence in Application of Rule 92 *bis* of the Rules (Dretelj and Gabela), rendered confidentially on 22 November 2007; Decision on

CONSIDERING that the Chamber, conscious of the very large number of motions presented by the Prosecution and subsequent decisions rendered by the Chamber, finds that a heavy workload also weighs on the Defence,

CONSIDERING that the Chamber must ensure that the right of the Accused to have adequate time and facilities for the preparation of their defence provided by Article 21 (4) of the Statute of the Tribunal ("Statute") is respected while guaranteeing that the trial proceeds without undue delay,

CONSIDERING that the Chamber must also ensure that the right of the Prosecution to a fair trial is respected and that it has the possibility to prepare the cross-examination of Defence witnesses,

CONSIDERING consequently that the Chamber finds that the Motion may be partially granted and that the commencement of the Defence case should be delayed; that postponing it three months nevertheless seems excessive since, in accordance with Tribunal case-law, it is incumbent upon the accused to prepare their defence throughout the trial and with regard to all the charges brought against them,¹⁴

CONSIDERING that the Chamber is of the opinion that the date for the commencement of the Defence case, initially set for 17 March 2008, should be postponed to 5 May 2008,

CONSIDERING that the Chamber wishes this extension of time to permit the effective preparation of the lists to file pursuant to Rule 65 *ter* (G) and the presentation of the Defence case,

CONSIDERING that the Chamber thus finds it necessary to organise two Rule 65 *ter* conferences with the Defence, before the filing of the exhibits and witness lists, on 10 and 26 March 2008,

Prosecution Motino for Admission of Evidence Pursuant to Rule 92 *bis* (A) and (B) (Vareš Municipality), rendered confidentially on 4 December 2007; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* (A) and (B) (Heliodrom and Generally).

¹⁴ *The Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007, para. 4; *The Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, Decision on Joint Defence Motion to Postpone Trial Schedule, 23 May 2007, para. 3.

CONSIDERING nevertheless that the Chamber has heard the arguments raised by the Prosecution in its Response concerning the filing date of Rule 65 *ter* (G) lists and its right to a fair trial whereby it must be entitled to sufficient time between the filing of the Rule 65 *ter* (G) lists and the commencement of the Defence case,

CONSIDERING consequently that the Chamber finds that the 65 *ter* (G) lists must be filed by 31 March 2008 at the latest,

CONSIDERING that the Chamber further decides to postpone the pre-Defence conference pursuant to Rule 73 *ter* from 13 March to 21 April 2008,

FOR THESE REASONS,

PURSUANT TO Articles 20 and 21 of the Statute and Rules 54, 65 *ter* and 73 *ter* of the Rules,

PARTIALLY GRANTS the Motion,

MODIFIES the Second Order,

DECIDES to hold two conferences pursuant to Rule 65 *ter* of the Rules with the Defence on 10 and 26 March 2008,

DECIDES that the Defence must file its Rule 65 *ter* (G) lists on 31 March 2008 at the latest,

DECIDES that the pre-Defence conference pursuant to Rule 73 *ter* of the Rules shall take place on 21 April 2008,

DECIDES that the Defence case shall commence on 5 May 2008,

AND

ADOPTS the following modified schedule:

Presentation of the arguments pursuant to Rule 98 *bis* of the Rules

- a. The arguments pursuant to Rule 98 *bis* of the Rules will be presented orally from 28 January 2008 to 6 February 2008 at the latest. Each Accused will

have three hours to present his arguments, unless the Accused decide to distribute the time allocated differently. The Prosecution will have no more than nine hours for its response. There will be no reply.

Pre-Defence conferences pursuant to Rule 65 *ter*

b. In order to allow the effective preparation of the Rule 65 *ter* (G) lists and the presentation of the Defence case, two pre-Defence conferences will take place with the Defence teams on 10 and 26 March 2008.

Filing of the lists pursuant to Rule 65 *ter* (G) of the Rules

c. The Accused will file the lists of exhibits and witnesses as provided in Rule 65 *ter* (G) of the Rules on 31 March 2008. They will each have:

- i. A list of the witnesses they intend to call which will state:
 - The name or pseudonym of each one; including the name of the Accused should he wish to appear as a witness for his own defence, in accordance with Rule 85 (C) of the Rules;
 - A summary of the facts on which each witness will testify;
 - The paragraphs of the Indictment and the counts on which each witness will testify;
 - The total number of witnesses;
 - If the witness will testify in person, or if pursuant to Rule 92 *bis*, Rule 92 *ter* or Rule 92 *quater*, a written statement or transcript of testimony previously given in other proceedings before the Tribunal will be used;
 - The anticipated length of each testimony and the total anticipated length of the presentation of the Defence case.
- ii. A list of the exhibits which they intend to present in support of the evidence they will use with an indication of which witness, if such

is the case, they will present it through. On the same day, the Accused will provide to the Prosecution copies of the exhibits in question (with translation into English if needed).

- iii. A list of the expert witnesses whom the Accused intend to present in support of their evidence and the *curricula vitae* of those expert witnesses and the expert reports.
- iv. To the extent possible, each Accused must indicate on his lists filed under Rule 65 *ter* (G) the witnesses and exhibits which will also be presented by his co-Accused.

Pre-Defence Conference

- d. The pre-Defence conference pursuant to Rule 73 *ter* of the Rules will be held on 21 April 2008.

Commencement of the presentation of the Defence case

- e. The presentation of the Defence case will commence on 5 May 2008.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-eighth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]