

**UNITED
NATIONS**



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-04-75-PT
Date: 10 July 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Pre-Trial Judge
Registrar: Mr. John Hocking
Decision: 10 July 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR EXTENSION OF TIME FOR
DISCLOSURE OF EXPERT REPORT OF REYNAUD THEUNENS**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

I, Guy Delvoie, Judge 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”) and Pre-Trial Judge in the present case, am seized of the “Prosecution Motion for Extension of Time for Disclosure of Expert Report of Reynaud Theunens”, filed on 4 July 2012 (“Motion”). On 9 July 2012, the Defence filed its “Response to Prosecution Motion for Extension of Time for Disclosure of Expert Report of Reynaud Theunens” (“Response”).

1. I, in accordance with Rule 94 *bis* (A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), ordered the Prosecution to disclose any expert reports by 10 July 2012.¹

2. In the Motion, the Prosecution submits that, as a result of unanticipated professional commitments, Reynaud Theunens will be unable to complete his expert report on military issues related to this case in time for the Prosecution to meet the disclosure deadline of 10 July 2012.² Therefore, the Prosecution seeks an extension of time for the disclosure of the expert report until 1 October 2012.³ According to the Prosecution, there is good cause for the requested extension.⁴ The Prosecution submits that it made a good-faith effort to select an eminent expert on military issues who could complete a report expeditiously⁵ and that Theunens possesses the requisite experience and expertise to prepare an expert report that is tailored to this case.⁶ The Prosecution further submits that the reasons for the delay, which are beyond its control, are an increase in Theunens’ workload as Chief of the Joint Mission Analysis Center in the United Nations Interim Force in Lebanon, resulting from “recent unrest in the region, in particular in Lebanon and Syria”⁷, and his preparation of an expert report in *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T.⁸

3. In its Response, the Defence opposes the Motion⁹ and submits that the timing of the Motion reflects a lack of diligence.¹⁰ According to the Defence, the factors relied upon in the Motion have not arisen recently; they should have been known and taken into account when Theunens was engaged; and, if unavoidable, they should have been brought to the Chamber’s attention much earlier.¹¹ The Defence further submits that to allow the Prosecution to file the expert report fifteen

¹ Order on Pre-Trial Work Plan, 16 December 2011, Annex, p. 1.

² Motion, para. 2.

³ Motion, paras 1, 17.

⁴ Motion, para. 9.

⁵ Motion, para. 9.

⁶ Motion, para. 11.

⁷ Motion, para. 12.

⁸ Motion, para. 12. The Prosecution submits that an extension in the disclosure deadline will not unduly prejudice the Defence. Motion, para. 13.

⁹ Response to Prosecution Motion for Extension of Time for Disclosure of Expert Report of Reynaud Theunens, 9 July 2012 (“Response”), para. 1.

¹⁰ Response, para. 2.

¹¹ Response, para. 2.

days before the start of trial would be prejudicial and unfair.¹² According to the Defence, the deadline set by the Pre-Trial Judge for disclosure of expert reports accords with those in other cases before the Tribunal. In previous cases—namely *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T; *Prosecutor v. Šešelj*, Case No. IT-03-67-T; and *Prosecutor v. Martić*, Case No. IT-95-11-PT—Theunens’ expert report was filed between three and nine months before the start of trial.¹³ Finally, the Defence submits that the prejudice of late disclosure will not be offset by the Prosecution’s proposal to identify portions of Theunens’ previous reports that will form part of his expert report in this case, since the key elements concerning the present case are not included in the previous reports.¹⁴

4. Rule 94 *bis* (A) of the Rules requires the full statement and/or report of any expert witness to be called by a party to be disclosed within the time limit prescribed by the Trial Chamber or the Pre-Trial Judge. According to Rule 127(A)(i) of the Rules, a Trial Chamber or Pre-Trial Judge may, on good cause being shown by motion, enlarge or reduce any time prescribed by or under the Rules.

5. I am not satisfied that the arguments advanced by the Prosecution in the Motion constitute good cause for extending the time for disclosure of Theunens’ expert report. Goran Hadžić was indicted in 2004, he was transferred to the Tribunal in July 2011, and the Prosecution has been aware of the deadline for Rule 94 *bis* disclosure since 16 December 2011. The Prosecution has therefore had sufficient time to fulfil its disclosure obligation. Having found no good cause, it is unnecessary to address the Prosecution’s submission that an extension of the disclosure deadline would not unduly prejudice the Defence.

¹² Response, para. 1.

6. Accordingly, I, pursuant to Rules 54, 94 *bis* (A), and 127(A)(i) of the Rules, hereby **DENY** the Motion.

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

Done this tenth day of July 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Pre-Trial Judge

[Seal of the Tribunal]

¹³ Response, paras 3-4.

¹⁴ Response, paras 5-6.