

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-T
Date: 18 July 2013
Original: English

IN THE TRIAL CHAMBER

Before: **Judge Guy Delvoie, Presiding**
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: **Mr. John Hocking**

Order: **18 July 2013**

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**ORDER ON CLOSE OF PROSECUTION CASE-IN-CHIEF,
RULE 98 *bis* PROCEEDINGS, AND
PREPARATION AND COMMENCEMENT OF DEFENCE CASE**

The Office of the Prosecutor:
Mr. Douglas Stringer

Counsel for Goran Hadžić:
Mr. Zoran Živanović
Mr. Christopher Gosnell

1. **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 *ex proprio motu* 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.

A. Background

2. At the outset, the Trial Chamber emphasises that it is not yet known whether there will be Rule 98 *bis* proceedings or a Defence case. The Chamber nevertheless is of the view that it is in the interests of a fair, expeditious, and efficient trial to make arrangements for these procedures, in the event that they arise.

3. On 8 July 2013, the Trial Chamber communicated to the parties its plans for the next stages of the trial, including the close of the Prosecution case-in-chief, any Rule 98 *bis* proceedings, and the preparation and commencement of any Defence case.¹

4. On 11 July 2013, a representative of the Trial Chamber met with the parties in a Rule 65 *ter* conference to discuss the next stages of the trial, in particular to give the parties an opportunity to provide their submissions on the Chamber’s plans that had been communicated on 8 July 2013. The Trial Chamber has taken the parties submissions into account when making its order below.

B. Close of Prosecution case-in-chief

5. The Prosecution has informed the Chamber and the Defence that it estimates that it will be calling its last witnesses by mid-September 2013, subject to an outstanding issue in relation to the attendance of one witness (GH-002). The Chamber considers that the Prosecution’s case-in-chief shall be deemed closed after (a) the evidence of its last witness has been completed or it has used all of the time allotted to lead its case-in-chief² or (b) the Chamber has issued its decision on the last evidence-related motion—whichever is later.

6. At the Rule 65 *ter* conference, the Prosecution sought the guidance of the Trial Chamber in relation to the timing of its forthcoming bar table motion. The Chamber will order the Prosecution

¹ Email from Chamber to parties, 8 July 2013.

² The Chamber notes that the Prosecution has a global time limit in which to lead its evidence and that the exhaustion of this time could signal the close of the Prosecution case-in-chief. See Decision on the Application of Rule 73 *bis*, 15 October 2012, paras 3, 5(a); Decision on Prosecution Motion for Additional Time for Completion of its Case-in-Chief, 24 April 2013.

to file any bar table motion by no later than 30 September 2013. Parties are reminded that such a motion has evolved as a tool of judicial economy and is not a “Trojan horse” by which evidence not otherwise admissible may be placed on the record.³ Moreover, when submitting the bar table motion, the Microsoft Excel Spreadsheet format should be used with the following information included and contained in separate columns: (a) description of documents, (b) authenticity of documents, (c) relevance and probative value of documents, and (d) reference to the paragraphs in the Indictment and the *Pre-Trial Brief* to which the documents are said to be relevant.⁴

C. Rule 98 bis proceedings

7. Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”—entitled “Judgement of Acquittal”—provides that “[a]t the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.”

8. The Defence should, in the closing weeks of the Prosecution case, endeavour to notify the Prosecution and the Chamber of its intention to lodge a Rule 98 *bis* motion. The Chamber will set out below the time table for the hearing of any such motion. In the event that such a motion is lodged, the Chamber expects the Defence to present specific challenges and to provide specific arguments as to the basis for these challenges. In turn, the Prosecution is expected to respond in a detailed and precise manner by reference to specific documents or witness testimony. No written submissions will be accepted by the Chamber.

D. Preparation and commencement of Defence case

9. The Chamber recalls that Articles 20 and 21 of the Statute of the Tribunal (“Statute”) require the Chamber to ensure the fair and expeditious conduct of the proceedings and to provide adequate time and facilities for the preparation of an accused’s defence. The Chamber notes that

it is the obligation of the [a]ccused 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.⁵

³ Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 9.

⁴ Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 8.

⁵ *Prosecutor v. Milutinović et al.*, Case No. 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, cited in *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting a New

The Defence therefore has had the responsibility of preparing any Defence case throughout the trial proceedings.

10. The Chamber communicated to the parties its preliminary view that two months would be sufficient time for the Defence to prepare any Defence case. The Defence, however, has stated that it requires at least four months. The Chamber—in an abundance of caution, due to the particular circumstances affecting this trial, and due to the responsible and competent manner in which the Defence has generally thus far conducted the trial—is willing to accept the submission of the Defence on this point and will order that the Defence may have four months to continue preparations for its Defence case. The Chamber will expect the Defence to present thorough pre-Defence case filings and a highly-focused and efficient Defence case.

11. The Trial Chamber finds it appropriate to set the deadline for the Defence to comply with its various pre-Defence case responsibilities at six weeks prior to the commencement of its case.

E. Disposition

12. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute and Rules 54, 54 *bis*, 65 *ter*, 67, 69, 70, 75, 84, 85, 92 *bis*, 92 *ter*, 92 *quater*, 94, 94 *bis*, and 98 *bis* of the Rules, hereby **ORDERS** as follows:

1. Close of Prosecution case-in-chief

- (a) The Prosecution case shall be deemed closed after (i) the evidence of its last witness has been completed or it has used all of the time allotted to lead its case-in-chief or (ii) the Chamber has issued its decision on the last evidence-related motion—whichever is later.
- (b) The Prosecution shall file any bar table motion by no later than 30 September 2013.

2. Rule 98 *bis* proceedings

- (c) In the event that the Defence chooses to present Rule 98 *bis* submissions, it shall do so seven days after the close of the Prosecution case-in-chief and shall have one regular sitting day to present its submissions.

Schedule, 28 January 2008, p. 6; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Scheduling Order on Close of the Prosecution Case, Rule 98 *bis* Submissions, and Start of the Defence Case, 26 April 2012, para. 9.

(d) The Prosecution shall present its response to the Defence's Rule 98 *bis* submissions on the second day after the Defence submissions and shall have one regular sitting day in which to do so.

3. Preparation and commencement of Defence case

(e) The Defence case, if any, shall commence four months after (i) the close of the Prosecution's case-in-chief (if there are no Rule 98 *bis* proceedings) or (ii) the Trial Chamber's decision on the Defence's Rule 98 *bis* motion (in the event that such a motion is made and does not result in a full acquittal).

(f) No later than six weeks prior to the commencement of the Defence case, the Defence shall complete the following tasks in connection with the presentation of its case:

(i) file a list of witnesses the Defence intends to call, which shall include the following:

- i. 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);
- ii. a summary of the facts upon which each witness will testify;
- iii. the points in the Indictment as to which each witness will testify;
- iv. the mode of testimony of each witness;
- v. the estimated length of time required for each witness; and
- vi. the total time estimated for presentation of the Defence case;

(ii) file any requests for protective measures, including trial-related protective measures, such as pseudonym, image distortion, voice distortion, or closed session testimony;

(iii) file any motion for judicial notice of adjudicated facts;

(iv) upload to and release in eCourt (to the Chamber, Prosecution, and Registry), pursuant to Rule 67(A)(ii):

- i. copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial; and

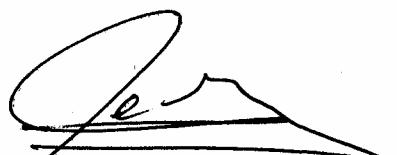
- ii. copies of all written statements or transcripts taken in accordance with Rule 92 *bis* or Rule 92 *quater* that the Defence intends to present at trial;
 - (v) file any omnibus Rule 92 *bis* or *quater* motions;
 - (vi) file a list of exhibits the Defence intends to tender in its case and upload to and release in eCourt (to the Chamber, Prosecution, and Registry) copies of the exhibits;⁶
 - (vii) file a list of the expert witnesses the Defence intends to call and upload to and release in eCourt (to the Chamber, Prosecution, and Registry) the *curricula vitae* and reports (translated into English, where necessary) of the expert witnesses the Defence intends to call; and
 - (viii) notify the Chamber, Prosecution, and Registry of any Rule 70 conditions or Rule 54 *bis* measures that apply to testimonial or documentary evidence;
- (g) The Defence shall file any motions for the admission of a Rule 92 *ter* statement at least six weeks prior to the witness taking the stand. Revisions to the Rule 92 *ter* statement, if any, may be submitted to the Chamber and the Prosecution after the witness's arrival in The Hague. Finalised statements shall be disclosed no later than 24 hours (one working day) prior to the witness taking the stand and should clearly mark the changes to the draft statement in a clear and comprehensive manner, for example, by use of the "track changes" function in Microsoft Word. The Defence is encouraged to finalise Rule 92 *ter* statements prior to a witness's arrival in The Hague.⁷
- (h) The Defence may make its opening statement at the commencement of its case and before the presentation of its evidence, pursuant to Rule 84. Immediately following the completion of its opening statement, the Defence shall call its first witness.
- (i) The Prosecution shall file its Rule 94 *bis* (B) notice in relation to the Defence's expert witnesses within 30 days of disclosure of the expert reports.

⁶ The Chamber takes this opportunity to remind the Defence that parties must upload to and release in eCourt the English translation of any Bosnian/Croatian/Serbian document at least one month prior to using it in court or tendering

13. 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.

Done this eighteenth day of July 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

it as evidence. Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 12; Order on Translations, 18 September 2012.

⁷ Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 20.