



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-05-88-T
Date: 19 January 2007
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 19 January 2007

PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

CONFIDENTIAL

**ORDER REGARDING PROSECUTION'S ESTIMATION AS TO
THE LENGTH OF ITS CASE-IN-CHIEF**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

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;

NOTING Article 20(1) of the Statute of the Tribunal (“Statute”) pursuant to which the Trial Chamber is entrusted with ensuring that a trial is both fair and expeditious;¹

NOTING further a recent decision of the Appeals Chamber of the Tribunal (“Appeals Chamber”) in the *Prlić* case, wherein it was held that “time and resource constraints exist in all judicial institutions and that a legitimate concern in this trial, which involves six accused, is to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time, which is recognized as a fundamental right of due process under international human rights law”;²

RECALLING that, at the outset of trial, the Trial Chamber had clearly indicated that, while it would not impose strict time limitations on the presentation of evidence at the time, such position could be revisited if necessary;³

CONSIDERING that one of the duties of the Trial Chamber in ensuring that the trial is conducted fairly and expeditiously is to avoid the presentation of repetitive evidence;⁴

CONSIDERING that the latest amendment to the Rules, namely the amendment to Rule 92*bis* and the introduction of Rules 92*ter* and 92*quater*,⁵ as well as the subsequent willingness shown by the Prosecution to make more extensive use of such written evidence,⁶ is likely to impact on the length of the Prosecution’s case, as estimated in the “Prosecution’s Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* and List of Exhibits Pursuant to Rule 65 *ter* (E) (v)”, filed under seal on 28 April 2006

¹ Article 20(1) of the Statute provides: “The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.” See also Article 21(4) of the Statute, according to which “[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (c) to be tried without undue delay [.]”

² *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber’s Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel’s Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006, p. 4.

³ Status Conference, 6 July 2006, T. 219; Pre-Trial Conference, 13 July 2006, T. 285.

⁴ Hearing of 12 January 2007, T. 5852; see also *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on First and Second Defence Filing Pursuant to Scheduling Order, 4 July 2005, p. 3; *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 6.

⁵ This amendment to the Rules, Document IT/32/Rev. 39, was adopted at the extraordinary plenary of 13 September 2006, and entered into force on 22 September 2006.

⁶ See for instance, Confidential Prosecution’s Submission to Convert Three *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 12 January 2007, p. 1: “In the interests of judicial economy, the Prosecution hereby moves to convert three *viva voce* intercept operators to Rule 92 *ter* witnesses”.

(“Rule 65ter Witness List”),⁷ and in the “Prosecution’s Second Submission Pursuant to the Trial Chamber’s Order for a Proofing Chart”, filed confidentially on 18 August 2006;

CONSIDERING that in light of the experience of the conduct of the proceedings thus far, the most recent estimate of the length of the Prosecution’s case-in-chief may require revision;

CONSIDERING therefore that it is necessary for the Trial Chamber, in ensuring a fair and expeditious trial, to obtain a clearer and more up-to-date picture of what the Prosecution presently estimates the length of the remainder of its case-in-chief to be;

FOR THE FOREGOING REASONS

PURSUANT TO Article 20(1) of the Statute of the Tribunal and to Rules 54 and 65ter(E)(ii) of the Rules;

HEREBY ORDERS that

- (a) the Prosecution shall file no later than Friday 2 February 2007 a revised time estimate of the length of the examination-in-chief in respect of each witness it wishes to call, irrespective of whether or not he or she is currently on the Rule 65ter Witness List, which shall be updated accordingly pursuant to Rule 65ter(E)(ii); and
- (b) in preparing the updated Rule 65ter Witness List, the Prosecution shall bear in mind the need to avoid any unduly repetitive evidence and the possibility of converting *viva voce* witnesses into Rule 92ter witnesses, where it deems appropriate to do so.

⁷ Rule 65ter (E)(ii) of the Rules provides that the Prosecution shall be required, upon order of the Pre-Trial Judge, within a time-limit set by the Pre-Trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73bis, to file “the list of witnesses the Prosecutor intends to call with: (a) the name or pseudonym of each witness; (b) a summary of the facts on which each witness will testify; (c) the points in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment; (d) the total number of witnesses and the number of witnesses who will testify against each accused and on each count; (e) an indication of whether the witness will testify in person 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 (f) the estimated length of time required for each witness and the total time estimated for the presentation of the Prosecutor’s case.”

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



Carmel Agius
Presiding Judge

Dated this nineteenth day of January 2007,

At The Hague

The Netherlands

[Seal of the Tribunal]