

UNITED
NATIONS

IT-01-42-PT
D2670-D2665
18 SEPTEMBER 2003

2670_{AT}



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-01-42-PT
Date: 18th September
2003
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie
Judge Amin El Mahdi
Judge Joaquín Martín Canivell
Registrar: Mr. Hans Holthuis
Order of: 18th September 2003

PROSECUTOR

v

PAVLE STRUGAR

DECISION ON:

**THE DEFENCE MOTION TO SUSPEND ALL TIME LIMITS &
PROTECT THE BASIC RIGHTS OF THE ACCUSED; AND**

THE DEFENCE MOTION FOR AN EXTENSION OF TIME

The Office of the Prosecutor:

Mr. Susan Somers

Counsel for the Accused:

Mr. Goran Rodić
Mr. Vladimir Petrović

Case No.: IT-01-42-PT

18th September 2003

TRIAL CHAMBER I 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 ("the Tribunal");

BEING SEISED of the Defence Motion for suspension of all time limits set out in Order 25th July 2003 and for the protection of the basic rights of the accused filed on 8th August 2003 ("First Motion"), the Defence Motion for an extension of time filed on 9th September 2003 ("Second Motion") and the Defence Additional Arguments to the Motion of 8th September 2003 ("Additional Arguments");

NOTING the Prosecution's Response to the First Motion (the "First Response") filed on 22nd August 2003 and the Prosecution's Response to the Second Motion (the "Second Response");

NOTING the Decision Granting Leave to Amend the Indictment of 31st March 2003 and to file a Second Amended Indictment of 15th September 2003 which limits the *ratione temporis* of the alleged crime to one day i.e., 6th December 1991 rather than the period of 3 months referred to in the amended indictment of 31st March 2003 and which limits the *ratione materiae* of the shelling to the Old Town of Dubrovnik;

NOTING the Chamber's Scheduling Order of 25th July 2003, as amended on the 19th August 2003, for the submission of the pre-trial briefs, for setting the date for the Pre-Trial Conference, and postponing the commencement of Trial date until 9th October 2003;

NOTING the Defence, in the First Motion, seeks further pre-trial orders, a status conference before the full trial, a pre-trial conference 120 days after the status conference and other measures necessary to ensure a fair trial;

NOTING that in the Second Motion the Defence requests an extension of time of 120 days to enable the Defence to prepare for trial; that pursuant to Rule 127 of the Rules of Procedure and Evidence (the "Rules") the Trial Chamber may, on good cause being shown by motion, enlarge any time prescribed under the Rules;

NOTING that the Defence argues that there has been a violation of the Accused's rights to a fair trial on the grounds that there has been a total absence of almost all pre-trial procedures and as a result the trial is not ready to commence;

NOTING that the Defence's arguments that:

- (a) following the commencement of proceedings on 21st October 2001 there has been one status conference on 12th March 2002, in violation of Rule 65 *bis*, and two 65 *ter* conferences held on 11th March 2003 and 26th June 2003;
- (b) a BCS version of the proposed second amended indictment has not been served on the Accused and he should have the opportunity to read the important and extensive changes in BCS;
- (c) the Defence intends to challenge the form of the Second Amended Indictment as proposed in the draft Second Amended Indictment pursuant to Rule 50 (C) and Rule 72 (A);
- (d) the Defence's pre-trial brief should not be filed until the proposed applications under (b) above and all other preliminary motions have been resolved;
- (e) the Prosecution's pre-trial brief was served on 2nd September 2003;
- (f) the Prosecution has not disclosed statements of the Co-Accused, Jokić, and in particular his statement made to the OTP in early 2002 in accordance with Rule 66 (A) (i);
- (g) no order has been made in accordance with Rule 66 (A) (ii);
- (h) no witness statements have been disclosed for 19 out of the 53 witnesses on the Prosecution's 65 *ter* witness list;
- (i) 10 witnesses on the Prosecution's' 65 *ter* witness list have not been named;
- (j) transcripts of witnesses' testimonies or interviews have been disclosed for 2 witnesses and not their witness statements;
- (k) 9 witness statements were obtained much earlier and disclosed for the first time on 29th August 2003;
- (l) a number of witnesses who testified in the *Milosevic* case are expected to give evidence in this case and their transcripts, statements, exhibits and 92 *bis* statements have not been disclosed; and further that the Prosecution has not formally requested admission of any Rule 92 *bis* statements;
- (m) the Defence will not be ready for trial because about 1000 pages were disclosed on 21st October 2001, and about 9900 pages and 80 hours of video and audio materials were disclosed on 29th August 2003;
- (n) the Prosecution and the Defence have not met to discuss admissions or agreements on facts;
- (o) the Prosecution has not informed the Defence of Rule 68 searches nor has it accepted the Defence criteria;

- (p) the Prosecution has disclosed Rule 68 material in two letters dated 8th August 2002 and 31st October 2002 in a summarised form contrary to the practice set out in *Prosecutor v Brdjanin*,¹
- (q) there has been no disclosure of Rule 70 materials;
- (r) the Prosecution's 3 expert witnesses have not been named and their reports and supporting material have not been disclosed; and further that if it is disclosed at some stage either before or during the trial the Defence will not have time to read them nor prepare a response;
- (s) issues concerning the proposed second amended indictment should be resolved before opening statements pursuant to Rule 84;
- (t) lack of resources;

NOTING the Defence submissions that the scheduling order of 25th July 2003 was not issued in accordance with the Rules and therefore should be revised;

NOTING that the Prosecution argues, in its First and Second Reply, that all Rules have been complied with as well as the Chamber's Order of 19th August and the rights of the Accused have not been violated; and in summarising the Prosecution's arguments as follows, further notes that the Prosecution's pre-trial brief was filed after the First Response:

1. that adding the names of two wounded persons does not amount to a new charge² in the Second Amended Indictment and therefore Rule 50 has no application;
2. out of the 9900 pages of exhibits disclosed to the Defence, approximately 3000 pages were copies of documents in other languages, over 2300 pages were diaries and almost 1000 pages were public documents;
3. of the 19 witnesses for whom the Defence allege they do not have statements;
 - a. summaries have been provided,
 - b. 4 are experts whose statements will be disclosed under Rule 94 *bis*,
 - c. 4 witnesses are custodians of records,
 - d. transcripts of two witnesses testimony has been disclosed and that is more comprehensive than any witness statement,
4. witness statements or summaries will be disclosed in advance if any witnesses are called to give evidence,

¹ Decision on Rule 68, Case No., IT-99-36-T

² Decision of the Defence Preliminary Motion on the Form of the Indictment, *Prosecutor v Krnojelac*, Case No., IT-97-25, 24th February 1999, para., 15.

5. disclosure of exculpatory material is ongoing and its obligations under Rule 68 are being fulfilled,
6. the Prosecution remains ready to work with the Defence prior to the commencement of trial for admissions and agreements on undisputed facts,
7. that Rule 70 documents will be disclosed as soon as clearance had been obtained,
8. there is no merit in the Defence argument for a revision of the scheduling order on the grounds stated;

CONSIDERING that the proposed Defence motions in relation to challenges to the Second Amended Indictment are premature;

CONSIDERING that, it is the practice of this Trial Chamber not to hold Status Conferences when the Accused is on provisional release and further considering that the Accused has not previously requested a Status Conference;

CONSIDERING that, as Rule 66 (A) (i) of the Rules refers to the prior statement of the Accused and not the Co-Accused, it has no application to the Defence's First Motion requesting disclosure of Jokić's statements; considering that the pre-trial brief refers to Jokić's interview transcripts and a statement at item 181 in the exhibit list; considering that Jokić is listed as a witness and a brief summary of his evidence has been provided; and considering further that the Chamber reminds the Prosecution of its obligations to disclose exculpatory material and if any statements exist, they should be reviewed forthwith and submitted to the Defence;

CONSIDERING that Rule 68 of the Rules obliges the Prosecution to disclose, as soon as practicable, the existence of material known to the Prosecution which tends to show the innocence of the Accused or mitigates his guilt or in any way affects the credibility of the prosecution evidence; and considering that the Defence has not described the type of exculpatory evidence but nevertheless the right to a fair trial suggests that the prosecution's summary of the evidence disclosed on 8th August 2002 and 31st October 2002 is insufficient and the whole document or those extracts containing the exculpatory material should be disclosed provided that those extracts are, "sufficiently cohesive, understandable and usable";³

CONSIDERING that the Prosecution has a general duty to disclose its case in time for the Defence to prepare its cross examination; that First and Second Responses do not satisfactorily explain why

³ Decision of the Defence Motion for "Sanctions for Prosecutors repeated violations of Rule 68 of the Rules of Procedure and Evidence", *Prosecutor v Brdjanin and Talic*, Case No., IT-95-14-T, 29th April 1998, para., 19.

statements have not been disclosed in relation to all of the 19 witnesses and referred to by the Defence in its Additional Arguments and that the Defence should be provided with these statements;

CONSIDERING that given the circumstances of the case as set out above, the Defence shall be granted an extension of time for filing its pre-trial brief;

FOR THE FORGOING REASONS

PURSUANT TO Rules, 54, 65 *bis*, 68, 73 (B) 127 of the Rules,

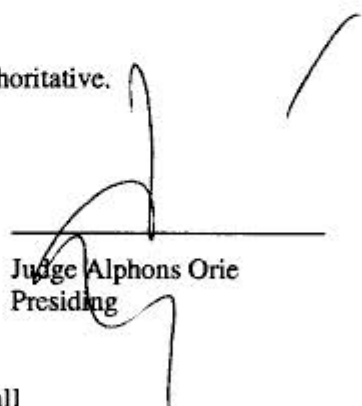
HEREBY ORDRS:

1. The Defence's pre-trial brief be filed by 1st October 2003;
2. The Prosecution shall disclose the exculpatory documents or extracts thereof provided that the redacted version is sufficiently cohesive, understandable and usable within 7 days of the date of this Decision; the summary of which was previously disclosed on 8th August 2002 and 31st October 2002;
3. The Prosecution shall disclose the prior witness statements of Jokić to the Defence within 7 days of the date of this Decision;
4. The Prosecution shall give the Defence and the Trial Chamber a full explanation as to why statements have not been disclosed for all witnesses listed in its Rule 65 *ter* list by 4pm on 22nd September 2003.

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

Dated this 18th day of September 2003

At The Hague,
The Netherlands.



Judge Alphons Orie
Presiding

[Seal of the Tribunal]