



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-03-68-T
Date: 21 July 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Hans Henrik Brydesholt
Judge Albin Eser

Registrar: Mr. Hans Holthuis

Order of: 21 July 2005

PROSECUTOR

v.

NASER ORIC

SCHEDULING ORDER

The Office of the Prosecutor:

Mr. Jan Wubben
Ms. Patricia Sellers
Mr. Gramsci Di Fazio

Counsel for the Accused:

Ms. Vasvija Vidović
Mr. John Jones

TRIAL CHAMBER II (“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”):

NOTING Rule 65ter(D)(iv) and (v) of the Rules of Procedure and Evidence (“Rules”) which provides that the Parties shall be ordered to meet to discuss issues related to the preparation of the case;

NOTING Rule 65ter(G)(i) of the Rules which provides that

After the close of the Prosecutor’s case and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:¹

- (i) a list of witnesses the defence 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;
 - (d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;
 - (e) an indication of whether the witness will testify in person or pursuant to Rule 92bis 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 defence case; (...)

NOTING further Rule 73ter(A) of the Rules which provides that the Trial Chamber may hold a Pre-Defence Conference prior to the commencement of the defence case;

NOTING the Scheduling Order issued on 14 June 2005 at the close of the case for the Office of the Prosecutor (“Prosecution”) in which the Trial Chamber set specific time-limits for the Defence to fulfil its obligations pursuant to Rule 65ter(G)(i) of the Rules;

NOTING the “Defence Filing pursuant to Scheduling Order” and the “Second Defence Filing pursuant to Scheduling Order” filed by the Defence respectively on 17 and 28 June 2005;

¹ Rule 65ter(M) provides that “the Trial Chamber may *proprio motu* exercise any of the functions of the pre-trial Judge”.

NOTING further that in the preparation and for the purposes of the Pre-Defence Conference envisaged in Rule 73*bis* of the Rules, the Trial Chamber requested the parties to attend a Rule 65*ter* meeting under the chairmanship of its Senior Legal Officer on 30 June 2005;

NOTING that a Pre-Defence Conference was held on 1 July 2005 and that the case for the Defence commenced on 4 July 2005;

NOTING the “Decision on Request for Certification to Appeal the Trial Chamber’s Decision on Defence Filings” rendered on 4 July 2005 in which the Trial Chamber granted the Defence certification to appeal the Trial Chamber’s “Decision on First and Second Defence Filings pursuant to Scheduling Order” also rendered on 4 July 2005 (“Decision on Defence Filings”);

NOTING the “Interlocutory Decision on Length of Defence Case” rendered by the Appeals Chamber on 20 July 2005 (“Interlocutory Decision”) requiring the Trial Chamber to permit the Defence to present evidence in certain matters;² to recalculate the time and number of witnesses available to the Defence for presentation of evidence;³ and to allow the Defence to begin presenting its case again, if it so chooses;⁴

CONSIDERING that it is obvious from the use of the terms “at a minimum” and “at least” in paragraph 6 of the Interlocutory Decision that the Appeals Chamber’s position on the subject matters that Naser Orić (“Accused”) should be allowed to address while presenting his case is not definitively being restricted to the four areas identified by the Appeals Chamber and detailed in the same paragraph 6 of the Interlocutory Decision;

CONSIDERING that this belief of the Trial Chamber is further strengthened by the indication made by the Appeals Chamber in paragraph 6 of the Interlocutory Decision that it is those issues regarding the “general historical and political background of the Balkan conflict” that are defensible as a reasonable exercise of the Trial Chamber’s responsibility pursuant to Rule 73*ter* to “set the number of witnesses the defence may call” and “determine the time available to the defence for presenting evidence”;

CONSIDERING further that there is nothing in the Interlocutory Decision that indicates which other from the eleven areas identified by the Trial Chamber, apart from the four identified by the Appeals Chamber in paragraph 6 of the Interlocutory Decision, may not, or should not, be considered as dealing with the “general historical and political background of the Balkan conflict”

² Interlocutory Decision, para. 6

³ *Ibid.*, at para. 10.

⁴ *Ibid.*

except for the first area identified by the Trial Chamber and listed in paragraph 4 of the Interlocutory Decision;⁵

CONSIDERING that the Trial Chamber had made it clear in its Decision on Defence Filings that, with respect to the eleven areas on which it did not require any further evidence on the part of the Defence, it felt that these had been sufficiently addressed during the Prosecution's case in a manner and to an extent which, in its considered opinion, did not require any further evidence on the part of the Defence as this would have resulted in unnecessary repetition and for no other reason;

CONSIDERING furthermore that the Trial Chamber had also made it clear in its Decision on Defence Filings that it "may grant any Defence request for additional time to present evidence if so required by the interests of justice, and in particular if the situation as regards the areas of evidence above, in the opinion of the Trial Chamber, changes in a way as to require further evidence";⁶

CONSIDERING that, had it been the intention of the Trial Chamber to incorporate the eleven areas mentioned above for the purpose of a partial acquittal pursuant to Rule 98*bis*, it would have done so and, furthermore, that it is not the Trial Chamber's intention to revisit or add to its Rule 98*bis* decision rendered orally on Wednesday 8 June 2005;

CONSIDERING that it is the duty of the Trial Chamber to ensure that the Interlocutory Decision is scrupulously respected and applied and that, in so doing, it appears to the Trial Chamber that the Defence should be allowed a "reasonable opportunity to present reliable and relevant evidence" on all issues except on the "historical and political background which led to the armed conflict in Bosnia-Herzegovina in April 1992;

CONSIDERING that, in the spirit of the Interlocutory Decision, the Defence has a duty to focus on the relevant issues of its case and avoid repetition;⁷

PURSUANT to Rules 54, 65*ter*(G) and 73*ter*(A) of the Rules;

HEREBY ORDERS THAT:

⁵ The Trial Chamber notes that the Appeals Chamber does not address the issue of the evidence pertaining to "the killing and inhumane treatment of Bosnian Muslims (...)", "the policy of 'ethnic cleansing' by Bosnian Serb political or military authorities(...)", "the positive treatment of Serbs-whether civilians or non-civilians, hostages or wounded, in Bosnian Muslim hospitals-by Bosnian Muslims, unless relating to persons identified in Counts 1 and 2 of the Indictment(...)" and "the genocide committed against Bosnian Muslims in Srebrenica in 1995". The Trial Chamber considers that these subject matters cannot be included in "the general historical and political background of the Balkan conflict" as identified by the Appeals Chamber in paragraph 6 of the Interlocutory Decision.

1. Pursuant to the Interlocutory Decision, the disposition of the “Decision on the First and Second Defence Filings pursuant to Scheduling Order” rendered by the Trial Chamber on 4 July 2005 is no longer in effect, except for the restriction imposed on the Defence not to bring evidence, during its case, regarding “the historical and political background which led to the armed conflict in Bosnia-Herzegovina in April 1992.”⁸
2. No later than Thursday 4 August 2005, the Defence, pursuant to Rule 65ter(G)(i) shall file its witness list to include:
 - (a) the names or pseudonyms of each witness it intends to call;
 - (b) a summary of the facts on which each witness called will testify;
 - (c) the points of the Indictment as to which each witness called will testify;
 - (d) the total number of witnesses and the number of witnesses who will testify on each count;
 - (e) an indication of whether the witness will testify in person or pursuant to Rule 92bis by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal;
 - (f) the estimated length of time required for each witness and the total time estimated for the presentation of the Defence case; (...)
3. The Defence shall indicate in its witness list whether it intends to avail itself of the choice indicated in the Interlocutory Decision to begin presenting its case again and

⁶ Decision on Defence Filings, p. 5.

⁷ Interlocutory Decision, para. 10

⁸ *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on First and Second Defence Filings pursuant to Scheduling Order, 4 July 2005: “1) During the Defence case, the Defence shall not address the areas of evidence identified above, except during the testimony of Defence witnesses, Izet Redžić and Dr. Eric Dachy; 2) Pursuant to Rule 73ter(F) of the Rules, in the course of the Defence case, the Trial Chamber may grant any Defence request for additional time to present evidence if so required by the interests of justice, and in particular, if the situation as regards the areas of evidence above, in the opinion of the Trial Chamber, changes in a way as to require further evidence. 3) The Defence case shall proceed as follows: 1) The Defence shall file a new witness list no later than 11 July 2005 reflecting a maximum of thirty witnesses; The Defence shall conclude calling witnesses on 30 September 2005, with two exceptions: i) Three additional days beyond 30 September 2005 shall be permitted for the Defence to present evidence, if it chooses, relating to the character of the Accused and the presence of any mitigating circumstances; ii) Any time lost during the Defence case which is for reasons beyond the control of the Defence shall be made up by allowing the Defence to continue their case into October for a period of time equal to the time lost.”

whether it intends to re-call the witnesses who have already testified in the Defence case to give evidence on other matters that flow from the Interlocutory Decision.

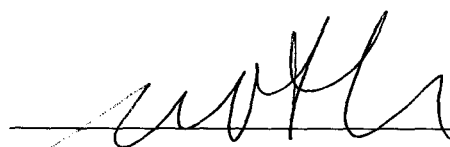
4. Upon filing its witness list, and no later than Thursday 4 August 2005, the Defence shall indicate the estimated time it will require to file its final brief.
5. No later than Monday 15 August 2005, the Prosecution shall file a note indicating the total estimated time it will require for the cross-examination of each Defence witness.
6. Upon filing the note referred above in paragraph 5, and no later than Monday 15 August 2005, the Prosecution shall indicate the estimated time it will require to file its final brief.
7. On Wednesday 17 August 2005, a meeting shall be called by the Senior Legal Officer of Trial Chamber II pursuant to Rule 65*ter*(D)(iv) and (v) of the Rules to prepare the Pre-Defence conference.
8. On Monday 22 August 2005, a Pre-Defence conference shall be convened pursuant to Rule 73*ter* of the Rules.
9. The Trial Chamber shall proceed with the Defence case, as appropriate, on Wednesday 24 August 2005.

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

Dated this twenty-first day of July 2005,

At The Hague,

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]