



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-02-54-T
Date: 22 November 2005
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 22 November 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

SCHEDULING ORDER FOR A HEARING

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

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 (“the International Tribunal”),

NOTING the Order of the Trial Chamber of 21 November 2005, adjourning the trial until 29 November on the basis of the medical advice received concerning the ill health of the Accused,¹

NOTING that Dr. van Dijkman will provide a further report on the medical condition of the Accused, as ordered by the Trial Chamber, and that the Accused will be examined by a specialist audiologist, as recommended in the report of the treating Ear, Nose and Throat specialist, Dr. Spoelstra,²

NOTING that as far back as July 2004, the Trial Chamber had

- (1) expressed its “resolve and determination to conclude the presentation of the defence case by October 2005”,³ but in light of further developments the conclusion date was revised to March 2006;
- (2) considered “ways in which the trial may be concluded in a fair and expeditious manner, including the possibility of severing one or more of the Indictments”,⁴
- (3) considered submissions from the parties on this question who were, at the time, opposed to severance, and decided not to give further consideration to that matter for the time being;⁵ and
- (4) instead determined that it could endeavour to conclude the trial in a fair and expeditious manner by assigning counsel to the Accused,⁶

NOTING that, since the determination to assign counsel, and consequent on an Appeals Chamber ruling on the matter,⁷ the Accused has been effectively conducting his case as a *pro se* accused,

¹ “Order Adjourning Trial and for a Further Medical Report”.

² See “Order Adjourning Trial and for a Further Medical Report”, 21 November 2005, and confidential report of Dr. Spoelstra, 21 November 2005.

³ “Further Order on Future Conduct of the Trial”, 19 July 2004.

⁴ “Further Order on Future Conduct of the Trial Relating to Severance of One or More Indictments”, 21 July 2004.

⁵ “Scheduling Order Concerning Recommencement of the Trial”, 25 August 2004.

⁶ See “Reasons for Decision on Assignment of Defence Counsel”, 22 September 2005 (“Counsel Decision”).

⁷ “Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel”, 1 November 2004.

NOTING that the Accused's case has now progressed to approximately 75% of the 360 hours allotted to him to present his case in chief, he has led almost entirely Kosovo-related evidence in that time, and the end of the Defence case – without any extension of additional time being granted and not taking into account the current or future loss of time due to the Accused's ill health – is estimated to be some time in March 2006,

NOTING that, on account of the Accused's ill health, the Trial Chamber has and will continue to be in a position to sit only three days per week, which has been the case since September 2003,⁸

NOTING that, as noted by the Trial Chamber in its Counsel Decision:

The Prosecution commenced the presentation of its case with an opening statement on 12 February 2002, closing its case by a written filing on 25 February 2004. In the course of the presentation of the Prosecution case, the trial was interrupted on the following thirteen occasions⁹ on account of the illness of the Accused: 18 to 28 March 2002 (9 days); 17 to 27 June 2002 (9 days); 18 to 19 July 2002 (2 days); 1 to 6 November 2002 (4 days); 12 to 15 November 2002 (4 days); 13 to 21 January 2003 (7 days); 18 to 28 March 2003 (7 days); 27 to 28 May 2003 (2 days); 28 July to 1 August 2003 (5 day); 4 September 2003 (1 day); 19 September to 3 October 2003 (9 days); 3 to 5 February 2004 (3 days); 18 to 25 February 2004 (4 days). As a result, 66 trial days were lost...

The defence case scheduled to start on 8 June 2004 was postponed on five occasions on account of the ill-health of the Accused.¹⁰ Between the period from 26 February 2004 to 17 June 2004, the number of days that doctors advised the Accused to rest totalled fifty-one weekdays.¹¹ In a report dated 2 July 2004, Dr. van Dijkman observed that serious rises in the Accused's blood pressure continued to be measured; according to the cardiologist, it was "necessary to navigate constantly between sufficient rest, optimum medication and the stress of the trial".¹² Critically, Dr. van Dijkman noted that, although the trial could start again as soon as the blood pressure reached values which are normal for the Accused, he expected the blood pressure to rise again after a short period of time.¹³

CONSIDERING that, following a period of relative good health, in which the Trial Chamber continued to sit three days per week, the trial was adjourned on 11 November for one day, and then from half way through the hearing on 15 November and until at least the

⁸ See Counsel Decision, para. 53. The sitting schedule had already been reduced as of September 2002, on account of the ill health of the Accused.

⁹ Eight of these occasions related exclusively to problems with the Accused's blood pressure.

¹⁰ "Order Rescheduling and Setting the Time Available to Present the Defence Case", 25 February 2002.

¹¹ "Report by the Registrar Pursuant to the Trial Chamber's 'Omnibus Order on Matters Dealt with at the Pre-Defence Conference', filed on 18 June 2004", 25 June 2004, at para. 7.

¹² Medical Report of Dr. van Dijkman, 2 July 2004.

¹³ *Ibid.*

end of this week, due to the same condition and factors that has plagued the conduct of the trial throughout,¹⁴

NOTING that the Appeals Chamber has contemplated the possibility of severance in principle in its “Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder”,¹⁵

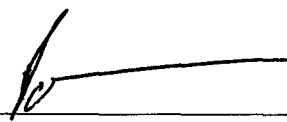
CONSIDERING that, based on the witness list produced by the Accused and his statements made in court about the number of remaining Kosovo witnesses, it is apparent that the Kosovo part of the Accused’s case has almost concluded,

CONSIDERING that it may be in the interests of justice for the Trial Chamber to sever the Kosovo Indictment, conclude that part of the trial and render its Judgement thereon,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal

HEREBY ORDERS that a hearing will be held on Tuesday 29 November 2005, at 9am, at which time the Trial Chamber will hear the submissions of the parties on severing the Kosovo Indictment and concluding that part of the trial, and further submissions in relation to the medical condition of the Accused.

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



Judge Robinson
Presiding

Dated this twenty-second day of November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ See Report of Dr. Falke, 21 November 2005.

¹⁵ 18 April 2002, para. 26.