



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-95-11-T

Date: 7 September 2006

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Janet Nosworthy  
Judge Frank Höpfel

**Registrar:** Mr. Hans Holthuis

**Decision of:** 7 September 2006

**PROSECUTOR**

**v.**

**MILAN MARTIĆ**

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**DECISION REVISING THE TIME AVAILABLE TO  
THE DEFENCE FOR PRESENTING EVIDENCE AND  
INCORPORATED SCHEDULING ORDER**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Ms. Anna Richterova  
Mr. Colin Black  
Ms. Nisha Valabhji

**Counsel for the Accused:**

Mr. Predrag Milovančević  
Mr. Nikola Perović

**TRIAL CHAMBER I** (“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”);

**BEING SEISED OF** the “Defence submission: Revised estimate of time for examination of defence witnesses”, filed confidentially on 31 August 2006 (“Revised Estimate”), wherein the Defence submits that 211,5 hours of Defence evidence remain counting from Witness MM-107;

**CONSIDERING** that there is no reason why this Decision should be confidential;

**NOTING** the “Decision on time available for the defence for presenting its evidence”, filed confidentially on 14 August 2006 (“Decision on Time”), wherein the Trial Chamber, acting under Rule 73 *ter* of the Rules of Procedure and Evidence (“Rules”) and after having analysed in detail “Defence submission of summaries of evidence of Defence witnesses”, filed confidentially on 19 July 2006 (“Submission of Summaries”):<sup>1</sup>

- set the total time available to the defence for presenting evidence to 260 hours, which is to include examination-in-chief, cross-examination, re-examination, and Judges’ questions; and
- determined that the Defence may call 54 witnesses, including Milan Martić;

**NOTING** that the Defence case commenced on 11 July 2006, that the first Defence witness was called on 12 July 2006, that the court recess commenced on 17 July 2006, and that the Defence case resumed on 14 August 2006;

**NOTING** that since 12 July 2006 until and including 5 September 2006 the Defence has called six witnesses the testimony of whom the Defence initially estimated at a total of 38 hours;<sup>2</sup>

**NOTING** that at the hearing on 24 August 2006 the Defence stated that Milan Martić will not appear as a witness in this case, and that this was accepted by the Trial Chamber;<sup>3</sup>

**NOTING** that the Trial Chamber found in its Decision on Time that two weeks would have provided reasonable and sufficient time for Milan Martić’s testimony;<sup>4</sup>

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<sup>1</sup> In the “Defence submission regarding Defence witnesses”, filed confidentially on 23 Aug 2006, the Defence provided the detailed summaries of Witnesses MM-134 and MM-135.

<sup>2</sup> “Defence submission of filings pursuant to rule 65ter (G)”, filed confidentially on 5 Jul 2006, Annex A.

<sup>3</sup> Hearing, 24 Aug 2006, T. 7122.

<sup>4</sup> Decision on Time, p. 3.

**NOTING** that the Trial Chamber has allowed the Defence to withdraw Witnesses MM-097, MM-115, MM-122, MM-128 and MM-130 from its witness list;<sup>5</sup>

**NOTING** that as a result of the above amendments the Defence witness list consists of 48 witnesses;

**NOTING** that “[the principle of] equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case”, that “[t]his is not to say, however, that an Accused is necessarily entitled to precisely the same amount of time or the same number of witnesses as the Prosecution”, and that “a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides”;<sup>6</sup>

**CONSIDERING** that the Trial Chamber must assess 1) if the amount of time allocated to the Defence for presenting evidence is reasonably proportional to that allocated to the Prosecution, and 2) if the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights;<sup>7</sup>

**CONSIDERING** Articles 20 and 21 of the Statute;

**CONSIDERING** that the expected evidence of many Defence witnesses, as described in the Submission of Summaries, is likely to concern general historical and political background and pre-Indictment period matters, which appear not to be of direct relevance to the charges raised against Milan Martić in the Indictment;

**NOTING** that the Trial Chamber has suggested to the Defence the witnesses whose evidence the Trial Chamber considers ought more appropriately be led pursuant to Rule 92 *bis* and Rule 89 (F);<sup>8</sup>

**NOTING** that according to the “Revised Estimate” the Defence will seek to have eight witnesses heard pursuant to Rule 89 (F), and seven witnesses admitted pursuant to Rule 92 *bis*, four of whom with cross-examination;

**REMINING** the Defence that Rule 92 *bis* (A)(i) provides that:

<sup>5</sup> “Decision on Defence submission regarding Defence witnesses”, filed confidentially on 31 August 2006.

<sup>6</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeal Judgement, 15 Jul 1999, paras 44, 48 and 50, as cited by the Appeals Chamber in *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, “Interlocutory decision on length of Defence case”, 20 Jul 2005, para. 7.

<sup>7</sup> *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, “Interlocutory decision on length of Defence case”, 20 Jul 2005, para. 8.

<sup>8</sup> Decision on Time, Annex. The Trial Chamber is of the opinion that none witnesses are suitable to admit pursuant to Rule 89 (F) and that 17 witnesses are suitable to admit pursuant to Rule 92 *bis*.

Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
- (b) relates to relevant historical, political or military background; [...]
- (e) relates to the character of the accused [...]

**REMINDING** the Defence that witnesses whose statement or previous testimony was admitted pursuant to Rule 92 *bis* may be called for cross-examination and re-examination;

**REMINDING** the Defence that according to the jurisprudence of the Tribunal a written witness statement may be admitted pursuant to Rule 89 (F) when the witness “a) is present in court; b) is available for cross-examination and any questioning by the judges; and c) attests that the statement accurately reflects his or her declaration and what he or she would say if examined”;<sup>9</sup>

**CONSIDERING** that Rule 89 (F) is wider in scope than Rule 92 *bis* in that it enables a party to tender written evidence without restrictions on the substance of the evidence, and therefore that Rule 89 (F) can be used to introduce, *inter alia*, evidence pertaining to the alleged joint criminal enterprise or which goes to the acts and conduct of the Accused;

**CONSIDERING** that Rule 89 (F) provides a way to streamline the Defence case so as to avoid repetition of evidence already presented through other witnesses, including Defence witnesses;

**REMINDING** the Defence that evidence admitted pursuant to Rule 89 (F) or Rule 92 *bis* forms part of the trial record and will be duly weighed by the Trial Chamber in light of the trial record as a whole in accordance with the Statute, Rules and jurisprudence of the Tribunal;

**REMINDING** the Defence not to lead repetitive, cumulative, peripheral or irrelevant evidence *viva voce*, as has been done on numerous occasions so far during the Defence case;

**REMINDING** the Defence of the existence of the Agreed Facts, which further limits the areas which the Defence should address;

**CONSIDERING** in light of all of the above that the time allocated to the Defence for presenting evidence should be revised;

**NOTING** that pursuant to Rule 73 *ter* (F) the Trial Chamber may grant a defence request for additional time to present evidence if this is in the interests of justice;

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<sup>9</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.4, “Decision on interlocutory appeal on the admissibility of evidence-in-chief in the form of written statements”, 30 Sep 2003, p.11.

**CONSIDERING** that it is in the interests of both an expeditious trial and the parties that the Trial Chamber decide at this stage of the proceedings on the schedule to be followed during the remainder of the trial;

**PURSUANT TO** Articles 20 and 21 of the Statute and Rules 54, 73 *ter*, and 86 of the Rules;

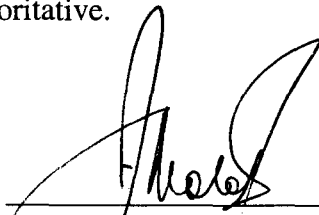
**DETERMINES** that the *remaining* time available to the Defence for presenting evidence, as counted from and including Wednesday 6 September 2006 and thus beginning with the testimony of Witness MM-107, be revised to 158 hours, which shall include examination-in-chief, cross-examination, re-examination and questions from the Judges;

**ORDERS** that the following schedule be followed during the remainder of the trial:

- 2-6 October 2006: adjournment of the trial;
- 20 November 2006: Defence evidence concludes;
- 11 December 2006: filing of the Final Trial Brief of each party;
- 10 January 2007: closing arguments of the Prosecution, if any, which shall also include any response to the Defence Final Trial Brief;
- 11 January 2007: closing arguments of the Defence, if any, which shall also include any response to the Prosecution Final Trial Brief;
- 12 January 2007: closing arguments in rebuttal and rejoinder, if any.

**ORDERS** the Defence to submit, by Monday 11 September 2006, a breakdown of hours of testimony for each witness in light of this Decision.

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



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Judge Bakone Justice Moloto  
Presiding

Dated this seventh day of September 2006

At The Hague

The Netherlands

[Seal of the Tribunal]