



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-05-88-T

Date: 31 March 2008

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

Decision of: 31 March 2008

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVCANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON NIKOLIĆ'S MOTION SEEKING AN EXTENSION OF
TIME FOR FILING OF MILITARY EXPERT REPORT**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušковиć 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. Christopher Gosnell for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić 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”);

BEING SEISED OF the partly confidential “Motion on Behalf of Drago Nikolić Seeking an Extension of Time for the Filing of a Military Expert Report”, filed on 25 March 2008 (“Motion”), in which Nikolić requests the Trial Chamber to grant an extension of time pursuant to Rule 127(A)(i) until 30 April 2008 for filing the military expert report prepared by Lieutenant-Colonel Rémi Landry;¹

NOTING that in support of the Motion, Nikolić submits that:

- (a) the decision to ask Lieutenant-Colonel Landry to prepare an expert report was not taken before February 2008, following the conclusion of Richard Butler’s testimony;²
- (b) Lieutenant-Colonel Landry, in the letter attached to the Motion, states that he will not be able to complete his report before the end of April given his professional and personal obligations, and the fact that he received only recently the “voluminous material” which he will have to thoroughly review;³
- (c) “good cause” has been shown pursuant to Rule 127(A)(i) and no prejudice to the Prosecution will be caused by the requested extension of time;⁴
- (d) his defence case is not expected to commence before mid-August 2008;⁵

NOTING the “Prosecution Response to Motion on Behalf of Drago Nikolić Seeking an Extension of Time for the Filing of a Military Expert Report”, filed on 27 March 2008 (“Response”), in which the Prosecution opposes the Motion;⁶

NOTING that in its Response the Prosecution argues that Nikolić has failed to establish “good cause” for the requested extension, noting that:

- (a) the Motion does not provide any explanation as to why the decision to commission the report was taken by Nikolić after the conclusion of Richard Butler’s testimony;⁷

¹ Motion, paras. 1, 8, 12.

² *Ibid.*, para. 6.

³ *Ibid.*, para. 7. See also, Confidential Annex A. Lieutenant-Colonel Landry also pointed out that there is additional material which he should receive. Confidential Annex A.

⁴ Motion, para. 9.

⁵ *Ibid.*, para. 11.

⁶ Response, paras. 1, 8.

(b) the Motion is devoid of any explanation as to why the “voluminous material” was not provided to the expert earlier;⁸ and

(c) the explanations concerning the professional and personal obligations of Lieutenant-Colonel Landry are “unpersuasive”;⁹

NOTING that the Prosecution submits that should the Motion be granted, this will significantly compromise the Prosecution’s ability to prepare for the Defence’s military expert’s testimony, “particularly if there are further extensions granted”;¹⁰

NOTING that on 28 March 2008, Nikolić filed a motion seeking leave to file a reply and a reply (“Reply”),¹¹ which Nikolić submits is necessary to highlight the inappropriate submissions in the Response, to bring new information to the attention of the Trial Chamber, and to assist the Trial Chamber in deciding the Motion;¹²

NOTING the main arguments raised in the Reply, in particular that:

(a) the Prosecution “misapprehend the *bona fide* nature of the [...] Motion, the aim of which was to be open and forthcoming with the Prosecution regarding the unfeasibility of providing it with the report of a military expert witness recently commissioned within the time frame set by the Trial Chamber”;¹³

(b) during the Prosecution case the Trial Chamber granted similar extensions of time;¹⁴

(c) the presentation of the Defence case is scheduled to commence on 1 June 2008 and the aim of the current adjournment of the proceedings is “specifically to allow for the adequate preparation of the case for the Defence”;¹⁵

(d) Nikolić is actively preparing for the presentation of his case, which includes “ongoing investigations which are likely to yield further relevant information, whether in terms of additional exhibits or witnesses, factual and expert”;¹⁶ and

⁷ *Ibid.*, para. 4.

⁸ *Ibid.*, para. 5.

⁹ *Ibid.*, para. 6.

¹⁰ *Ibid.*, para. 7.

¹¹ Defence Motion Seeking Leave to Reply and Reply to Prosecution Response to Motion on Behalf of Drago Nikolić Seeking an Extension of Time for the Filing of a Military Expert Report, with Confidential Annex, 28 March 2008 (“Reply”).

¹² Reply, para. 6.

¹³ *Ibid.*, para. 8.

¹⁴ *Ibid.*, para. 9.

¹⁵ *Ibid.*, para. 10.

(e) the Office of Legal Aid and Detention Matters (“OLAD”) assigned Lieutenant-Colonel Landry as a military expert witness in this case only on 27 March 2008;¹⁷

NOTING that pursuant to Rule 127(A)(i) of the Rules, a Trial Chamber may on good cause being shown by motion, enlarge any time prescribed by or under the Rules;

NOTING the Trial Chamber “Order on Close of Prosecution Case-in-Chief, Rule 98bis Proceedings, Defence Rule 65ter filings, Pre-Defence Conference and Commencement of the Defence Case” (“Scheduling Order”), filed on 29 November 2007, in which the Defence was ordered to provide the Prosecution with military expert reports by 31 March 2008;

NOTING that the Defence initially requested a 30-day extension for disclosure of witness and exhibits lists, witness summaries and expert reports, and that the Prosecution’s agreement to this request was conditioned upon disclosure of the military expert reports by 31 March 2008;¹⁸

NOTING the oral ruling of 13 December 2007, in which the Trial Chamber granted the Defence’s extension but did not alter the deadline for provision of military expert reports;¹⁹

NOTING that the aim of the Scheduling Order was to ensure the fair and expeditious conduct of the proceedings and that the current adjournment of the proceedings was granted to provide adequate time for the preparation of the Defence cases, and for the Prosecution to prepare for trial with knowledge of the Defence’s disclosed evidence;

NOTING that Butler’s evidence was disclosed to the Defence in 2006,²⁰ and that his testimony concluded on 1 February 2008;

NOTING that Nikolić had sufficient time to commission the military expert report in order to file it before the 31 March 2008 deadline and that Nikolić’s decision to engage Lieutenant-Colonel Landry was made at a very late date;

NOTING that Nikolić did not request the appointment of Lieutenant-Colonel Landry as an expert witness until 13 March 2008;²¹

¹⁶ *Ibid.*, para. 11.

¹⁷ *Ibid.*, para. 14, referring to enclosed letter in Confidential Annex A.

¹⁸ T. 19206 (13 December 2007).

¹⁹ T. 19253–19254 (13 December 2007).

²⁰ See “Prosecution’s Notice of Filing Military Report of Richard Butler”, 9 June 2006, and “Prosecution’s Notice of Disclosure of Expert Witness Statements under Rule 94 bis”, confidential, 31 October 2006.

²¹ See Reply, Confidential Annex A.

NOTING further that Nikolić indicated to the Registry that it requested Lieutenant-Colonel Landry to complete an expert report “no later than 30 April 2008”, which is one month later than the date prescribed by the Trial Chamber in the Scheduling Order;²²

NOTING that Nikolić claims that his defence case is not expected to commence before mid-August 2008;

CONSIDERING that the busy schedule of an expert witness is not *per se* a valid reason for requesting an extension of a Trial Chamber’s deadline;

CONSIDERING, however, that Lieutenant-Colonel Landry was assigned as a military expert witness in this case by OLAD on 27 March 2008, and that it was impossible for him to compile the requested report by 31 March 2008;

CONSIDERING that despite the Nikolić Defence’s lack of diligence in this matter, it is in the Trial Chamber’s interest to have this evidence properly presented and disclosed;

CONSIDERING that the extension of the deadline by 15 days seems sufficient in the circumstances;

CONSIDERING, however, that the Trial Chamber might consider favorably an application for a further extension of time provided that by 15 April 2008 the preparation of the report has been pursued with diligence and good cause is demonstrated; but that any such additional extension of time will not be granted beyond 30 April 2008;

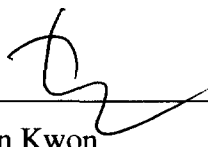
²² See Reply, Confidential Annex A.

PURSUANT TO Rule 127(A)(i) of the Rules;

HEREBY GRANTS the Motion **IN PART**, and **ORDERS** as follows:

1. Leave to file the Reply is granted;
2. Nikolić shall file the military expert report no later than 15 April 2008.

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



O-Gon Kwon
Judge

Dated this thirty-first day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]