

**UNITED
NATIONS**



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-04-75-T
Date: 24 April 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 24 April 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADDITIONAL TIME FOR
COMPLETION OF ITS CASE-IN-CHIEF**

The Office of the Prosecutor:
Mr. Douglas Stringer

Counsel for Goran Hadžić:
Mr. Zoran Živanović
Mr. Christopher Gosnell

1. **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”) is seised of the “Prosecution Motion for Additional Time for Completion of its Case-in-Chief”, filed on 13 February 2013 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests that the Trial Chamber grant it an additional 20.5 hours for the oral presentation of its case-in-chief.¹ The Prosecution submits that this additional time is required to adduce the evidence of seven witnesses either *viva voce* or pursuant to Rule 92 *ter*, as a result of decisions by the Chamber requiring (a) four proposed Rule 92 *bis* witnesses to appear for cross-examination and (b) one proposed Rule 92 *bis* witness and two proposed Rule 92 *ter* witnesses to be led *viva voce*.² Specifically, the Prosecution seeks the following: (a) an additional 30 minutes each to conduct the examination-in-chief of GH-155 and GH-060 pursuant to Rule 92 *ter*;³ (b) an additional 45 minutes each to conduct the examination-in-chief of GH-138 and GH-063 pursuant to Rule 92 *ter*;⁴ (c) an additional four hours to conduct the *viva voce* examination-in-chief of GH-013; (d) an additional six hours to conduct the *viva voce* examination-in-chief of GH-129; and (e) an additional eight hours to conduct the *viva voce* examination-in-chief of GH-038.⁵ The Prosecution submits that granting the additional time is in the interests of justice and that the Chamber, in exercising its discretion under Rule 73 *bis* (F), should balance the Prosecution’s duty to present the available evidence to prove its case with the right of the accused to have adequate time and facilities to prepare a defence and be tried without undue delay.⁶ The Prosecution submits that its initial assessment of the number of hours required to present its case-in-chief did not include the time that is now necessary to lead the evidence of these seven witnesses.⁷ The Prosecution submits that it would be unduly prejudiced in the presentation of its case-in-chief if required to accommodate the *viva voce* testimony of these witnesses within its current time allocation.⁸ The Prosecution further submits that the Defence will suffer no undue prejudice should the Motion be granted because it will have sufficient opportunity to cross-examine these witnesses.⁹

¹ Motion, paras 1, 13.

² Motion, paras 2, 4-6.

³ Motion, para. 11.

⁴ Motion, para. 12. The Prosecution notes that it will file a separate motion requesting permission for GH-138 and GH-063 to testify through the use of video-conference link.

⁵ Motion, para. 10.

⁶ Motion, paras 7-8.

⁷ Motion, para. 9.

⁸ Motion, para. 9.

⁹ Motion, para. 9.

3. The Defence indicated that it would make no submissions in relation to the Motion.¹⁰

B. Applicable Law

4. Article 20(1) of the Statute of the Tribunal (“Statute”) states in relevant part that Trial Chambers “shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the [Rules], with full respect for the rights of the accused”. Article 21 of the Statute sets forth the general fair trial rights of a person tried by the Tribunal, including, *inter alia*, the right to adequate time and facilities to prepare a defence, and the right to be tried without undue delay.¹¹

5. Rule 73 *bis* (C)(ii) provides that a Trial Chamber, after having heard the Prosecution, shall determine the time available to the Prosecution for presenting evidence. Rule 73 *bis* (F) provides in relevant part that the Prosecution, after commencement of the trial, may file a motion for additional time to present evidence and that the Trial Chamber may grant the Prosecution’s request if satisfied that this is in the interests of justice. In allocating time for the duration of a party’s case at trial, a Trial Chamber must justify its decision, but it need not “specifically itemise and justify” all of the reasons for its decision.¹²

C. Discussion

6. The Chamber recalls that the Prosecution, in its Rule 65 *ter* (E) filings, indicated that it would require 172.5 hours of hearing time for the oral presentation of its case-in-chief,¹³ which it then revised to 170 hours at the time of the pre-trial conference.¹⁴ The Chamber further recalls its decision allotting a total of 175 hours to the Prosecution in which to present its case-in-chief, including the direct examination and re-examination, if any, of the witnesses it intended to call.¹⁵

7. The Chamber has considered, *inter alia*, the Rule 65 *ter* material previously submitted by the Prosecution, the scope and complexity of the Indictment, and the requirement for the Prosecution to have a fair opportunity to present its case.¹⁶ The Chamber has also accounted for the likelihood that the mode of testimony of some witnesses may change over the course of the case, that some witnesses may be dropped or added to the Prosecution witness list, and that time charged

¹⁰ Email from the Defence to the Trial Chamber, 27 February 2013.

¹¹ Statute, Articles 21(4)(b)-(c). See *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.10, Decision on Appeal From Decision on Duration of Defence Case, 29 January 2013 (*Karadžić* Decision), para. 8; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Use of Time, 9 October 2006, p. 2.

¹² *Karadžić* Decision, para. 10.

¹³ Prosecution Notice of Rule 65 *ter* (E) Filings, 20 June 2012, para. 5.

¹⁴ Hearing, 15 October 2012. T. 61.

¹⁵ Decision on the Application of Rule 73 *bis*, 15 October 2012, paras 3, 5(a).

¹⁶ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber’s Ruling Reducing Time for the Prosecution Case, 6 February 2007, para. 14.

to the Prosecution does not include time used by the Chamber to put questions to witnesses or time used for procedural and administrative matters.

8. The total additional time requested by the Prosecution to lead the evidence of the four newly designated Rule 92 *ter* witnesses is 2.5 hours. Having already accounted for the likelihood that some Rule 92 *bis* witnesses may be called to provide testimony in accordance with Rule 92 *ter*, the Chamber considers that the Prosecution should be able to fulfil the requirements of Rule 92 *ter* and complete any redirect of GH-155,¹⁷ GH-060, GH-063, and GH-138 within its existing time allotment. Therefore, no additional time will be granted to lead the evidence of these four witnesses.

9. The total additional time requested by the Prosecution to lead the evidence of the three newly designated *viva voce* witnesses is 18 hours.

10. Witness GH-038 was initially designated as a Rule 92 *ter* witness.¹⁸ The Prosecution indicated that it would use one hour of court time to lead her evidence pursuant to that Rule.¹⁹ However, the Chamber determined that her evidence should be led *viva voce*. Based on this change to the mode of testimony, the Prosecution considers that it now requires eight hours to lead her evidence.

11. Witness GH-129 was initially designated as a Rule 92 *ter* witness. The Prosecution indicated that it would use one hour of court time to lead his evidence pursuant to that Rule.²⁰ However, the Chamber determined that his evidence should be led *viva voce*. Based on this change to the mode of testimony, the Prosecution considers that it now requires six hours to lead his evidence.

12. Witness GH-013 was initially designated as a Rule 92 *bis* witness, which would not have required any court time to lead his evidence. However, the Chamber determined that his evidence should be led *viva voce*. Based on this change to the mode of testimony, the Prosecution considers that it now requires four hours to lead his evidence.

13. Having considered the above, the Chamber determines that it would be in the interests of justice to allocate the Prosecution an additional ten hours in which to lead its evidence for the foregoing three witnesses. Therefore, the total time of 175 hours in which the Prosecution has been

¹⁷ The Chamber notes that GH-155 testified in this case prior to the issuance of this decision. *See* Hearing, 8 March 2013.

¹⁸ The Chamber notes that GH-038 testified in this case prior to the issuance of this decision. *See* Hearings of 8, 9, and 10 April 2013.

¹⁹ Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-038), 24 December 2012, confidential Annex A, p. 1.

allocated to present its case-in-chief, including the direct examination and re-examination, if any, of the witnesses it intends to call, will be revised upwards to a total of 185 hours.

D. Disposition

14. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute and Rules 54 and 73 *bis* of the Rules, hereby

(a) **GRANTS** the Motion in part; and

(b) **GRANTS** the Prosecution an additional ten hours in which to lead its evidence.

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

Done this twenty-fourth day of April 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

²⁰ Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-129) (confidential), 21 December 2012, confidential Annex A, p. 1.