



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: 4 December 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: 4 December 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADVANCE NOTICE OF
ISSUES TO BE RAISED AT RULE 98 *bis* HEARING**

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 Advance Notice of Issues to be Raised at the Rule 98 *bis* Hearing (Expedited Ruling Requested)”, filed publicly on 29 November 2013 (“Motion”). The Defence filed publicly a “Response to Prosecution Motion for Advance Notice of Issues to be Raised at the Rule 98 *bis* Hearing (Expedited Ruling Requested)” on 3 December 2013 (“Response”).

2. In the Motion, the Prosecution requests that the Chamber direct the Defence to provide the Prosecution, by no later than 11 December 2013, with notice of the grounds for acquittal that it intends to raise at the Rule 98 *bis* hearing.¹ As argued by the Prosecution, such advance notice is in the interest of fairness and efficiency and will not prejudice the Defence.² The Prosecution submits that the Defence submissions may include a broad range of both factual and legal challenges and that responding to these challenges will require the Prosecution to locate references from the prodigious evidentiary record.³ According to the Prosecution, the practice that has evolved around Rule 98 *bis* proceedings does not give sufficient notice to the Prosecution, and ordering the Defence to provide advance notice would serve the interests of the parties, as well as the Trial Chamber and the Appeals Chamber.⁴ The Prosecution adds that Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) does not prohibit a Chamber from ordering advance notice of the general nature of what will form the basis of a motion for judgement of acquittal.⁵

3. In the Response, the Defence opposes the Motion, arguing that it has no jurisprudential or statutory basis and is contrary to the summary nature of the proceedings under Rule 98 *bis*.⁶ The Defence points out that no Trial Chamber has ever ordered advance notice of Rule 98 *bis* submissions and cites instances where requests for such advance notice were denied.⁷ The Defence argues that the absence of an express prohibition on advance notice is hardly persuasive.⁸ According to the Defence, requiring advance notice would constitute an incongruous departure from the oral nature of the proceedings.⁹ The Defence avers that the volume of the record is entirely a matter of the Prosecution’s own creation and that the Prosecution should therefore be in a position to locate references to evidence without extensive research.¹⁰ Finally, the Defence is of the view

¹ Motion, paras 1, 9.

² Motion, paras 7-9.

³ Motion, para. 4.

⁴ Motion, paras 5-6.

⁵ Motion, para. 7.

⁶ Response, para. 1.

⁷ Response, para. 2.

⁸ Response, para. 2.

⁹ Response, para. 3.

¹⁰ Response, para. 4.

that the time allocated to the Prosecution for the preparation of its submissions is generous and properly reflects the summary nature of the Rule 98 *bis* proceedings.¹¹

4. The Trial Chamber considers that it is not necessary, in order to ensure the fairness and efficiency of the Rule 98 *bis* proceedings, to require the Defence to provide the Prosecution with advance notice of the grounds for acquittal it intends to raise. The Prosecution is presumed to know its own case. In the view of the Chamber, the interval between the close of the Defence submissions and the commencement of the Prosecution response is sufficient notice to the Prosecution and is consistent with the practice of the Tribunal. Finally, the absence in Rule 98 *bis* of an express prohibition on advance notice is not determinative of this matter.

5. Accordingly, the Trial Chamber, pursuant to Rules 54 and 98 *bis* of the Rules, hereby **DENIES** the Motion.

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

Done this fourth day of December 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

¹¹ Response, para. 4.