

IT-09-92-T
D78175 - D78171
02 May 2014

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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-09-92-T
Date: 2 May 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 2 May 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON URGENT DEFENCE MOTION SEEKING TO
ENLARGE TIME DUE TO THE TRIBUNAL'S INABILITY TO
PROVIDE NECESSARY TECHNICAL MEANS**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 24 April 2014, the Defence requested a postponement of the deadline set by the Chamber in relation to complying with its obligations pursuant to Rule 65 *ter* (G) of the Tribunal's Rules of Procedure and Evidence ("Rules"), as well as a corresponding postponement of the start of the Defence case ("Request").¹ On the same date, the Prosecution requested that the Chamber hold a hearing to further discuss the matters raised in the Request.² On 29 April 2014, the Registry filed a submission in response to the Request ("Registry Submission").³ On the same date, the Chamber held an out-of-court meeting to discuss the matters raised in the Request. The Chamber informed the parties of the outcome of the present decision on 30 April 2014 through an informal communication.

II. SUBMISSIONS

2. The Defence submits that the postponement sought is warranted on the following grounds: Defence computer log-ins have not been fully functioning during a period of ten days in the month of April 2014 on the computers in the Defence rooms of the Tribunal; Defence remote access tokens have not been functioning during a period of four days in the month of April 2014; upload requests into eCourt have not been executed expeditiously by the Tribunal's Information Technology Service Section ("ITSS"); members of the Defence have been unable to properly access the transcript of the case through LiveNote; and the scanners in the Defence rooms have not been functioning properly.⁴

3. The Registry submits that starting on 7 April 2014, some technical problems arose throughout the Tribunal which were mainly related to a change in some of the computers' operating systems.⁵ However, it submits that these problems did not cause any material disruption and were expeditiously addressed and resolved.⁶

¹ Defense Urgent Motion Seeking to Enlarge Time due to the Tribunal's Inability to Provide Necessary Technical Means, 24 April 2014, para. 2, "Relief Requested".

² Prosecution Response to Defense Urgent Motion Seeking to Enlarge Time due to the Tribunal's Inability to Provide Necessary Technical Means, 24 April 2014, para. 2.

³ Registrar's Submission in Response to Defense Motion Seeking to Enlarge Time, 29 April 2014.

⁴ Request, paras 4, 8-30.

⁵ Registry Submission, para. 2.

⁶ Registry Submission, paras 5-8.

4. The Prosecution submits that the start of the Defence case should not be postponed due to the matters raised in the Request, and makes a number of practical proposals in order to overcome the challenges faced by the Defence.⁷

III. APPLICABLE LAW

5. Rule 65 *ter* (G)(ii) of the Rules provides, in relevant part, that the pre-trial Judge shall order the Defence to file a list of exhibits the Defence intends to offer in its case, and that the Defence shall serve on the Prosecutor copies of the exhibits so listed.

6. A Trial Chamber has discretion regarding trial scheduling matters.⁸ However, this discretion is limited by the obligations enshrined in Articles 20 and 21 of the Tribunal's Statute to ensure that a trial is fair and expeditious and that the accused has adequate time for the preparation of his case.⁹

It is not possible to set a standard of what constitutes adequate time to prepare a defence.¹⁰ The length of the preparation period depends on a number of factors specific to each case.¹¹ A Trial Chamber's assessment of the amount of pre-trial preparation requires an in-depth consideration of all facts.¹²

IV. DISCUSSION

7. The Chamber notes that despite the Request, the Defence filed its witness list pursuant to Rule 65 *ter* (G)(i) of the Rules.¹³ Accordingly, the Chamber understands the Request to have been narrowed such that the Defence now only seeks an extension of the deadline under Rule 65 *ter* (G)(ii), as well as a postponement of the start of the Defence case.

⁷ The Prosecution made these submissions at the 29 April 2014 out-of-court hearing, where it also stated that it would file these submissions on the record at a later stage. The Chamber will further address the Prosecution's practical proposals at the Pre-Defence Conference.

⁸ *Augustin Ngirabatware v. the Prosecutor*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("*Ngirabatware* Decision"), para. 22.

⁹ *Ibid.*

¹⁰ *Ngirabatware* Decision, para. 28.

¹¹ *Ibid.*

¹² *See Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009, para. 19.

¹³ Defence Submission of Witness List Pursuant to Rule 65*ter* (G), 29 April 2014 (Confidential). The Chamber was informed by the Registry that the Defence submitted its witness list for filing on 28 April 2014 in accordance with the deadline set by the Chamber. However, as there was a mistake in the submission which was only corrected by the Defence through a re-submission of the list the following day, the Registry filed the Defence's submission with a date of 29 April 2014. Under these circumstances, the Chamber accepts the late filing of the witness list.

8. In relation to the five matters raised in the Request, the Chamber considers that while the Defence raises various detailed technical complaints, it fails, for the most part, to explain or demonstrate to what extent such technical inconveniences impact its ability to prepare for the Defence case. For example, the Defence complains about scanning and uploading documents into eCourt,¹⁴ but does not explain how such problems necessarily hinder it to file a *list* of exhibits pursuant to Rule 65 *ter* (G)(ii). Similarly, the Defence does not specifically argue that any of the technical problems adversely impacted its preparations for examining the first witnesses to be called.

9. Nevertheless, the Chamber understands that having to deal with technical problems wastes time intended to spend on substantive Defence case preparations. At least for a number of days in April 2014, some of the members of the Defence team encountered technical problems in their work. In order to compensate for some of these inconveniences, the Chamber will grant the Defence some additional time before filing its exhibit list and starting its case. As a result of the out-of-court meeting held on 29 April 2014, the Chamber is further satisfied that any ongoing or future technical problems will be reported by the Defence to ITSS without delay and expeditiously resolved.

10. The Chamber considers that the Defence's exhibit list is primarily a tool which gives the Prosecution notice of the documents to be used during the Defence case. The Prosecution has not yet raised any major concerns about a delay in having the Defence's exhibit list filed. Under these circumstances, the Chamber will instruct the Defence to file its exhibit list as soon as possible. In addition, the Chamber encourages the Defence to file, or at least to provide the Prosecution with, the list incrementally so as to give the Prosecution maximum notice of the documents the Defence intends to offer during its case.

V. DISPOSITION

11. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber

GRANTS the Request **IN PART**;

¹⁴ In that respect, the Chamber notes that a member of the Defence, at the 29 April 2014 meeting, *inter alia* complained that the scanner the Defence team primarily uses had stopped working the day before. After the meeting and upon his suggestion, the member of the Defence wanted to demonstrate to the Presiding Judge, the Prosecution, and the Registry the technical problems encountered in the Defence rooms. However, when scanning documents on the scanner at issue, no further problems were encountered.

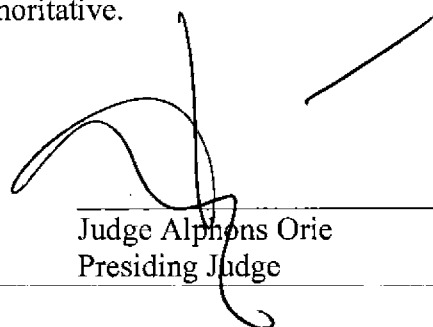
ORDERS the Defence to file its list of exhibits pursuant to Rule 65 *ter* (G)(ii) of the Rules without further delay;

CONFIRMS that the Pre-Defence Conference in this case will be held on 12 May 2014;

ORDERS that the Defence case shall start on 19 May 2014; and

DENIES the remainder of the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this Second day of May 2014
At The Hague
The Netherlands

[Seal of the Tribunal]