



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-04-74-T
Date: 25 April 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Opinion of: 25 April 2008

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIC
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

**SEPARATE OPINION OF JUDGE JEAN-CLAUDE ANTONETTI ON THE
LENGTH OF THE PRESENTATION OF EVIDENCE BY THE DEFENCE**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

1 On 25 April 2008, the Trial Chamber rendered the "Decision Allocating Time to the Defence to Present Its Case" ("Decision"). In view of the importance of this Decision, I wish to make clear my personal position on the question raised.

2 At the end of the presentation of Prosecution evidence, pursuant to provisions under Rule 65 *ter* (G) of the Rules of Procedure and Evidence ("Rules"), the Defence is to file the list of exhibits and witnesses and to provide an estimated length for the examination-in-chief of each witness.

3 The Trial Chamber is obliged, under Rule 73 *ter* (E) of the Rules, to establish the length for the presentation of evidence required by the Defence before the trial resumes.

4 The six defence teams requested through their written submissions an amount of time that exceeds excessively the time used by the Prosecution, which came to around 300 hours for the presentation of evidence. It may be said that the Defence, as a whole, is excessive in its request for 546 hours and 30 minutes.

D1 : 128 hours (+ 24 for the testimony of the Accused)

D2 : 68 hours

D3 : 156 hours (of which 36 hours for the testimony of the Accused)

D4 : 91 hours (of which 12 hours for the testimony of the Accused)

D5 : 81 hours (of which 15 hours for the testimony of the Accused)

D6 : 22 hour 30 minutes

Total : 546 hours 30 minutes

5 Initially, a *prima facie* examination of the 65 *ter* summaries, case by case, accused by accused and witness by witness, led me to make the following estimate:

D1 : 69 hours

D2 : 52 hours

D3 : 62 hours 30 minutes

D4 : 74 hours

D5 : 71 hours

D6 : 31 hours

TOTAL : 359 hours 30 minutes

6 However, second time round, taking into consideration the fact that the Chamber reduced the times allocated to the Prosecution for the presentation of evidence to around 300

hours, I considered that it was equally possible to save on time for the presentation of the Defence case, while allowing the Defence teams to have adequate time for the presentation of evidence.

7 There is no doubt that the Chamber has to guarantee a fair trial to the accused, and it should also take into account other requirements to establish the length of time needed by the Defence, other than fairness, such as the expeditiousness of the proceedings.

Article 20 (1) of the Statute states:

"The Trial Chamber shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses."

8 I have taken into account the principles of fairness and expeditiousness of the proceedings as well as other factors, such as the full examination of lists of witnesses, the use of 92 *bis* and 92 *ter* procedures, the fact that the Accused are charged in the Amended Indictment with individual responsibility in a joint criminal enterprise or with superior responsibility, under Articles 7.1 and 7.3 of the Statute; any testimony by the accused as well as the progress of the proceedings, evidence already admitted in the case and, notably, the cross-examination by the Defence during the testimony of Prosecution witnesses.

9 In all fairness, as a result I then decided to assign to the six Accused a time frame of 300 hours in total, dividing the time fairly between each of the Defence teams, in such a way that each Defence team disposes of 50 hours, including the time required for the testimony of the Accused, with the explanation that the Chamber can modify its decision at any time to allow new parameters.

10 It is worth mentioning that the fact that the Defence was not automatically given the requested time does not constitute a violation of the rights of the Accused, since the defence of the accused does not have control of the length of the trial.

11 The Appeals Chamber has referred in this case to the discretionary power of the Trial Chamber in matters of allocating time and stated that it has not abused this power by reducing the time allotted to the Defence.¹

12 According to the Tribunal's practice and as the Appeals Chamber stated in the Decision of 20 January 2004 rendered in the *Milosević* case in paragraph 18 of the Decision:²

"The authority best placed to determine what time is sufficient for the Accused to finish preparing his defence in this admittedly complex case is the Trial Chamber which has been conducting his trial for over two years."

13 Regarding the observation made by the Appeals Chamber, I wish to recall that having been the confirming Judge and the pre-trial Judge, as well as the Presiding Judge in this case, I consider that I have a sufficiently in-depth knowledge of this case to establish the amount of time required by the Defence to present its case.

14 Moreover, in the *Milosević* Decision, the Appeals Chamber explained that the Trial Chamber did not wish to take into account the considerations of the completion target for the Tribunal's work and stated the following:

« The Trial Chamber has made that determination with proper regard to the importance of ensuring a fair trial for the Accused and with an explicit disclaimer of such inappropriate considerations as the completion target for the Tribunal's work." ³

15 It is also worth noting that the Security Council stated in its Resolution 1503 that the trial phase should be completed in 2008 and that this date was reiterated on various occasions by several permanent members of the Security Council.

16 Clearly, the time needed by the Defence, as assigned by the Chamber, will involve a trial which will broadly finish after 2008, with a judgement rendered in 2009 or 2010; which on all accounts does not confirm to the completion target of the Tribunal stated in Resolution 1503.

¹ *The Prosecutor v. Jadranko Prlić et al.*, case no. IT-04-74-AR73.4, "Decision on Prosecution Appeal Following Trial Chamber's Decision on Remand and further Certification", 11 May 2007, para. 14.

² *The Prosecutor v. Slobodan Milosević*, case no. IT-02-54 AR73. 16, "Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence case", ("*Milosević* Decision"), 20 January 2004, para. 18.

³ *Milosević* Decision, para. 18.

17 I have therefore not taken into account this target when establishing the amount of time to be assigned to each Defence team at the risk of being censured, correctly, by the Appeals Chamber which recalled, as noted by the *Milosević* Chamber, that it would be "an inappropriate consideration".⁴

18 Taking as the starting point these 300 hours, I have estimated that the length of this part of the proceedings could run to around 1,000 hours, which would not allow the trial to be completed in 2008, taking into account the time that is absolutely necessary for the Prosecution to conduct its own cross-examination (300 hours), the cross-examination of the other Accused (150 hours), the judges' questions (60 hours), and incidental matters (120 hours).

19 After an in-depth examination of the lists of witnesses and the evidence, the Trial Chamber estimated a time required by the Defence to present its case which was not too far removed from my initial suggestion of 50 hours per Accused, with the exception of the Prlić Defence.

20 Therefore, the Chamber envisaged assigning to each Defence team the required amount of time, as indicated below, for the presentation of its case and decided to hear the observations of the parties during the Pre-Defence Conference held on 21 April 2008.⁵

D1 : 80 hours

D2 : 54 hours

D3 : 50 hours

D4 : 50 hours

D5 : 45 hours

D6 : 22.30 hours

TOTAL : 301.30 hours

21 After hearing the parties during the Pre-Defence Conference held on 21 April 2008, the Chamber decided to allocate to most of the Defence teams more time than it had first envisaged and to assign to each Defence team the following time:

D1 : 95 hours

D2 : 59 hours

D3 : 55 hours

D4 : 55 hours

⁴ *Milosević* Decision, paras. 17 and 18.

⁵ Agenda of the 73rd Conference, p. 3.

D5 : 50 hours

D6 : 22.30 hours

TOTAL : 336.30 hours

22 Of course, the length of time fixed by the Trial Chamber is much less than that requested. However, I would like to explain that several of the witnesses on the lists are redundant and the Defence has the possibility of calling only those witnesses who are indispensable to its case. Similarly, it seemed to me that several requests for time for some of the witnesses were excessive, without going into the relevance of these witnesses. Similarly, I have found that several witnesses are on the lists to deal with one subject, when a single *viva voce* witness would have sufficed. Finally, in studying the lists of documents that will be presented to various witnesses leads me to question their necessity

23 The length of time assigned by the Decision should allow each of the Accused to present in the best possible circumstances their argument through their witnesses and documents, whereby each Defence team had an opportunity to outline its lines of defence during the cross-examination phase of Prosecution witnesses.

24 The estimate of the overall amount of time of 1,000 hours in court in the second phase of the proceedings is, in my opinion, an optimistic estimate, which does not take into account any possible delays caused by the health of the participants, delays in the proceedings for various reasons that are inherent to a trial, the possible appearance of witnesses called by the Trial Chamber or, even, the possible reopening of the trial.

25 In concluding this separate opinion, I wish to state that the completion goal for the work of the Tribunal was not taken into account in the assessment of the time required by the Defence. It is clear that the allocation of 1,000 hours for this part of the proceedings may, at first, surprise the layperson. However, it should not be forgotten that this is a complex case because of the number of Accused, the Indictment which includes numerous crime locations, the long period covering the commission of these crimes, the various forms of responsibility and the numerous documents provided by the parties. Absolute control by the judges of the proceedings in a different framework, with real control of discussion effected by the judges rather than the parties would, in my opinion, have led to a much earlier end to the trial.

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

/signed

Jean-Claude Antonetti

Presiding Judge

Done this twenty-fifth day of April 2008

At The Hague

The Netherlands

[Seal of the Tribunal]