



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: 13 November 2006
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French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 13 November 2006

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ

**DECISION ON ADOPTION OF NEW MEASURES TO BRING THE TRIAL
TO AN END WITHIN A REASONABLE TIME**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphey 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 Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I INTRODUCTION

1. Trial Chamber III (“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”) finds it necessary, pursuant to Article 20 paragraph 1 and Article 21 paragraphs 1 and 4 (c) of the Statute of the Tribunal (“Statute”) and Rule 90(F) of the Rules of Procedure and Evidence (“Rules”), to adopt new measures in order to complete the presentation of the case against the Accused in a reasonable time.

II PROCEDURAL BACKGROUND

2. The Chamber would first recall the “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings”, which it issued on 28 April 2006 (“Decision Adopting Guidelines”). The Chamber took the view that it would be unreasonable for this trial to continue for longer than three years and requested the Office of the Prosecutor (“Prosecution”) to complete its presentation of evidence within one year.¹ To this end it fixed the number of hours allocated to the Prosecution for the presentation of its evidence to 400 hours (examination-in-chief and re-examination)² based on the assumption that the Prosecution would have at its disposal 400 hours of the 920 hours of court-room time per year.³ The Chamber also decided that a system for monitoring the use of time would be established by the Registry.⁴

3. By its oral decision pronounced on 8 May 2006⁵ and the “Decision on the Implementation of the Decision of 8 May 2006 on Time Allocated for Cross-Examination by Defence” rendered by the Chamber on 12 July 2006,⁶ the Chamber limited the duration of the cross-examination of Prosecution witnesses. Thus, the total time allocated for cross-examination by the Counsel for the Accused (“Defence”) must not, in principle, exceed the time allocated for the Prosecution’s examination-in-chief. The Chamber may grant additional time for cross-examination to an Accused directly concerned by the testimony of a witness.⁷

¹ Decision Adopting Guidelines, paras. 2 and 7.

² Decision Adopting Guidelines, para. 7.

³ *Id.*, para. 7. This calculation is also based on the assumption that the proceedings will be conducted for 20 hours each week and 46 weeks per year.

⁴ *Id.*, para. 6.

⁵ Oral decision of 8 May 2006, Court Transcript in French (“T(F)”) pp. 1475, 1476, 1485 and 1486 (“Decision of 8 May 2006”).

⁶ “Decision on the Implementation of the Decision of 8 May 2006”.

⁷ Decision of 8 May 2006 and the Decision on the Implementation of the Decision of 8 May 2006, p. 2. This decision was confirmed by the Appeals Chamber: *Prosecutor v. Jadranko Prlić et al.*, case IT-04-

4. In its “Decision on the Principles for Recording the Use of Time during Hearing” rendered on 13 July 2006 (“Decision on the Principles for Recording the Use of Time”), the Chamber recalled the Decision Adopting Guidelines and noted that the time used by the Prosecution for its examination-in-chief and re-examination shall not include the time used for dealing with objections or for the admission of evidence.⁸ The same applies to the time used by the Defence for cross-examination.⁹

5. The Chamber notes that it encouraged the Prosecution to have recourse to the expedited procedure of witness examination stipulated under Rule 92 *ter* of the Rules.¹⁰ In this regard, it allowed the Prosecution to make extensive use of this disposition. In fact, the Chamber authorised the admission of written statements, at the same time allowing the Prosecution to ask questions in order to help clarify or explain some ambiguous or important parts in them. It also authorised the Prosecution to present documents to the witnesses who were examined under this procedure.¹¹ Moreover, the Chamber did not hesitate to admit the transcripts of other cases brought before the Tribunal pursuant to Rules 92 *bis* and 92 *quater* of the Rules. Finally, the Chamber also partially granted the Prosecution motions to take judicial notice of adjudicated facts in the *Naletilić and Martinović* and the *Blaškić* cases.¹²

6. On 12 October 2006 the Registrar submitted to the Chamber and to the Parties the first record of the sitting time used pursuant to the Decision on the Principles for Recording the Use of Time.¹³ This record contains the following information:

- Total sitting time: 305 hours and 15 minutes,
- Time used by the Prosecution for its examination-in-chief: 88 hours and 11 minutes,
- Time used by the Prosecution for re-examination: 2 hours,

74-AR73.2, “Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber’s Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel’s Request for Leave to File an *Amicus Curiae* Brief”, 4 July 2006.

⁸ Decision on the Principles for Recording the Use of Time, guidelines nos. 2 and 5.

⁹ *Id.*, guidelines nos. 3 and 5.

¹⁰ Of the 35 witness who appeared by 12 October 2006, nine appeared pursuant to Rules 89(F) or 92*ter* of the Rules.

¹¹ Oral decision rendered by the Chamber in private session on 13 September 2006, T(F) pp. 6512 and 6513, 6717 and 6718; see also T(F) of 25 September 2006, pp. 7147 and 7148, 7150, 7156-7160 and the “Order to Admit Evidence Relative to Witness BA”, rendered by the Chamber on 19 October 2006.

¹² “Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006”, 7 September 2006.

¹³ Registrar’s internal memo dated 26 October 2006.

- Time used jointly by the Counsel for the Accused and the Accused themselves for cross-examination: 112 hours and 42 minutes,¹⁴
- Time used by the Judges for putting questions: 23 hours and 11 minutes, and
- Time used for procedural matters: 79 hours and 1 minute.¹⁵

7. At the hearing of 16 October 2006, the Chamber and the Parties discussed this record of sitting time. The Parties presented their objections to it.¹⁶

8. At the hearing of 1 November 2006, following on the debate of 16 October 2006 and based on the information presented by the Registrar, the Chamber announced to the Parties its intention to adopt a number of measures intended to complete the presentation of the Prosecution case within a reasonable time. On this occasion it again invited the Parties to inform it of their relevant observations.¹⁷

9. On 3 November 2006, the Registrar submitted to the Chamber and to the Parties the second record of the sitting time for the period from 26 April 2006 to 3 November 2006, and notified the Chamber and the Parties that the first record presented on 12 October 2006 contained minor errors. The second record included the following information:

- Total sitting time: 333 hours and 30 minutes,
- Time used by the Prosecution for its examination-in-chief: 100 hours and 38 minutes,
- Time used by the Prosecution for re-examination: 2 hours and 2 minutes,
- Time used jointly by the Counsel for the Accused and the Accused themselves for cross-examination: 126 hours and 5 minutes,¹⁸

¹⁴ Time used by the Accused alone: 12 hours and 23 minutes; time used by the Counsel for the Accused Prlić: 32 hours and 34 minutes; time used by the Counsel for the Accused Stojić: 17 hours and 22 minutes; time used by the Counsel for the Accused Praljak: 12 hours and 18 minutes; time used by the Counsel for the Accused Petković: 14 hours and 35 minutes; time used by the Counsel for the Accused Ćorić: 21 hours and 14 minutes; time used by the Counsel for the Accused Pušić: 2 hours and 16 minutes.

¹⁵ The Decision on the Principles for Recording the Use of Time envisages two distinct categories of procedural matters, namely: 1. the category of procedural matters arising from the examination of a witness, such as the admission of evidence and the time used for dealing with objections and 2. the category of any other procedural matter. Due to some technical problems, however, it was not possible to make a distinction between the two categories in the record of time of 12 October 2006.

¹⁶ T(F) of 16 October 2006, pp. 8410-8421.

¹⁷ T(F) of 1 November 2006, p. 9316.

¹⁸ Time used by the Accused alone: 20 hours and 53 minutes; time used by the Accused Prlić: 16 minutes; time used by the Accused Stojić: 5 minutes; time used by the Accused Praljak: 17 hours and

- Time used by the Judges for putting questions: 30 hours and 50 minutes, and
- Time used for procedural matters: 73 hours and 55 minutes.¹⁹

III ARGUMENTS OF THE PARTIES

10. At the hearing of 6 November 2006, the Parties presented their arguments concerning the adoption of measures intended to complete the presentation of the Prosecution case within a reasonable time.²⁰

11. The Prosecution stated that it represented not only the victims of the alleged crimes but also the international community. It recalled that the right to a fair trial is a right to which both the Prosecution and the Defence are entitled. In this context, it noted the complex nature of a trial of multiple accused and the fact that the burden of proof which rests on the Prosecution compels it to show beyond a reasonable doubt the veracity of the allegations contained in the Indictment. Furthermore, the Prosecution argued that it should not be the only Party to the proceedings to bear the weight of the measures intended to expedite the proceedings, but that the measures should also apply to the presentation of the Defence case. Moreover, the Prosecution argued that, to date, it had given proof of great efficiency when it presented 46 witnesses in 75 trial days. It also recalled its repeated attempts, albeit futile, to reach an agreement on certain facts.

12. The Defence first argued that, in the phase of pre-trial proceedings in the present case, it had moved for a reduction of the scope of the Indictment, which would have reduced the duration of the proceedings. It also pointed out that if the Chamber decided to comply with the time limits imposed by the UN Security Council, the nature of the proceedings would change. Consequently, there would be a serious danger that the truth would not be established and that both the independence of the Judges and the rights of the Accused would be compromised. The Defence also pointed out that such restrictions were not imposed on the other accused being tried

11 minutes; time used by the Accused Petković: 11 minutes; time used by the Accused Ćorić: 3 hours and 10 minutes; time used by the Counsel for the Defence alone: 105 hours and 12 minutes; time used by the Counsel for the Accused Prlić: 33 hours and 17 minutes; time used by the Counsel for the Accused Stojić: 24 hours and 5 minutes; time used by the Counsel for the Accused Praljak: 14 hours and 15 minutes; time used by the Counsel for the Accused Petković: 18 hours and 28 minutes; time used by the Counsel for the Accused Ćorić: 12 hours and 51 minutes; time used by the Counsel for the Accused Pušić: 2 hours and 16 minutes.

¹⁹ The Decision on the Principles for Recording the Use of Time envisages two distinct categories of procedural matters, namely: 1. the category of procedural matters arising from the examination of a witness, such as the admission of evidence and the time used for dealing with objections and 2. the category of any other procedural matter. Due to some technical problems, however, it was not possible to make a distinction between the two categories in the record of time of 3 November 2006.

²⁰ T(F) of 6 November 2006, pp. 9525-9556.

before the Tribunal. It opposed the motion to deduct the time used for objections from the time allocated to the Party raising the objection. In this respect, it stressed that the jurisprudence of the Tribunal requires a party to present its position regarding an issue by means of an objection, otherwise it could not be considered for appeal. Moreover, the Accused Prlić said that he would renounce his right to an expeditious trial provided that the proceedings were of a reasonable duration. Finally, the Defence indicated that it was impossible to estimate the length of time necessary for the presentation of the Defence case before the Prosecution ended the presentation of its case.

IV DISCUSSION

13. It follows from the record submitted by the Registrar on 3 November 2006 that, in the period between 26 April and 3 November 2006, the Prosecution used only 102 hours and 40 minutes out of the total sitting time of 333 hours and 30 minutes, or 30.78% of this time. This means that on average the Prosecution used 74 minutes each trial day (out of the 240 minutes allowed per a trial day). The Chamber thus calculated that at this pace, the presentation of the Prosecution evidence would not be completed before the beginning of March 2008.²¹ Taking into account the time that might be needed for the presentation of the Defence case, possible Prosecution reply, Defence evidence in rejoinder and evidence ordered by the Chamber pursuant to Rule 98 of the Rules, the trial might not finish before the end of 2009, or even the beginning of 2010. It should be noted that this calculation does not include the time needed to draft the judgement.

14. The Chamber considers that adhering to these excessively long terms would not be in the interest of justice or in line with the right of the Accused to a fair and expeditious trial. Articles 20 and 21 of the Statute stipulate that the Chamber shall ensure that the Accused be tried without undue delay. What constitutes a reasonable time for a trial to be brought to an end should be determined on a case per case basis.²² The Chamber has the inherent power to control the proceedings during the course of the trial and to take appropriate measures.²³ As regards the Accused Prlić's claim that he is willing to renounce his right to an expeditious trial, the Chamber considers that it is not a real renunciation because the Accused Prlić explicitly

²¹ The Chamber used the following calculation to arrive at this date. Out of the 400 hours originally allocated to the Prosecution, the time remaining at its disposal is 297 hours or 17,820 minutes. If the Prosecution uses no more than 74 minutes per trial day, it will take it another 241 trial days (17,820/74) to present its evidence, which corresponds to about 60 weeks (241/4) starting from 3 November 2006, not taking into consideration the court recess.

It should be noted that the Prosecution estimates that it will complete the presentation of its case at the end of the year 2007. This calculation however is based on 90 minutes (time used by the Prosecution) per trial day. T(F) of 16 October 2006, p. 8415 and Court Transcript in English ("T(E)"), p. 8416.

²² See in this respect *Prosecutor v. Slobodan Milošević*, case IT-02-54-T, oral decision of 10 April 2002, T(F) pp. 2782-2785 ("Milošević Trial Chamber Decision"), in which the Trial Chamber ruled that "the Prosecution would have fourteen months in which to present its case"; *Prosecutor v. Slobodan Milošević*, case IT-02-54-AR73, "Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit", 16 May 2002 ("Milošević Appeals Chamber Decision"), which supported this decision; see also *Prosecutor v. Milan Milutinović et al.*, case IT-05-87-T, *Decision on the Use of Time*, 9 October 2006, whereby the Trial Chamber reduced the number of hours envisaged by the Prosecution for the presentation of its evidence from 280 to 220 hours.

²³ Milošević Appeals Chamber Decision, paras. 10 and 13.

requested to be tried within a reasonable time. Furthermore, the Chamber holds that the Accused are not the only ones to have the right to an expeditious trial and, consequently, cannot renounce it.

15. As the Chamber already stated in the Decision Adopting Guidelines, it considers that in the present case a period of three years constitutes a reasonable time limit for the presentation of evidence. Consequently, the Chamber considers that the presentation of the Prosecution evidence should not exceed 15 months and should be completed, subject to the unforeseen, before the court recess in July 2007.²⁴

16. In this context, there is a good reason to recall Resolution 1503 (2003) of the United Nations Security Council, which governs this trial and states that “all trial activities at first instance” should be completed by the end of 2008.²⁵ The Chamber is aware of the necessity to ensure that a trial is expeditious and does not consume, unduly, too much in the way of international time and resources.²⁶ It stresses, however, that the considerations of economy should never violate the right of the Parties to a fair trial.

17. The Chamber has decided to adopt several measures in order to respect the time limits stipulated in paragraph 15 of this Decision. Firstly, the Chamber has decided that the sitting time dedicated to procedural matters should be reduced. The Chamber notes that a large portion of time used to date was spent on procedural matters. More specifically, these issues used up 73 hours and 55 minutes out of 333 hours and 30 minutes of sitting time. In this respect, the Chamber would remark that this significant number of hours should diminish spontaneously. Numerous procedural incidents that have occurred since the beginning of the trial were linked to the fact that, this is the first time that the Tribunal has had to conduct a “mega-trial”. These difficulties should not recur in the future. Furthermore, the Registrar, the Parties and the Chamber have had to familiarise themselves with the e-court information system, which also slowed down the course of the proceedings.

18. Nevertheless, the Chamber is aware that this reduction of expected time will not be sufficient to significantly reduce the excess time dedicated to procedural incidents. In order to guarantee better employment of the sitting time, the Chamber must thus take the following measures, which are also intended to prevent the Parties from raising objections that have no real grounds. 1. In the future, the Chamber will play a more active role in dealing with the objections raised by the Parties and will take a firm position in this matter. It is aware that a Party must present its position regarding an issue by means of an objection in order to be able to raise the alleged error in appeal. It notes however, that the Defence has shown a tendency to make objections in order to raise issues which should be discussed during the cross-examination of a witness. 2. In order to save as much time as possible, the Chamber hereby directs the Prosecution to file requests for witness protection measures in writing. 3. It hereby directs the Parties to move for the admission of evidence presented in court by filing written lists. These lists may be filed in court and will be marked IC (“in court”).

²⁴ See also Milošević Trial Chamber Decision, in which the Trial Chamber held that no Prosecution case should continue for longer than 14 months.

²⁵ S/RES/1503 (2003) UN Security Council Resolution, adopted by the Security Council at its 4817th session, 28 August 2003.

²⁶ *Prosecutor v. Slobodan Milošević*, case IT-02-54-T, 20 May 2003, T(F) p. 20750.

19. Next, the Chamber has decided to reduce the number of hours allocated to the Prosecution for the presentation of its evidence. The Chamber would note that there is a considerable divergence between the data on the basis of which the Chamber made its calculations in the Decision Adopting Guidelines and those communicated in the present record. Indeed, the Chamber allocated 400 hours to the Prosecution under the assumption that the Prosecution would complete the presentation of its evidence within a year. This assumption has proved unworkable under the current conditions, which was shown in the record submitted by the Registrar.²⁷

20. Consequently, the Chamber hereby reduces by 107 hours the number of hours allocated to the Prosecution for the presentation of its evidence. This means that the time remaining at the disposal of the Prosecution for the presentation of its evidence is reduced from 297 hours to 190 hours.²⁸ The Chamber hopes that it will be able to increase the average time used by the Prosecution per trial day from 74 minutes to at least 86 minutes.²⁹ In this way, the Prosecution should be able to conclude the presentation of its evidence before the court recess in July 2007.

21. In order to save as much time as possible, the Chamber also encourages the Prosecution to present its evidence in a more efficient manner by calling only those witnesses who are absolutely necessary to its case and by presenting only such evidence that is crucial to prove that the crimes were committed and that the Accused were responsible for them. Furthermore, it invites the Prosecution to use more frequently the procedure postulated under Rules 92 *bis* and *ter* of the Rules, especially for witnesses called to testify about crimes committed in the municipalities and detention centres. In this way, the Prosecution could present a number of key witnesses as *viva voce* witnesses who would subsequently supplement their statements by making statements pursuant to Rule 92 *ter* of the Rules. This evidence could then be corroborated by written statements or transcripts presented pursuant to Rule 92 *bis* or *quater* of the Rules. Moreover, the Chamber urges the Prosecution to examine the possibility of reducing the scope of the Indictment or its evidence.

22. The Chamber also notes that the reduction of time allocated to the Prosecution refers only to the duration of the presentation of the Prosecution case. In view of the fact that the time allocated for cross-examination is proportional to the duration of the examination-in-chief, it also impinges on the Defence. The Chamber shall deal with

²⁷ The initial calculation was based on the assumption that the time used to deal with procedural matters and the Judges' questions would not exceed 120 hours per year, or 13% of the total sitting time. Actually, to date, about 74 hours (22% of the time) have been dedicated to procedural matters and 31 hours (9.3% of the time) to the Judges' questions. Moreover, the initial calculation presupposed that the time allocated for cross-examination would be equal to the time allocated for the examination-in-chief and re-examination. In fact, the Chamber has frequently granted additional time to the Defence when one or several Accused were directly concerned by the testimony of a witness.

²⁸ As of 13 November 2006, the remaining sitting time until the summer court recess in 2007 is 33 weeks (37 weeks minus the 4 weeks of court recess), or 132 trial days (33*4 trial days per week). This corresponds to 528 trial hours (132 days * 4 hours per day) or 31,680 trial minutes. At least 10% (53 hours) of this time will be used for procedural matters and at least 10% (53 hours) of this time will be used for the Judges' questions. Consequently, there remain 422 trial hours or 25,320 trial minutes to be divided between the Prosecution and the Defence. If we consider that the Chamber has to grant additional time to the Defence when one or several Accused are directly concerned by a witness, the Defence and the Prosecution will use up, respectively, 55% and 45% of this time. Consequently, the Prosecution will have at its disposal 190 hours or 11,400 minutes.

²⁹ This is 11,400 minutes/ 132 trial days.

the modalities and the time to be allocated for the presentation of the Defence case at a later date.

23. Finally, the Chamber reserves the right to modify the measures adopted by this decision should new circumstances arise.

V DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statue and Rules 54 and 90(F) of the Rules,

DECIDES to supplement the Decision Adopting Guidelines. Thus, the time allocated to the Prosecution for the presentation of its evidence is reduced by 107 hours. As of 13 November 2006, the Prosecution shall have 190 hours at its disposal to present its case.

DIRECTS the Prosecution to submit its requests for witness protection measures in writing, **AND**

DIRECTS the Parties to draft written lists when moving for the admission into evidence of documents presented in court. These lists may be filed in court and will be marked IC ("in court").

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of November 2006
At The Hague (The Netherlands)

[Seal of the Tribunal]