



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: 29 May 2006  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti  
Judge Árpád Prandler  
Judge Stefan Trechsel

**Registrar:** Mr Hans Holthuis

**Order of:** 29 May 2006

**THE PROSECUTOR**

v.

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

**DECISION ON DEFENCE REQUEST FILED JOINTLY BY THE  
SIX ACCUSED FOR CERTIFICATION OF INTERLOCUTORY APPEAL  
AGAINST THE ORAL DECISION OF 8 MAY ON TIME ALLOCATED  
FOR CROSS-EXAMINATION BY DEFENCE**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Daryl Mundis

**Defence Counsel:**

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 for Milivoj Petković  
Mr Tomislav Jonjić for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

**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”);

**BEING SEIZED OF** the “Joint Defence Request for Certification for Appeal of Oral Decision of Trial Chamber of 8 May 2008 Relating to Cross-Examination by Defence” filed jointly on 15 May 2006 (“Request”) by the defence of the six accused (“Defence”) pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) in which the Defence requests the Chamber to authorise it to file an interlocutory appeal against the Chamber’s oral decision of 8 May 2006 (“Decision”);

**NOTING** the “Prosecution Response to Joint Defence Request for Certification for Appeal of Decision relating to Cross-Examination by Defence” filed on 17 May 2006 (“Response”) in which the Prosecution is not opposed to the filing of an interlocutory appeal on the Decision provided that the trial proceedings are not interrupted while the appellate proceedings are underway;

**NOTING** the Decision in which the Chamber adopted the following three principles: 1) the total time limit of cross-examination by the Defence of the six accused shall not *in principle* exceed that of the Prosecution’s direct-examination and, if the Defence fails to reach an agreement, shall be allocated equally among the Defence Counsel,<sup>1</sup> 2) the Defence Counsel shall rotate their order of cross-examining witnesses,<sup>2</sup> and 3) if the testimony of a witness concerns the responsibility of one of the accused in particular, the time for cross-examination may be allocated differently;<sup>3</sup>

**CONSIDERING** that, according to the Defence, the testimony of witness Donia illustrated how unfair the implementation of the Decision could be, for example, by allocating Mr Karnavas only four or five hours for cross-examination;<sup>4</sup>

**CONSIDERING**, furthermore, that the Defence deems that when the Chamber limited the time for cross-examination it should have borne in mind the extreme complexity of the case and in particular the fact that all the accused have been charged

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<sup>1</sup> Transcript, 8 May 2006, pp. 1475 and 1476.

<sup>2</sup> Ibid., pp. 1485 and 1486.

<sup>4</sup> Request, paras. 3 and 4.

in an undifferentiated form with every mode of criminal responsibility provided for in Article 7 of the Statute;<sup>5</sup>

**CONSIDERING** that the Defence has concluded that there is no logical basis for the Decision and that allocating time for cross-examination on a case-by-case basis depending on the specificity of each testimony would have been preparable;<sup>6</sup>

**CONSIDERING** that in its Request the Defence relies upon the jurisprudence of the European Court of Human Rights (“ECHR”) and specifically the *van Mechelen v. Netherlands* Case according to which judges must, in principle, favour measures which are the least restrictive to the rights of the accused;<sup>7</sup>

**CONSIDERING** that rather than setting the time available for cross-examination once and for all, the Chamber should have, pursuant to ECHR jurisprudence, left it to the Defence to exercise their professional judgement as to the conduct of cross-examination and limit this time only if necessary;<sup>8</sup>

**CONSIDERING** that the Defence furthermore submits that the Chamber, in rendering its decision, should not have taken into account the political and economic reasons arising from the Tribunal’s “completion strategy”;<sup>9</sup>

**CONSIDERING** that according to the Defence, the result of all these issues is that the Decision could potentially compromise the fair and expeditious conduct of the proceedings and that its immediate resolution by the Appeals Chamber could materially advance the proceedings;<sup>10</sup>

**CONSIDERING** that the Prosecution submits that the Defence should be permitted to file an interlocutory appeal against the Decision as it could have significant repercussions on the proceedings;<sup>11</sup>

**CONSIDERING** that the Chamber nevertheless considers the Decision to be perfectly reasonable and notes that it is “flexible” since it allows Counsel to agree among themselves on the allocation of time for their respective cross-examinations, so

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<sup>5</sup> *Ibid.*, para. 5.

<sup>6</sup> *Ibid.*, para. 6.

<sup>7</sup> *Ibid.*, para. 8.

<sup>8</sup> *Ibid.*, para. 9.

<sup>10</sup> *Ibid.*, paras. 10 and 11

<sup>11</sup> Response, para. 21.

that if a specific Counsel is directly concerned by the testimony of a witness this Defence may be allocated more time for the cross-examination;<sup>12</sup>

**CONSIDERING** that the Prosecution also submits that, according to the Tribunal's practice, the time allowed for cross-examination is equated to the time of the direct-examination and in some cases has even been reduced to 60% of the direct-examination;<sup>13</sup>

**CONSIDERING** that the Prosecution further notes that during the hearing of the first six witnesses there was no prejudice against the Defence as a result of the implementation of the Decision<sup>14</sup> and that, in any event, for practical organisational reasons in terms of the proceedings (such as the scheduling of witness testimony) it is necessary to set time limits;<sup>15</sup>

**CONSIDERING** that the Prosecution submits, in conclusion, that the Chamber has allotted the Prosecution a maximum of 400 hours in which to present its evidence;<sup>16</sup>

**NOTING** the context which led the Chamber to take the Decision;

**CONSIDERING** that at the Status Conference held on 16 February 2006, the Pre-Trial Judge heard the opinion of the Prosecution and the Defence on the time to be allocated for cross-examination by Defence;<sup>17</sup>

**CONSIDERING** that, at the Status Conference held on 30 March 2006, the Pre-Trial Judge once again raised the issue of the time to be allocated for cross-examination by the Defence and moreover noted that, according to a calculation made by the Prosecution, the trial would continue till 2012 (roughly six years), which is much longer than the date set of around 2008-2009 by the Security Council to complete all the Tribunal's trials.<sup>18</sup>

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<sup>12</sup> *Ibid.*, para. 9.

<sup>13</sup> *Ibid.*, para. 6.

<sup>14</sup> *Ibid.*, paras., 10-14.

<sup>15</sup> *Ibid.*, paras., 15-17.

<sup>16</sup> *Ibid.*, para. 18.

<sup>17</sup> Transcript, 16 February, pp. 477-493.

<sup>18</sup> Transcript, 30 March 2006, pp. 514-517.

**CONSIDERING** that this issue was also discussed by the Parties at the Status Conference held on 12 April 2006<sup>19</sup> when the Prosecution indicated it would present its evidence within some 450 hours;<sup>20</sup>

**CONSIDERING** that at the Pre-Trial Conference held on 25 April 2006 the Prosecutor Mrs Carla Del Ponte undertook to have the Prosecution present its evidence within 450 hours;<sup>21</sup>

**CONSIDERING** that, following these status conferences and the Pre-Trial Conference, in its decision of 28 April 2006 the Chamber directed the Prosecution to present its evidence within one year<sup>22</sup> based on of the principle that the time for cross-examination would not be in excess of that for direct-examination;<sup>23</sup>

**CONSIDERING** that in setting this one-year time limit, the Chamber bore in mind the specific features and the scale of this case, which has six accused and 1,700 facts to be established;

**CONSIDERING** moreover that the hearing of the first three witnesses has shown the need to limit the time available for cross-examination if there is disagreement among the Defence Counsel on how to conduct the cross-examination;<sup>24</sup>

**CONSIDERING** that, it was not until all these discussions, the hearing of the first witnesses and bearing in mind the specific features of the case that the Chamber took the decision that cross-examination by the six accused should not, in principle, take more time than the Prosecution's direct-examination;

**CONSIDERING**, however, that the Decision provides that only if the accused *fail to reach an agreement*, then the time for cross-examination will be allocated equally among them,<sup>25</sup> and that if a witness testimony bears specifically on the responsibility of one accused, then the time for cross-examination may be allocated differently;<sup>26</sup>

<sup>19</sup> Transcript, 12 April 2006, pp. 672 and 673.

<sup>20</sup> *Ibid.*, pp. 672 and 673.

<sup>21</sup> Transcript, 25 April 2006, p. 726.

<sup>22</sup> Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings, 28 April 2006, para. 7.

<sup>23</sup> *Ibid.*, para. 5.

<sup>24</sup> Transcript, 8 May 2006, pp. 1475, 1485 and 1486.

<sup>25</sup> Transcript, 8 May 2006, pp. 1475 and 1476.

<sup>26</sup> Transcript, 8 May 2006, pp. 1486 and 1486.

**CONSIDERING** that the Decision was based on Article 21 of the Statute which provides that the accused have the right to both an expeditious and a fair trial, and pursuant to the ECHR jurisprudence according to which “administering justice [is to be] without delays which might jeopardise its effectiveness and credibility”.<sup>27</sup>

**CONSIDERING** that, although convinced that the Decision is reasonable, the Chamber deems that the Defence has nevertheless shown that setting time limits for cross-examination or the Trial in general raises an issue of principle with regard to the trial’s fairness and expediency and that its immediate resolution by the Appeals Chamber could materially advance the proceedings;

**CONSIDERING** furthermore that the Appeals Chamber decision, falling within the Security Council’s framework of the Tribunal’s completion strategy, could also influence the other multiple accused trials which are being prepared;

**CONSIDERING** that the Prosecution has no objection to the Request;

**FOR THE FOREGOING REASONS,**

**PURSUANT** to Rule 73(B) of the Rules,

**GRANTS** the Request.

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

/signed/

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this twenty-ninth day of May 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>27</sup> *Moreira de Azevedo v. Portugal* Case, 23 October 1990, A189, para. 74, and *H. v. France* Case, 24 October 1989, A162-A, para. 74.