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UNITED
NATIONS

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-05-87-T

Date: 18 March 2008

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **18 March 2008**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

DECISION ON LUKIĆ DEFENCE REQUEST FOR INFORMATION ON FEBRUARY 2008 REPORT ON USE OF TIME

Office of the Prosecutor
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Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 "Sreten Lukic's Objection and Request for Substantiation of Internal Memorandum dated 29 February 2008," filed 6 March 2008 ("Motion"), and hereby renders its decision thereon.

1. In the Motion, the Lukić Defence objects to the February 2008 report on the use of time on the basis that "the fundamentals of justice and the work of this Tribunal ought to have some level of transparency as far as the public and the accused are concerned" and requests the following:

(a) "That the precise nature of time keeping is fully disclosed to the parties, including but not limited to the person so employed and methods used and whether this is done concurrently with the ongoing trial hearings or at some later time."

(b) "A precise explanation of how the determination is made, the method employed, the justification and legal basis for the same and the persons, person or institution making the determination to qualify something as being direct examination time chargeable to a particular party or otherwise."

(c) "[C]opies of all supporting documentation that is kept and exists for issuing this and the previous summaries that have been kept during the defence case. Likewise, for purposes of comparison we would request the same for the similar time analysis that was undoubtedly being done during the time of the Prosecution case in chief."

(d) "Depending on the information so received, [the Lukić Defence] reserve[s] the right to insist on having representatives of the defence involved in every aspect of the time recordation process and reporting of the same from this date forward."

2. In paragraph 2 of the "Order on Procedure and Evidence," issued on 11 July 2006,[1] the Chamber stated as follows:

> A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used during the evidence of each witness: (a) by the Prosecution for its examination-in-chief, noting in each case whether part of the witness's evidence was given in the form of a statement under Rule 89(F) or 92 *bis*, and the length of that statement; (b) by each of the individual Defence teams for cross-examination; (c) by the Prosecution for re-examination; (d) by the Judges for putting questions to witnesses; and (e) for all other matters, including procedural and administrative matters. Regular reports on the use of time shall by compiled by the Registry in conjunction with the Chamber, which shall be provided periodically to the parties. The Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning time used by the Prosecution or the Defence.

[1] As modified by the "Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence," issued 16 August 2006.

The Chamber notes that the "Order on Procedure and Evidence" applies *mutatis mutandis* to the Defence case.[2]

3. On pages six and seven of the "Decision on Use of Time," issued 9 October 2006, the Chamber ordered as follows:

> If the parties dispute the calculations or time records set forth in this Decision, which are based upon the records kept by the Registry, they shall file any such challenge in the form of a written application to the Chamber within fourteen days of this Decision.
>
> * * *
>
> As ordered in the Order on Procedure and Evidence, regular reports on the use of time shall by compiled by the Registry in conjunction with the Chamber, and shall be provided periodically to the parties. Any challenge to the information contained within the report shall be filed in the form of a written application to the Chamber within seven days of the provision of the report.

4. The Chamber has issued fourteen reports on the use of time since the "Decision on the Use of Time." The reports on the use of time during the Defence case have carried the following text on the first page:

> In paragraph 2 of its "Order on Procedure and Evidence", issued on 11 July 2006, the Trial Chamber decided, *inter alia*, that "[r]egular reports on the use of time shall b[e] compiled by the Registry in conjunction with the Chamber, which shall be provided periodically to the parties. The Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning time used by the Prosecution or the Defence."
>
> On 22 June 2007, during the Pre-Defence Conference, the Trial Chamber issued an oral ruling pursuant to Rule 73 *ter* in which it decided to allocate to the Defence a maximum of 240 hours for the presentation of their cases.[3]
>
> As ordered, the parties have seven days from the date of this updated monthly report to file any challenge to the information contained herein in the form of a written application to the Trial Chamber.[4]

5. This is the first instance of a time report being challenged by one of the parties, and the Chamber will only entertain the Motion in respect of the report for February 2008, pursuant to the seven-day deadline. Much of the other information sought in the Motion is already contained within the Orders and Decisions of the Chamber, which have been quoted above for the convenience of the Lukić Defence. Moreover, the quantitative and qualitative determinations of time are done by the Registry Court Officer, under the direction of the Chamber, in a

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[2] *See* Order on Prosecution Motion to Postpone Close of Case-in-chief, Pre-defence Conference, and Commencement of Defence Case, 23 March 2007.

[3] Pre-Defence Conference, T. 12847 (22 June 2007).

[4] Decision on the Use of Time, 9 October 2006, p. 7, para. 6.

contemporaneous fashion. At the end of each month, the raw data is then given to the Chamber, for preparation of the monthly report.

6. That is sufficient to answer many of the enquiries set forth in the Motion. However, the Chamber considers that it is appropriate for the Lukić Defence to be furnished with the raw numerical data compiled by the Registry for February 2008, under the direction of the Chamber, in order to formulate its objection to the February 2008 report with more specificity.

7. The Chamber devised the foregoing system to ensure accurate and transparent use of time in the trial. However, this has always been regarded by the Chamber as a mere tool to provide information to the Chamber to assist it to determine issues related to the use of time, which it will always consider on a much broader basis than simply the click of the time keeper's watch. During the hearing on 13 March 2008, the Chamber stated as follows:

> JUDGE BONOMY: You should have realized from what has happened so far in the case that—albeit there is a system of recording very accurately the use of time and then producing monthly a clear statement of the position for the sake of transparency, contrary to the motion you made to us so far about the matter—we have taken a flexible approach to the ultimate assessment of the time available to each individual party, and there's no question of you being cut off as of the minute your 80 hours expire. On the other hand, whether or not that flexibility extends to any particular period will depend on the circumstances we face because we have to be fair to all the parties involved here, not just a straightforward battle between you and the Prosecution.
>
> You'll find on any view of time in this case that by the time you've presented your defence, you will have used more time than the combined defences of Pavkovic and Lazarevic, just as a rough indication of I think a useful rule-of-thumb comparison of the way in which we are trying to look at this.
>
> MR. LUKIC: Thank you, Your Honour

Echoing these comments from the Bench, the Chamber rejects any argument made by the Lukić Defence that there is a lack of transparency at work in the trial, either in relation to the use of time or any other aspect of the proceedings. The Chamber's system for recording time, far from being a source of opacity, is a valuable—and transparent—tool for ensuring the fair and expeditious conduct of the trial under Articles 20 and 21 of the Statute of the Tribunal.

8. The Chamber does not consider it appropriate to have "representatives of the defence involved in every aspect of the time recordation process and reporting of the same from this date forward," since this is a part of trial management that is the responsibility of the Chamber. In any event, such a request comes far too late in the proceedings since it would require a major alteration in the practice followed by the Chamber, without providing any obvious benefits for the conduct of the trial proceedings.

9. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rule 54 of the Rules of Procedure and Evidence of the Tribunal, hereby DENIES the Motion, in part, and GRANTS the Motion, in part, and ORDERS as follows:

a. The Registry shall furnish the parties, within three days of the date of this Decision, with the raw data for the recordation of time in the trial for February 2008, *i.e.*, no later than 20 March 2008.

b. The Lukić Defence shall have an additional seven days, after receipt of the raw data in which to object to the February 2008 time report, *i.e.*, no later than 26 March 2008.

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

Judge Iain Bonomy
Presiding

Dated this eighteenth day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]