



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: 16 April 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: 16 April 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON LUKIĆ DEFENCE OBJECTION TO
FEBRUARY 2008 REPORT ON USE OF TIME**

Office of the Prosecutor

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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 Motion Objecting to the Registry’s Record of Time in these Trial Proceedings,” filed 26 March 2008 (“Objection”), and hereby renders its decision thereon.

Background

1. 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 be 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.

The Chamber notes that the “Order on Procedure and Evidence” applies *mutatis mutandis* to the Defence case.²

2. 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 be 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.

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

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. The Chamber has issued sixteen 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

4. On 6 March 2008, the Lukić Defence objected 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 requested various forms of relief, including the records of the Registry underlying the February 2008 report.⁵

5. In its “Decision on Lukić Defence Request for Information on February 2008 Report on Use of Time,” issued 18 March 2008, the Chamber noted that (a) much of the information sought in the 6 March motion was already contained within the Orders and Decisions of the Chamber, (b) the quantitative and qualitative determinations of time are done by the Registry Court Officer, under the direction of the Chamber, in a contemporaneous fashion, and, (c) at the end of each month, the raw data is then given to the Chamber, for preparation of the monthly report. The Chamber also ordered the Registry to furnish the parties with the raw data for the recordation of time in the trial for February 2008 and extended the deadline for the Lukić Defence to object to the February 2008 report.

6. On 20 March 2008, the Registry complied with this order;⁶ and, on 26 March 2008, the Lukić Defence filed its Objection to the February 2008 report “as a further formulation with greater specificity of problems endemic in process [sic] being utilized in the Trial Proceedings”.⁷

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

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

⁵ Sreten Lukic’s Objection and Request for Substantiation of Internal Memorandum dated 29 February 2008, 6 March 2008.

⁶ Internal Memorandum from Court Officer to Parties and Chamber, 20 March 2008.

⁷ Objection, para. 8.

Discussion

7. The Chamber recalls its previous rejection of any argument made by the Lukić Defence that there is a lack of transparency at work in the trial and notes that 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. An evident example of the utility of this system was where the Chamber used the time recordation process to monitor the Lazarević Defence case in order to ensure that the Lukić Defence was given enough time to present its case.⁸ In fact, it is likely that, by the end of the trial, the Lukić Defence will have used more time than any other Accused in this case.

8. Moreover, this system has always been regarded by the Chamber as a mere tool to assist it in determining 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.⁹ The Appeals Chamber has held that the right of an accused to be tried without undue delay, as recognised in Article 21(4)(c) of the Statute, extends to all stages of the trial and imposes upon a Trial Chamber an obligation "to ensure ... that the trial is completed within a reasonable time."¹⁰

9. The Chamber will now turn to the specific objections to the February 2008 report, lodged by the Lukić Defence.

10. In respect of the evidence of Radojko Stefanović, who was called by the Lazarević Defence and who gave evidence on 5–7 February 2008,¹¹ the Lukić Defence complains that time from its global time limit for the presentation of the Defence case should not have been deducted during the examination of this witness by the Lukić Defence.¹²

11. The Chamber has reviewed, again, the allocation of time in respect of witness Stefanović. Fifty-five minutes were allocated to the Lukić Defence as cross-examination, and one hour and 19 minutes were allocated toward the Defence's global time limit. The Lukić Defence's examination of witness Stefanović focused on the following topics:

⁸ See Decision on Use of Time Remaining for Defence Phase of Trial, 21 November 2007, para. 3.

⁹ Decision on Lukić Defence Request for Information on February 2008 Report on Use of Time, 18 March 2008, para. 7.

¹⁰ See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-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, p. 4 (noting that this right "is recognized as a fundamental right of due process under international human rights law" and citing international human rights treaties and authoritative interpretations thereof). See also Decision on Lukić Motion for Alteration of Court Schedule, 20 February 2008, para. 7.

¹¹ T. 21640–21723 (5 February 2008); T. 21724–21806 (6 February 2008); T. 21807–21838 (7 February 2008).

¹² Objection, para. 5.

- a. reports and knowledge of VJ of MUP committing crimes and non-compliance of MUP with re-subordination orders;¹³
- b. the Priština Military District and re-subordination of Military territorial detachments;¹⁴
- c. anti-terrorist actions and activities of KLA;¹⁵
- d. joint MUP and VJ actions and checkpoints and patrols, especially in Đakovica/Gjakovë;¹⁶
- e. re-subordination;¹⁷
- f. joint actions and re-subordination, specifically regarding Drenica 1 Joint Action, and military territorial police and PJP units;¹⁸ and
- g. MUP planning of anti-terrorist actions.¹⁹

Part of the questioning, pursuant to Rule 90(H)(i), was on the basis that the witness could give evidence relevant to the Lukić's Defence's case, and part went to matters affecting the witness' credibility. It was therefore appropriate for a portion of the time to count toward the total 240 hours that the six Accused have been allotted to present their evidence.²⁰ Moreover, the Chamber has been allocating time in the above manner, in its discretion and on a case-by-case basis, since the commencement of the trial—including to the Lukić Defence in August 2007 (29 minutes), in September 2007 (6 minutes), in October 2007 (24 minutes), in December 2007 (1 hour, 19 minutes), and in January 2008 (3 hours, 15 minutes)—without ever having had a complaint

¹³ T. 21720–21729.

¹⁴ T. 21729–21731.

¹⁵ T. 21731–21739. During this line of questioning, the Chamber interjected a number of times to query the relevance or usefulness of the questions, given that they seemed general in nature or seemed to be on topics the witness knew nothing about. T. 21733, 21737–21739 (6 February 2008). *See, e.g.*, T. 21733–21734 (6 February 2008).

¹⁶ T. 21739–21743. The Chamber questioned the conduct of the cross-examination again, stating that it should proceed on “matters that you have a reasonable anticipation of this witness knowing about. We’ve had a witness, at least one and probably more than one, from the command group already.” T. 21740–21743 (6 February 2008).

¹⁷ T. 21743–21746.

¹⁸ T. 21746–21770.

¹⁹ T. 21770–21771.

²⁰ On 13 September 2007, the Chamber informed that parties that “there’s a difference between cross-examination in the sense of defending yourself against what’s coming from your co-accused and making your own case when it comes to our assessment of how you’re using the time.” T. 15547–15549 (13 September 2007). There were no objections to the Chamber’s comment.

before.²¹ To this extent, the Lukić Defence may even be estopped from raising the issue at this late stage in the proceedings.

12. In respect of the evidence of Miroslav Mijatović, who was called by the Lukić Defence and who gave evidence on 12–15 February 2008,²² the Lukić Defence complains that questioning by the Judges during the examination of the witness was allocated toward its global time.²³

13. The Chamber has reviewed, again, the allocation of time in respect of this witness, and finds it to have been recorded accurately. It is also noted that the Lukić Defence seems to have made some calculation errors in its Objection,²⁴ which evidences the fatuity of taking a second-by-second approach to these issues. In any case, when the Chamber intervenes to clarify an issue during the examination of a party, this time is properly within the 240-hour global time limit, seeing as the Chamber, rather than conducting its own independent enquiry into the evidence of the witness, is seeking to clarify an issue raised by the party conducting the examination. The time spent by the Chamber in questioning a witness after all the parties have conducted their examinations is, of course, allocated as “Chamber time,” and is not counted toward the Defence’s allotment. The Chamber has also had occasion to apportion questioning by the Judges during a party’s examination of a witness as “Chamber time,” where the Judges’ questions deviated from the line of examination of the party.

14. The Chamber points out that the Lukić Defence’s constant and unremitting complaints about how much time it has been allocated to present its case are without merit and border upon petulance, at this advanced stage of the proceedings. The Prosecution used 166 hours to present six cases against the Accused, whereas the Defence have been given 240 hours to present their cases. Moreover, the joint experts at the end of the case will most certainly fall outwith the 240-hour global time limit, and so this figure will undoubtedly be even larger.

15. The Chamber also notes that the Šainović, Ojdanić, and Pavković Defences significantly reduced their cases from the estimates given in their Rule 65 *ter* submissions and that these three

²¹ This system has been in place since the commencement of the case and has been applied to the rest of Lukić’s co-Accused, as well. For example, Milutinović, four minutes in October 2007; Šainović, 31 minutes in November 2007 and one hour, two minutes in February 2008; Ojdanić, 39 minutes in December 2007; Pavković, three hours, six minutes in September 2007 and one hour in November; and Lazarević, two hours, 15 minutes in September 2007 and 33 minutes in October 2007.

²² T. 22162–22243 (12 February); T. 22244–22359 (13 February); T. 22360–22456 (14 February); T. 22457–22550 (15 February).

²³ Objection, paras. 6–7.

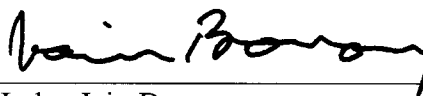
²⁴ On page 4 of the Objection, the sixth row, third column should be 5 minutes, 21 seconds, instead of 6 minutes 21 seconds. Also, when adding up the time in the third column, the Lukić Defence makes another mistake and thus, instead of the total being 29 minutes, 56 seconds, the total should be 32 minutes, 36 seconds.

Accused had initially indicated they were going to give evidence in their cases, but then decided not to. The Lukić Defence therefore may have had significantly less time in which to present its case, if the co-Accused had acted differently.²⁵

Disposition

16. For the foregoing reasons, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 73 *ter* of the Rules of Procedure and Evidence of the Tribunal, hereby REPELS the Objection.

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



Judge Iain Bonomy
Presiding

Dated this sixteenth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁵ See Decision on Use of Time Remaining for Defence Phase of Trial, 21 November 2007, para. 7.