



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 2008
Original: ENGLISH
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

Order of: 29 May 2008

THE PROSECUTOR

v.

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

PUBLIC

**ORDER CLARIFYING THE DECISION ADOPTING GUIDELINES FOR
THE PRESENTATION OF DEFENCE EVIDENCE**

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 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”) is seized of the “Petković Defence Submission on Issues Raised in Court on Thursday 22 May 2008 Concerning Re-Examination of Defence Witnesses Including Criteria for Calculating the Use of Time Allocations for the Defence Cases”, filed by Counsel for the Accused Petković (“Petković Defence”) on 26 May 2008 (“Submission”), in which it asks the Chamber to rule on a number of questions on how to interpret the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”).

II. PROCEDURAL BACKGROUND

2. At the hearing of 22 May 2008, the Chamber, the Petković Defence and Counsel for the Accused Prlić (“Prlić Defence”) discussed how to interpret the guidelines as adopted by the Decision of 24 April 2008, in particular those on the allocation of time for re-examination.¹ At the end of this hearing, the President of the Chamber invited the Petković Defence to file a submission arguing its position in this regard.²

3. Following this invitation, the Petković Defence filed the Submission.

4. On 28 May 2008, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Filing Regarding Defence Submissions Regarding Allocating Time for Re-Direct Examination” (“Filing”), in which the Prosecution argues its position on how to interpret the Decision of 24 April 2008 for the subjects discussed at the hearing of 22 May 2008.

III. ARGUMENTS OF THE PARTIES

5. In the Submission, the Petković Defence asks the Chamber to declare that (1) the time allocated in advance for the examination-in-chief of a Defence witness is for the examination-in-chief only of the witness and does not include the time for re-examination, (2) re-examination is to be allowed if the Party calling a witness so requests, and (3) the Chamber will allow sufficient time for re-examination, in the light of the matters brought up during the cross-examination of the witness.³

6. In the Filing, the Prosecution agrees with the Petković Defence that the time allocated for the interrogation of a witness should comprise only the time of the examination-in-chief and not re-examination.⁴ On the other hand, the Prosecution objects to the Chamber guaranteeing the Defence the right to always re-examine. The Prosecution notes that during the presentation of the Prosecution case, the Chamber granted it very little time or even no time to re-examine its witnesses.⁵

IV. DISCUSSION

7. As a preliminary observation, the Chamber recalls that it is seized of a motion filed by the Prosecution on 20 May 2008, in which the Prosecution asks it to amend some of the guidelines adopted in the Decision of 24 April 2008.⁶ The Chamber is awaiting a response from the other Parties. The following clarification refers solely to the guidelines as adopted on 24 April 2008. This is solely to clarify and not amend the Decision of 24 April 2008.

8. First, the Chamber would like to recall that pursuant to Rule 85 (B) of the Rules of Procedure and Evidence (“Rules”), the Party calling a witness may re-examine after the examination-in-chief and cross-examination. This rule is also repeated in guideline 1, paragraph 2 of the Decision of 24 April 2008. Nevertheless, as set out in guideline 3, paragraph 9 of the Decision of 24 April 2008, re-examination is limited to matters raised in cross-examination. In order to allow the Chamber to fulfil

¹ Court Transcript in French (“CT(F)”) of 22 May 2008, pp. 28490, 28500-28501, 28505-28511.

² CT(F) of 22 May 2008, p. 28511.

³ Submission, para. 2.

⁴ Filing, para. 2 (1).

⁵ Filing, paras. 2 (2) and (3).

⁶ “Prosecution Motion Concerning Use of Leading Questions, the Attribution of Time to the Defence Cases, the Time Allowed for Cross-Examination by the Prosecution, and Associated Notice Requirements”, 20 May 2008.

its obligation to control the mode of witness examination pursuant to Rule 90 (F) of the Rules, this guideline obliges the re-examining Party to specify in advance which of the points raised during cross-examination will be the subject of its re-examination.

9. The debate at the hearing of 22 May 2008 revolved around the question of whether the time allocated by the Chamber to examine a witness included both the time of the examination-in-chief and the time of the re-examination. In this regard, the Chamber recalls guideline number 5, paragraph 13 of the Decision of 24 April 2008. This paragraph allows the Chamber to determine the time for both the examination-in-chief and re-examination, based on information provided in accordance with guideline 4 and the lists filed pursuant to Rule 65 *ter* (G) of the Rules. According to this rule, the time allocated by the Chamber for a witness includes the time of the examination-in-chief and re-examination.

10. Unlike the Defence, the Chamber considers the rule to be fair. According to guideline 4, the Party calling a witness is to specify the expected duration of the hearing in the monthly calendar. Unless the duration proposed by the Party seems completely unreasonable or does not provide sufficient time in the monthly calendar for cross-examination by the other Parties, the Chamber will accept the proposition. It is therefore incumbent on the Party calling a witness to properly calculate in advance the time it needs for both the examination-in-chief and re-examination. The Chamber therefore invites the Party to indicate to it, before the beginning of the examination-in-chief, how much time is reserved for re-examination of the witness.

11. Having said this, the Chamber accepts that there might be situations where it is difficult to anticipate before the cross-examination of a witness whether re-examination will be necessary or not. The hypothesis can be imagined where the cross-examining Parties discuss matters with a witness that were not discussed during the examination-in-chief. Since the Party calling the witness cannot always anticipate this hypothesis, the Chamber will be flexible in possibly granting additional time for re-examination. It considers that this approach is consistent with the approach adopted during the presentation of the Prosecution case.

12. Regarding this point, the Chamber would like to recall that pursuant to guideline 6, paragraph 19 of the Decision of 24 April 2008, any time allocated for the

examination-in-chief and re-examination of a witness will be deducted from the total time granted to the Party presenting the witness.

13. This brings us to an interpretation of guideline 6, paragraphs 18, 19 and 20 of the Decision of 24 April 2008. Unlike guideline 5 that deals with the time allocated for the examination of **a specific witness**, guideline 6 deals with the **total time** granted to the Defence for the presentation of its case.

14. As set out in paragraph 18 of the Decision of 24 April 2008, on 25 April 2008 the Chamber rendered a decision setting the time for the presentation of the case of each Defence team.⁷ The Chamber thus allocated 95 hours to the Defence for the Accused Prlić, 59 hours to the Defence for the Accused Stojić, 55 hours to the Defence for the Accused Praljak, 55 hours to the Defence for the Accused Petković, 50 hours to the Defence for the Accused Ćorić and 22 hours and thirty minutes to the Defence for the Accused Pušić to present their respective cases. Paragraphs 19 and 20 of the Decision of 24 April 2008 explain what comprises this total time. According to paragraph 19, the total time allocated to a Defence team includes the time used for the examination-in-chief and re-examination of all its witnesses. According to paragraph 20, the total time also includes the time used during the cross-examination of a witness presented by another Defence team to discuss subjects matters that were not raised during the examination-in-chief of this witness.

15. The Chamber agrees that it is not always easy to distinguish between a subject already discussed with a witness during the examination-in-chief and a subject that could be qualified as “new” that was discussed for the first time during cross-examination of the witness. It might indeed be difficult to distinguish between the different subjects that are discussed. In order to make recording the time as clear as possible and facilitate the work of the Court Deputy, the Chamber invites the cross-examining Party to indicate before the beginning of cross-examination the subjects it would like to discuss with the witness, explaining the extent to which they were already discussed with the witness during the examination-in-chief. The Chamber will decide whether this is a new subject and deduct this time from the total time allocated for the presentation of the case of the cross-examining Party. It will ask the Court

⁷ Decision Allocating Time to the Defence to Present its Case, 25 April 2008.

Deputy to record this time according to guideline 7, paragraph 21 (c) of the Decision of 24 April 2008.

FOR THE FOREGOING REASONS,

THE CHAMBER

PURSUANT TO Rules 85 (B) and 90 of the Rules,

CLARIFIES the Decision of 24 April 2008 as set out above,

DECLARES that:

1. the time allocated by the Chamber to interrogate a Defence witness includes the time of the examination-in-chief and re-examination of the witness; this time is subject to the allocation of additional time upon the Party showing good cause; this additional time will also be deducted from the total time allocated by the Chamber for the presentation of the case of the Party calling the witness;
2. re-examination will be allowed in principle if the Party calling a witness so requests, while recalling that the Chamber exercises control over the mode of interrogating witnesses pursuant to Rule 90 (F) of the Rules;
3. the Chamber will grant sufficient time for re-examination in light of the subjects raised during cross-examination of the witness;

INVITES

4. the Party calling a witness to indicate to the Chamber no later than the beginning of the examination-in-chief how much time it has reserved, if so required, for re-examination of the witness, **AND**
5. the cross-examining Party to indicate before the beginning of the cross-examination the subjects it would like to discuss with the witness, explaining the extent to which they were already discussed with the witness during the examination-in-chief.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]