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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-04-74-AR73.4

Date: 6 February 2007

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Decision: **6 February 2007**

PROSECUTOR

v.

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

DECISION ON PROSECUTION APPEAL CONCERNING THE TRIAL CHAMBER'S RULING REDUCING TIME FOR THE PROSECUTION CASE

The Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Daryl Mundis
Ms. Christine Dahl

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Mr. Peter Murphy for Bruno Stojić
Mr. Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak
Ms. Vesna Alaburić for Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

1. The Appeals 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 ("Appeals Chamber" and "International Tribunal", respectively), is seized of the "Prosecution Appeal Concerning the Trial Chamber's Ruling Dated 13 November 2006 Reducing Time for the Prosecution Case" filed by the Prosecution on 30 November 2006 ("Interlocutory Appeal").

I. BACKGROUND

2. On 13 November 2006, Trial Chamber III rendered its "Decision on Adoption of New Measures to Bring the Trial to an End Within a Reasonable Time" ("Impugned Decision"),[1] in which it decided, *inter alia*, to reduce the number of hours allocated to the Prosecution for the presentation of its evidence in the *Prlić et al.* trial by 107 hours.[2] The Trial Chamber decided, pursuant to Articles 20 and 21 of the Statute of the International Tribunal ("Statute") and Rules 54 and 90(F) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), to amend its previous "Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings" of 28 April 2006 ("Decision Adopting Guidelines"),[3] by reducing the Prosecution's remaining 297 hours (out of a total 400 allotted hours) to 190 hours, beginning on 13 November 2006.[4]

3. On 23 November 2006, the Trial Chamber granted the Prosecution's application, pursuant to Rule 73(C) of the Rules, for certification to appeal the Impugned Decision[5] and on 30 November 2006, the Prosecution filed its Interlocutory Appeal.

4. On 11 December 2006, Defence Counsel for Jadranko Prlić, Slobodan Praljak and Berislav Pušić ("Accused") filed a Joint Response ("*Prlić et al.* Joint Response"),[6] supporting the Prosecution's appeal against the reduction of remaining time for the presentation of its case.[7] The *Prlić et al.* Joint Response, however, takes issue with the Prosecution's assessment of its own efficiency and cooperation with the Trial Chamber; rejects the suggestions it makes for speeding up

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[1] *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Adoption of New Measures to Bring the Trial to an End Within a Reasonable Time, 13 November 2006.
[2] Impugned Decision, paras. 19-20.
[3] *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings, 28 April 2006.
[4] Impugned Decision, para. 20, p. 10.
[5] T. 10678-10681, 23 November 2006.
[6] *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.4, Joint Defence Response of Jadranko Prlić, Slobodan Praljak and Berislav Pušić to Prosecution Appeal Concerning the Trial Chamber's Ruling Dated 13 November 2006 Reducing Time for the Prosecution Case, 11 December 2006.
[7] *Prlić et al.* Joint Response, paras. 2, 21. *See also*, paras. 3-7.

the trial; and joins the Trial Chamber in calling on the Prosecution to examine the possibility of reducing the scope of the Indictment or its evidence.[8]

5. On 11 December 2006, Defence Counsel for Milivoj Petković filed the "Response of the Defence for Milivoj Petković to Prosecution Appeal Against the Trial Chamber's Ruling Dated 13 November 2006 Reducing Time for the Prosecution Case" ("*Petković* Response"), supporting the Prosecution's appeal against the Impugned Decision's reduction of remaining time for the presentation of its case.[9] The *Petković* Response also supports the Trial Chamber's suggestions for improved efficiency by the Prosecution and its urging of the Prosecution to examine the possibility of reducing the scope of the Indictment.[10]

6. On 13 December 2006, Defence Counsel for Bruno Stojić and Valentin Ćorić filed a "Joinder of the Accused Stojić and Ćorić in Joint Defence Response of Jadranko Prlić, Slobodan Praljak and Berislav Pušić to Prosecution Appeal Concerning the Trial Chamber's Ruling Dated 13 November 2006 Reducing Time for the Prosecution Case," joining and adopting the *Prlić et al.* Joint Response.

7. On 14 December 2006, the Prosecution filed the "Prosecution Reply to Defence Responses to Prosecution Appeal of the Trial Chamber Ruling Dated 13 November 2006 Reducing Time for the Prosecution Case" ("Prosecution Reply").

II. STANDARD OF REVIEW

8. It is well established in the jurisprudence of the International Tribunal that Trial Chambers exercise discretion in relation to trial management.[11] The Trial Chamber's decision in this case to reduce the time allocated to the Prosecution for the presentation of its evidence was a discretionary decision to which the Appeals Chamber accords deference. Such deference is based on the recognition by the Appeals Chamber of "the Trial Chamber's organic familiarity with the day-to-

[8] *Ibid.*, paras. 2, 21. *See also* paras. 8-20.
[9] *Petković* Response, para. 5.
[10] *Ibid.*, para. 4.
[11] *Prosecutor v. Jadranko 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 ("*Prlić* Decision on Cross-Examination"), p. 3; *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 27 January 2006 ("Decision on Radivoje Miletić's Interlocutory Appeal") para. 4; *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004 ("*Milošević* Decision on the Assignment of Defence Counsel") para. 9; *Prosecutor v. Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, 16 May 2002 ("*Milošević* Decision to Impose Time Limit"), at para. 14: "The prosecution concedes, correctly, that the decision by the Trial Chamber to impose a time limit within which the prosecution was to present its case was a discretionary one."

day conduct of the parties and practical demands of the case."[12] The Appeals Chamber's examination is therefore limited to establishing whether the Trial Chamber has abused its discretionary power by committing a discernible error.[13] The Appeals Chamber will only overturn a Trial Chamber's exercise of its discretion where it is found to be "(1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion."[14]

III. DISCUSSION

9. Before addressing the Prosecution's arguments in this Interlocutory Appeal, the Appeals Chamber considers it useful to review the events leading up to the issuance of the Impugned Decision reducing the Prosecution's case. At the commencement of the trial, the Trial Chamber, in the Decision Adopting Guidelines, took the view that "it would be unreasonable for this trial to continue for longer than three years" and therefore considered that it would be appropriate to set out the manner in which it expected the trial proceedings to be conducted within that timeframe.[15] With respect to the Prosecution, after considering some of its proposals, the Trial Chamber exercised its power under Rule 73 *bis* (C)(ii) to limit the Prosecution's case by setting the maximum time that would be available for the tendering of its evidence. The Trial Chamber determined that "it is reasonable to require the Prosecution to complete its presentation of evidence within one year" and, in light of its calculation that a maximum total of 920 hours of court-room time would be available per year, allocated the Prosecution a total of 400 hours, which included examination-in-chief and re-examination.[16] The Trial Chamber specified that the Prosecution's "time does not include time used by the Judges to put questions to witnesses, or procedural matters" and also excludes time for cross-examination by the Defence or time for the Prosecution to present evidence in rebuttal.[17]

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[12] Decision on Radivoje Miletić's Interlocutory Appeal, para. 4; *Milošević* Decision on Defense Counsel, para. 9.

[13] *Prlić* Decision on Cross-Examination, p. 3 *citing Prosecutor v. Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, and IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 4: "Where an appeal is brought from a discretionary decision of a Trial Chamber, the issue in that appeal is not whether the decision was correct, in the sense that the Appeals Chamber agrees with that decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision", *see also* paras. 5-6; *see* also *Milošević* Decision on the Assignment of Defence Counsel, para. 10; Decision on Radivoje Miletić's Interlocutory Appeal, para. 6 *citing Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005 ("*Stanišić* Provisional Release Decision"), para. 6.

[14] Decision on Radivoje Miletić's Interlocutory Appeal, para. 6 *citing Stanišić* Provisional Release Decision, para. 6 & n. 10. The Appeals Chamber will also consider whether the Trial Chamber "has given weight to extraneous or irrelevant considerations or that it has failed to give weight or sufficient weight to relevant considerations . . . ." *Ibid.*

[15] Decision Adopting Guidelines, para. 2.

[16] *Ibid.*, paras. 7, 9.

[17] *Ibid.*, para. 7. The Trial Chamber indicated that time available for presentation of the Prosecution's evidence in rebuttal would be the subject of a further order at the relevant time. *Ibid.*

10. Six months later, on 3 November 2006, the Registry of the International Tribunal submitted its revised record of the sitting time in the trial to date from 26 April 2006 ("Registry's Record"), [18] which indicated that: the Prosecution had used 102 hours and 40 minutes for examination-in-chief and re-examination; the Defence had jointly used 126 hours and 5 minutes in cross-examination; the Judges had used 30 hours and 50 minutes for putting questions to the witnesses; and procedural matters took up 73 hours and 55 minutes. At a hearing held on 6 November, the Trial Chamber considered submissions it invited from the parties on the matter of its intention to adopt a number of new measures for the purpose of completing the Prosecution's case within a reasonable time in light of the Registry's Record.[19]

11. Thereafter, in the Impugned Decision, the Trial Chamber noted that in the past six months, the Prosecution only used 30.78% of the sitting time and that, at the current pace of the trial, the Prosecution's case would not be completed before the beginning of March 2008. As a result, the trial might not even finish before the end of 2009 or beginning of 2010. The Trial Chamber reiterated that, as stated in the Decision Adopting Guidelines, it considered that three years constituted a reasonable time for the trial. It noted, however, that the assumption that the Prosecution would be able to use its allocated 400 hours for presentation of its evidence within a year was unworkable in light of the figures presented in the Registry's Record. The Trial Chamber therefore placed a 15 month limit on the Prosecution's case such that it should be completed, subject to the unforeseen, by the court recess in July 2007. In order to achieve this deadline, the Trial Chamber reduced the Prosecution's outstanding 297 hours by 107 hours to 190 hours for the presentation of the remainder of its case[20] and suggested ways in which the Prosecution could present its evidence in a more efficient manner.[21]

12. In addition, the Trial Chamber noted that "a large portion of the time used to date was spent on procedural matters" due to the fact that "this is the first time that the Tribunal has had to conduct a mega-trial" and because the parties and the Chamber had to familiarise themselves with the e-

[18] 2nd Internal Memorandum Correcting the Internal Memorandum Regarding the *Prosecutor v. Prlić et al.*: Time-Monitoring; Period Ending 12 October 2006 and Updating the Time-Monitoring for Period Ending 2 November 2006, 3 November 2006.
[19] Impugned Decision, paras. 8-10.
[20] The Trial Chamber reduced the Prosecution's case in light of the reality that more time had been used for procedural matters and Judges' questions as well as for cross-examination by the Defence where one or several Accused were directly concerned by the testimony of a witness. *See* Impugned Decision, fns. 27-28. Thus, it calculated that for the remaining sitting time until the court recess in July 2007, the time allocated for procedural matters and Judges' questions would be increased from 13% of the sitting time to at least 20%. With the remainder of the time left after deducting procedural matters and Judges' questions, the Chamber calculated that the Defence should be given 55% of that amount for cross-examination rather than 50% as originally determined. The Prosecution was thus left with 45% of the amount of sitting time after subtracting time for procedural matters and Judges' questions. *Ibid.*
[21] Impugned Decision, paras. 13, 15, 19-21.

court system.[22] The Trial Chamber acknowledged that although only 120 hours were initially calculated per year for procedural matters and Judges' questions, or 13% of the sitting time, in fact, a total of 31.3% of the sitting time thus far had been used for those purposes.[23] However, the Trial Chamber anticipated that these hours should diminish spontaneously as the trial continued and indicated a number of measures to be taken to reduce the excess time dedicated to procedural matters in the future, including that it would more actively prevent the parties from raising objections with no real foundation.[24]

13. Turning to the Interlocutory Appeal, the Appeals Chamber notes that the Prosecution alleges that the Impugned Decision "denies and violates the fundamental right of the victims, the Prosecution and the international community to a fair trial."[25] The Prosecution specifically submits that the Impugned Decision (1) "substantially interferes with and unreasonably limits the Prosecution's ability to fairly and effectively present its case";[26] (2) "changes the rules for the conduct of the trial after the Prosecution has fully relied, to its detriment, on the Trial Chamber's earlier rulings";[27] (3) "penalises and prejudices the Prosecution without justification, for factors beyond the Prosecution's control";[28] (4) "is arbitrary and capricious, involving a too precipitous and too severe action to the prejudice of the Prosecution, without taking other available steps to provide more time and to conduct the trial proceedings more efficiently and fairly";[29] and (5) "impermissibly gives priority to a stated Completion Strategy deadline over the rights of the victims, the Prosecution and the international community."[30]

14. At the outset, the Appeals Chamber recalls that "every court possesses the inherent power to control the proceedings *during* the course of the trial."[31] It was therefore entirely within the Trial Chamber's discretion in the Impugned Decision to revise the time originally allocated to the Prosecution in the Decision Adopting Guidelines as a function of that power.[32] However, with respect to the Prosecution's first argument in this Interlocutory Appeal, the Appeals Chamber further recalls its previous holding in the *Orić* case that in setting time limits for the presentation of evidence, a Trial Chamber is required to consider whether the amount of time allocated is

[22] *Ibid.*, para. 17 (internal quotation marks omitted).
[23] *Ibid.*, fn. 27.
[24] *Ibid.*, paras. 17-18.
[25] Interlocutory Appeal, para. 3.
[26] *Ibid.*, paras. 3, 22-34.
[27] *Ibid.*, paras. 3, 35-37.
[28] *Ibid.*, paras. 3, 38-45.
[29] *Ibid.*, paras. 3, 46-57.
[30] *Ibid.*, paras. 3, 58-62.
[31] *Milošević* Decision to Impose Time Limit, para. 10 (emphasis in the original).
[32] *Ibid. See also*, Rules 54 and 73*bis*(F).

objectively adequate to permit the relevant party to fairly set forth its case.[33] While the *Orić* Decision applied to the *setting* of time limits rather than to their revision as in this case, the same logic applies. Furthermore, while that decision by the Appeals Chamber involved a reduction of the Defence's case, under Article 20(1) of the Statute of the International Tribunal, the requirement of the fairness of a trial is not uniquely predicated on the fairness accorded to any one party.[34] Indeed, the principle of equality of arms, falling within the fair trial guarantee under the Statute,[35] applies to the Prosecution as well as the Defence.[36] As previously reasoned by the Appeals Chamber:

> application of a fair trial in favour of both parties is understandable because the Prosecution acts on behalf of and in the interests of the community, including the victims of the offences charged (in cases before the Tribunal the Prosecutor acts on behalf of the international community). This principle of equality does not affect the fundamental protections given by the general law of Statute to the accused, and the trial proceeds against the background of those fundamental protections. Seen in this way, it is difficult to see how a trial could ever be considered fair where the accused is favoured at the expense of the Prosecution beyond a strict compliance with those fundamental protections.[37]

Thus, in this case, the question before the Appeals Chamber is whether the Trial Chamber, in reducing the Prosecution's case by 107 hours, took into consideration the complexity of the remaining issues to be addressed and determined that the remainder of the time allotted to the Prosecution was sufficient for allowing it a fair opportunity to present its case.[38]

15. The Appeals Chamber notes that, in the Impugned Decision, when reducing the time allotted to the Prosecution for the presentation of its case, the Trial Chamber was principally guided by its previous determination in the Decision Adopting Guidelines that three years constitutes a reasonable duration for this trial and the Registry's Record demonstrating that, at the current pace of the proceedings, the presentation of the Prosecution's evidence would not be completed before the start of March 2008, bringing the estimated close of the trial to the end of 2009 or the beginning of 2010.[39] The Trial Chamber considered that there was a "considerable divergence" between the data on which it based the 400 hour allocation to the Prosecution in the Decision Adopting

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[33] *Cf. Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, ("*Orić* Decision"), para. 8

[34] *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 13.

[35] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement"), para. 44; *Prosecutor v. Dario Kordić and Mario Čerkez*,, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 175.

[36] *Tadić* Appeal Judgement, para. 48; *Prosecutor v. Zlatko* Aleksovski, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999 ("*Aleksovski* Decision"), para. 25.

[37] *Aleksovski* Decision, para. 25 (citations omitted), *see also Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21-T, Decision on the Motion of the Joint Request of the Accused Persons Regarding the Presentation of Evidence, 24 May 1998, para. 44 ("compliance with the specific rights set out in Article 21 alone may not necessarily guarantee that there has been a fair trial" and that "a fair trial can only be considered within the plenitude of the trial as a whole").

[38] *Orić* Decision, para. 9. In this regard, the Appeals Chamber recalls that the Prosecution "has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond reasonable doubt." *Ibid.*, para. 7.

[39] Impugned Decision, para. 13.

Guidelines and that presented in the Registry's Record.[40] Therefore, in order to stay within the three year timeframe it concluded 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".[41]

16. The Appeals Chamber considers that although the Trial Chamber further based its decision on the fact 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",[42] it failed to adequately consider whether reducing the amount of time available to the Prosecution by 107 hours would still allow it the opportunity to fairly present its case.[43] The Trial Chamber's duty to ensure the fairness and expeditiousness of proceedings will often entail a delicate balancing of interests. This is particularly so in a trial of this scope and complexity, for which there is little precedent. As stated previously, in allocating or revising the amount of time allotted to a party for the presentation of its case, the Trial Chamber is required to ensure that the allotted time is reasonably sufficient in light of the complexity and number of issues to be litigated.[44] In this sense, the Trial Chamber was required to assess whether the appropriate balance was struck in reducing the time available to the Prosecution for the presentation of its case. However, it failed to actually do so, merely stating in this regard that "the considerations of economy should never violate the right of the Parties to a fair trial."[45] The Appeals Chamber recalls that a Trial Chamber must, at a minimum, provide reasoning in support of its findings on the substantive considerations relevant for a decision and considers that, in this case, the reasoning in the Impugned Decision in the absence of this assessment is insufficient in itself to support the reduction.[46] While it may be that, in light of the evidence presented to date, the reduction of 107 hours allocated to the Prosecution still permits it a fair opportunity to present its case, the Trial Chamber must specifically consider whether this is indeed so.

17. In so finding, the Appeals Chamber stresses that this is in no way a determination that the Trial Chamber abused its discretion in its original determination that three years is a reasonable timeframe for the conduct of this trial.

[40] *Ibid.*, para. 19.
[41] *Ibid.*, para. 15.
[42] *Ibid.*, para. 14.
[43] The Appeals Chamber notes that the Prosecution made it clear in oral argument that it would not be able to put forward a "fair and reasonable case" should the Trial Chamber reduce its total number of allocated hours by one fourth. *See* T. 9316, 1 November 2006; T. 9532, 6 November, 2006.
[44] *Orić* Decision, paras. 8-9.
[45] Impugned Decision, para. 16.
[46] *See Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006, para. 10; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 (finding that the Trial Chamber had an obligation to provide reasons for its decision, although it need not have provided its reasoning in detail); *Prosecutor v. Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR65, Decision on Provisional Release, 30 October 2002, para. 6.

18. In light of the foregoing, the Appeals Chamber does not consider it necessary, at this stage, to address in detail the Prosecution's second, third and fourth arguments. The Appeals Chamber only notes that the Trial Chamber clearly stated in the Decision Adopting Guidelines that the guidelines therein, including those with respect to the time available to the Prosecution for the presentation of its evidence "remain subject to future variation by the Chamber as the trial progresses [. . .]"[47] and thus, the Prosecution had notice that the 400 hours allocated were subject to possible modification later in the trial.

19. Furthermore, the Trial Chamber did indeed adopt measures in addition to the reduction of the Prosecution's time.[48] Moreover, many of the measures suggested by the Prosecution in this Interlocutory Appeal were already proposed and considered by the Trial Chamber when the Prosecution put forward its "10 Point Plan"[49] at the Status Conference which took place on 12 April 2006[50] and at the Pre-Trial Conference on 25 April 2006.[51] In the Decision Adopting Guidelines, the Trial Chamber stated in reference to the "10 Point Plan" that "[w]hile some of the proposals put forward by the Prosecution have merit, the Chamber is unable to accept the plan in its entirety as being consistent with its duty under Article 20(1) of the Statute. Indeed, there are aspects of the plan that would be impossible for the Chamber to apply."[52]

20. Finally, the Prosecution claims that the only articulated basis for the Trial Chamber's ruling that it should finish its case by July 2007 is "for the singular purpose of satisfying an alleged Completion Strategy deadline"[53] regardless of due process and fair trial concerns and further submits that the Impugned Decision violates and interferes with its independence and separate functions, in taking away its case.[54] With respect to the latter argument, the Appeals Chamber reiterates that the imposition of time limits in a trial – whether calculated in months or hours – is entirely the prerogative of the Trial Chamber. The true intent and extent of the independence accorded to the Prosecutor under Article 16 of Statute is to ensure that no "government or other institution or person, including the Judges of the Tribunal, can direct the Prosecutor as to whom he or she is to investigate or to charge."[55] The Appeals Chamber maintains that it is erroneous for the

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[47] Decision Adopting Guidelines, para. 2.
[48] Impugned Decision, paras. 17-19. *See also supra* para. 12.
[49] *Ibid.*, Annex 1.
[50] T. 628-672, 12 April 2006
[51] T. 725 – 751; 783- 789, 25 April 2006.
[52] Decision Adopting Guidelines, para. 4.
[53] Interlocutory Appeal, para. 34.
[54] *Ibid.*, para. 26.
[55] *Milošević* Decision to Impose Time Limit, para. 12.

Prosecution to suggest that its independence extends to the way in which its case is to be presented before a Trial Chamber.[56]

21. As for the Trial Chamber's consideration of the International Tribunal's Completion Strategy, the *Prlić et al.* Joint Response joins the Prosecution in submitting that "[w]hile the Trial Chamber presents its Impugned Decision as being in the interests of justice, it is in fact dictated by the Security Council's completion strategy."[57] Likewise, the *Petković* Response states that it is "transparent that the Trial Chamber's assessment and calculations of time have been driven by the deadline set by the UN Security Council resolution 1503"[58] and that the Trial Chamber "has worked backwards from that resolution to produce a timetable which will fit that deadline."[59]

22. The Appeals Chamber notes that the Prosecution and the Accused's arguments in this respect are based in large part on the Trial Chamber's observation that United Nations Security Council resolution 1503 (2003) "governs this trial" and declares the end of 2008 to be the deadline for all trial activities at first instance.[60] However, they are based on an inaccurate English translation of the original and authoritative French text of the Impugned Decision in which the Trial Chamber simply notes that this trial takes place against the background of Security Council resolution 1503 (2003).[61]

23. The Appeals Chamber finds that the Trial Chamber did not abuse its discretion in so noting when reducing the Prosecution's case in the Impugned Decision. The Trial Chamber did not state that because the Completion Strategy is reflected in a Security Council resolution, it is therefore bound to its deadlines in the management of this trial. Rather, it merely considered the Completion Strategy as one factor to be weighed in the Impugned Decision while correctly stressing that it would not allow the "considerations of economy" to "violate the right of the Parties to a fair trial."[62] The Appeals Chamber notes however, as it has done previously in this case, that Completion Strategy considerations aside,

> time and resource constraints exist in all judicial institutions and that a legitimate concern in this trial, which involves six accused, is to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time, which

[56] *Ibid.*, para. 13.
[57] *Prlić et al.* Joint Response, para. 6.
[58] *Petković* Response, para. 10(a).
[59] *Ibid.*, para. 10(c). The Prosecution cites this passage with agreement in the Prosecution Reply at paragraph 6.
[60] Impugned Decision, para. 16.
[61] The original French text reads as follows: " A cet égard, il ya lieu de rappeler également la Résolution 1503(2003) du Conseil de sécurité des Nation Unies dans laquelle s'inscrit le present procès et qui, dans sa version anglaise souligne que « *all trial activities at first instance* » devraient se terminer à la fin de l'année 2008."
[62] Impugned Decision, para. 16.

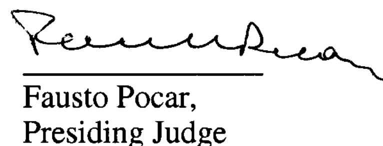
is recognized as a fundamental right of due process under international human rights law.[63]

IV. DISPOSITION

24. On the basis of the foregoing, the Impugned Decision is remanded to the Trial Chamber for its renewed assessment and consideration of whether the reduction of time would allow the Prosecution a fair opportunity to present its case in light of the complexity and number of issues that remain.

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

Done this 6th day of February 2007,
At The Hague,
The Netherlands.



Fausto Pocar,
Presiding Judge

[Seal of the International Tribunal]

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63 *Prlić* Decision on Cross-Examination, p. 4 (citations omitted).