



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: 11 December 2008
DATE
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

Decision of: 11 December 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON SUBMISSION OF THE EXPERT REPORT OF DAVOR
MARIJAN PURSUANT TO RULE 94 *BIS* (A) AND (B) AND ON MOTIONS
FOR ADDITIONAL TIME TO CROSS-EXAMINE DAVOR MARIJAN**

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 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”),

SEIZED of the submission of the expert report of Davor Marijan (Bruno Stojić’s Submission of the Expert Report of Dr Davor Marijan with Confidential Annexes A and B), filed partially confidentially by Counsel for Bruno Stojić (“Stojić Defence”) on 27 October 2008 (“Submission”),

NOTING the expert report by Davor Marijan attached in confidential annex to the Submission (“Expert Report”),

NOTING the addendum to the Submission (Confidential Addendum to Bruno Stojić’s Submission of the Expert Report of Dr Davor Marijan with Confidential Annexes A and B), filed partially confidentially by the Stojić Defence on 27 October 2008, in which it submits the *curriculum vitae* of Davor Marijan,

NOTING the notice by Slobodan Praljak in response to the Submission (Slobodan Praljak’s Notice of Intent to Cross-Examine Jadranko Prlić’s Expert Witness Milan Cvikić, Jadranko Prlić’s Expert Witness Svetlana Radovanović, and Bruno Stojić’s Expert Witness Dr Davor Marijan), filed by Counsel for Slobodan Praljak (“Praljak Defence”) on 6 November 2008 (“Praljak Notice”); the notice by Valentin Ćorić in response to the Submission (Valentin Ćorić’s Notice pursuant to Rule 94 *bis* (B) to Cross-Examine Bruno Stojić’s Expert Witness Dr Davor Marijan), filed by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 13 November 2008 (“Ćorić Notice”); the notice by Jadranko Prlić in response to the Submission (Jadranko Prlić’s Notice pursuant to Rule 94 *bis* (B) to Cross-Examine Stojić Defence Expert Davor Marijan), filed by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 13 November 2008 (“Prlić Notice”); and finally the notice by Milivoj Petković in response to the Submission (Notice by Milivoj Petković in relation to the Stojić Defence Expert Witness Davor Marijan), filed by Counsel for Milivoj Petković (“Petković Defence”) on 14 November 2008 (“Petković Notice”), in which the Praljak, Ćorić, Prlić and Petković Defence request to be able to cross-examine

Witness Davor Marijan pursuant to Rule 94 *bis* (B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the witness schedule filed by the Stojić Defence on 19 November 2008 (“Stojić Schedule”) in which it is indicated that the Stojić Defence plans to examine Witness Davor Marijan as of 19 January 2009 for four hours,¹

NOTING the notice from the Office of the Prosecutor (“Prosecution”) pursuant to Rule 94 *bis* (B) of the Rules (Prosecution’s Notice pursuant to Rule 94 *bis* (B) regarding Accused Stojić’s Expert Witness Davor Marijan), filed by the Prosecution on 25 November 2008 (“Prosecution Notice”), in which the Prosecution indicates that it would like to cross-examine the expert witness Davor Marijan,

SEIZED of the Motion of Milivoj Petković for a Fair Allocation of Sufficient Time (Being 4 hours) for his Defence to Cross-Examine the Expert Witness Davor Marijan Scheduled to Be Called by the Defence for Bruno Stojić, filed by the Petković Defence on 26 November 2008 (“Petković Motion for Additional Time”), in which the Petković Defence requests it be allocated four hours to cross-examine Witness Davor Marijan,

NOTING the email sent on 2 December 2008 by the Chamber’s legal officer to the Defence teams on behalf of the Chamber asking them whether they intended to file a response to the Petković Motion for Additional Time and, if so, to file it before 5 December 2008,

SEIZED of Jadranko Prlić’s Motion for Additional Time to Cross-Examine Stojić Defence Expert Davor Marijan, filed by the Prlić Defence on 3 December 2008 (“Prlić Motion for Additional Time”), in which the Prlić Defence requests that it be allocated 105 minutes to cross-examine Witness Davor Marijan,

SEIZED of Valentin Ćorić’s Motion for Allocation of Time to Cross-Examine Stojić Expert Witness Davor Marijan, filed by the Ćorić Defence on 4 December 2008 (“Ćorić Motion for Additional Time”), in which the Ćorić Defence requests at least four hours to be able to cross-examine Witness Davor Marijan,

¹ Schedule of the Stojić Defence witnesses sent by email to the Chamber and to the Parties on 19 November 2008.

NOTING Bruno Stojić's Response to Prlić, Petković and Čorić Motions for Additional Time to Cross-Examine Stojić Defence Expert Davor Marijan, filed by the Stojić Defence on 5 December 2008 in response to the Petković, Prlić and Čorić Motions for Additional Time ("Stojić Response"), in which the Stojić Defence objects to the motions,

NOTING the Prosecution Response to Accused Petković Motion for Fair Allocation of Sufficient Time to Cross-Examine the Expert Witness Davor Marijan, filed by the Prosecution on 5 December 2008 ("Prosecution Response"), in which the Prosecution, in principle, does not object to the Petković Request for Additional Time provided that (1) the cross-examination of Davor Marijan is actually considered to be a direct examination and the Chamber orders the Petković Defence to put only open-ended questions within this scope, (2) the Chamber orders the Petković Defence to provide a complete summary pursuant to Rule 65 *ter* (G) of the Rules, (3) the Chamber orders the Petković Defence to disclose to the Prosecution, 30 days in advance, the documents that the Petković Defence intends to introduce by means of the examination, and (4) that the Prosecution is allocated additional time equal to the direct examination of the Petković Defence; and in the alternative, should the Chamber not grant the above-cited conditions, the Prosecution requests the postponement of its cross-examination of Witness Davor Marijan in order to have time to prepare it,²

CONSIDERING first that the Chamber decides to join its examination of the Submission, the Petković Motion for Additional Time, the Prlić Motion for Additional Time and the Čorić Motion for Additional Time, since all of these submissions deal with the testimony of Witness Davor Marijan,

CONSIDERING that Counsel for Berislav Pušić did not file a notice informing the Chamber of their intention to cross-examine Witness Davor Marijan,

CONSIDERING that in support of their respective Notices, the Praljak, Čorić, Prlić and Petković Defence confine themselves to informing the Chamber that they wish to cross-examine Davor Marijan and do not indicate whether they accept the Expert

² Prosecution Response, para. 14.

Report and/or challenge Davor Marijan's expert status and/or challenge the relevance of the Expert Report,³

CONSIDERING that in support of its Notice, the Prosecution maintains that the Expert Report is marred by errors and that it raises substantial issues,⁴ but does not give an opinion on the expert status of Witness Dvor Marijan,

CONSIDERING that after examining the Expert Report and professional qualifications of Davor Marijan, the Chamber finds that Davor Marijan is, *prima facie*, authorised to testify as an expert on the matters set out in his report, in particular on aspects relevant to the creation, the organisation and the activities of the Defence Department of the Croatian Community of Herceg-Bosna,

CONSIDERING that pursuant to the requests formulated in the Notices of the Prosecution and the Praljak, Petković, Ćorić and Prlić Defence, the Chamber considers that Davor Marijan should testify in person before the Tribunal to answer questions by the Stojić Defence, within the scope of direct examination, and by the Prlić, Praljak, Petković and Ćorić Defence, and by the Prosecution within the scope of cross-examination,

CONSIDERING that owing to this fact, Witness Davor Marijan is authorised to appear as an expert and that the Stojić Defence will have four hours to conduct its direct examination and its possible re-examination,

CONSIDERING that it is in light of the testimony of expert witness Davor Marijan, before this Tribunal, that the Chamber will evaluate the relevance and probative value of the Expert Report, and will rule on its admission,

CONSIDERING that the Chamber will now examine the allocation of time available for the cross-examination of Witness Davor Marijan, who is called to testify before the Chamber from 19 to 22 January 2009,

CONSIDERING that the Chamber will first turn its attention to the admissibility of the Prlić and Ćorić Motions for Additional Time,

³ Praljak Notice, para. 3; Ćorić Notice, para. 1; Prlić Notice, para. 1; Petković Notice, para. 2.

⁴ Prosecution Notice, para. 2.

CONSIDERING that the Chamber notes that the Prlić and Ćorić Motions for Additional Time were not introduced within the deadline of seven days from the filing of the Stojić Schedule, pursuant to paragraph 16 of guideline 5 in the Decision Adopting Guidelines for the Presentation of Defence Evidence rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”),⁵

CONSIDERING that in support of the Prlić Motion for Additional Time, the Prlić Defence merely indicates to the Chamber that its motion was introduced well in advance of Witness Davor Marijan’s testimony,⁶

CONSIDERING that in order to minimise its failure to respect the set deadline, the Prlić Defence puts forward the argument that the Chamber allegedly already granted the Prosecution additional time to conduct its cross-examination of witnesses Svetlana Radovanović and Neven Tomić, even though, as it claims, requests for additional time were filed outside the deadline prescribed in paragraph 16 of guideline 5 in the Decision of 24 April 2008,⁷

CONSIDERING that the Chamber notes that, in the case of Witness Svetlana Radovanović, contrary to what the Prlić Defence maintains, the Prosecution had formulated its request for additional time within seven days of the filing of the Prlić Defence monthly schedule, i.e. within the set deadline,⁸

CONSIDERING furthermore that in the case of Witness Neven Tomić, the Chamber granted the Prosecution’s motion for additional time to finish its cross-examination owing to the fact that the Prlić Defence was granted additional time to re-examine the witness, pursuant to paragraphs 13 and 14 of guideline 5 in the Decision of 24 April 2008,⁹

CONSIDERING that the example of Witness Radovanović therefore does not cover the same case in point,

⁵ The monthly schedule for the Stojić Defence witnesses was filed on 19 November 2008, while the Prlić and Ćorić Motions for Additional Time were filed on 3 and 4 December 2008, respectively.

⁶ Prlić Motion for Additional Time, para. 2.

⁷ Prlić Motion for Additional Time, para. 2.

⁸ Order on Modalities of the Testimony of Expert Witness Svetlana Radovanović, 21 November 2008.

⁹ Oral Decision of 13 November 2008, transcript in French, pp. 34559-34561.

CONSIDERING that neither the Prlić Defence nor the Ćorić Defence justify the belated filing of their respective motions,

CONSIDERING that since the Expert Report was disclosed to the Parties on 27 October 2008, the Chamber finds that the Prlić and Ćorić Defence had sufficient time from the filing of the Stojić Schedule, i.e. 19 November 2008, to file a motion for additional time within the deadline prescribed by article 16 of guideline 5 in the Decision of 24 April 2008,¹⁰

CONSIDERING that for the reasons set out above, the Chamber denies the Prlić Motion for Additional Time and the Ćorić Motion for Additional Time owing to their inadmissibility,

CONSIDERING next that in support of the Petković Motion for Additional Time, the Petković Defence maintains that (1) the Expert Report contains almost 60 pages and more than 300 references to documents, and covers a large number of subjects,¹¹ (2) although Witness Davor Marijan is not a joint witness, it intends to cross-examine Davor Marijan primarily through non-leading questions so that the answers to these questions may be attributed greater weight,¹² (3) the Petković Defence does not often ask to be granted additional time to cross-examine witnesses presented by other Parties,¹³ and finally (4) refusing to grant it sufficient time to cross-examine Davor Marijan would contravene the rights of Milivoj Petković as enshrined in Article 21 of the Tribunal Statute and Rule 82 (A) of the Rules,¹⁴

CONSIDERING that in support of the Stojić Response, the Stojić Defence argues in particular that allocating the additional time requested by the Petković, Prlić and Ćorić Defence as a whole would create a precedent likely to adversely affect the effectual use of time and resources for the remainder of the proceedings,¹⁵

CONSIDERING that in support of its Response, the Prosecution submits in particular that owing to the nature of the subjects covered by the Expert Report,

¹⁰ The Stojić Defence monthly schedule was filed on 19 November 2008, while the Prlić and Ćorić Motions for Additional Time were filed on 3 and 4 December 2008, respectively.

¹¹ Motion for Additional Time, para. 1.

¹² Motion for Additional Time, para. 7.

¹³ Motion for Additional Time, para. 8.

¹⁴ Motion for Additional Time, para. 9.

¹⁵ Stojić Response, paras. 1-6.

Davor Marijan's testimony will be primarily in favour of the Petković Defence and that in reality he is a common witness through whom the Petković Defence will seek to continue the direct examination of the Stojić Defence,¹⁶

CONSIDERING that pursuant to the rules on allocating time for cross-examination by the Prosecution and the Defence teams set out in paragraphs 14 and 15 of guideline 5 in the Decision of 24 April 2008, the Prosecution has 100% of the time allocated for the direct examination while the Defence teams conducting cross-examination have a total of 50% of the time allocated for the direct examination,

CONSIDERING that pursuant to these rules, the Prosecution should have four hours to conduct its cross-examination of Witness Davor Marijan, while the Prlić, Prljak, Petković and Čorić Defence should in principle have a total of two hours to conduct their cross-examination of the witness,

CONSIDERING that with regard to the Petković Motion for Additional Time, the Chamber cannot follow the Petković Defence reasoning when it justifies the need for additional time by the fact that it intends to cross-examine Davor Marijan primarily by means of non-leading questions,

CONSIDERING that while the Petković Defence has the right to ask the witness open questions during the cross-examination, such a choice could not in consequence call into question the principle of dividing up the time of the cross-examination as set out in paragraph 15 of guideline 5 in the Decision of 24 April 2008,

CONSIDERING indeed that adopting a contrary reasoning would mean extending indefinitely the debate at the hearing and would contravene the right of the Accused to an expeditious and fair trial,

CONSIDERING furthermore that the choice of cross-examination by means of open, or non-leading, questions during the time requested by the Petković Defence would be justified if the Petković Defence had indicated to the Chamber that Witness Davor Marijan is a common witness,

¹⁶ Prosecution Response, paras. 1 and 3-10.

CONSIDERING that since the Petković Defence clearly indicated to the Chamber that Davor Marijan is not a common witness,¹⁷ the Petković Defence may not take advantage of rules, necessarily more beneficial, applicable to the time available to a party examining the witness it presented,¹⁸

CONSIDERING next that the Chamber is neither convinced by the Petković Defence argument that refusing to grant it sufficient time to cross-examine Davor Marijan would contravene the rights of Milivoj Petković enshrined in Article 21 of the Tribunal's Statute and Rule 82 (A) of the Rules,

CONSIDERING that the Chamber recalls that in response to a similar argument raised by the Petković Defence, the Appeals Chamber decided that guideline 5 in the Decision of 24 April 2008 set a basic framework for the proceedings, likely to be reviewed pursuant to paragraph 17 of the Decision of 24 April 2008 and that, consequently, with regard to the allocation of time at the hearing, the Chamber established a flexible approach that accords with the well-established practice of the Tribunal,¹⁹

CONSIDERING consequently that the sole question raised at present is whether, pursuant to paragraph 16 of guideline 5 in the Decision of 24 April 2008, the Petković Motion for Additional Time is justified with regard to the Expert Report and the subjects that it wishes to raise with Witness Davor Marijan,

CONSIDERING that in this case, the content of the Expert Report, in particular with regard to relations between the Defence Department and the HVO Main Staff, as well as the importance of the subjects that the Petković Defence wishes to raise in its cross-examination of Witness Davor Marijan, could justify granting a motion for additional time,

¹⁷ Petković Motion for Additional Time, para. 5; Petković Defence Notice pursuant to Trial Chamber's *Ordonnance portant complément d'information des Listes 65 ter* of 9 April 2008, filed confidentially on 14 April 2008.

¹⁸ See paragraph 13 of guideline 5 in the Decision of 24 April 2008.

¹⁹ *The Prosecutor v. Prlić et al*, Case No. IT-04-74-AR73.8, Decision on Petković's and Praljak's Appeals Against the Trial Chamber's Decision Adopting Guidelines for the Presentation of Defence Evidence, 18 July 2008, paras. 21 and 22.

CONSIDERING that the Chamber nevertheless finds that four hours is excessive and concludes that one hour thirty minutes is sufficient in this case to allow the Petković Defence to properly conduct its cross-examination,

CONSIDERING consequently that the Chamber partially grants the Petković Motion for Additional Time,

CONSIDERING that since the Chamber grants the Petković Motion for Additional Time only within a strict limit, there is no cause to examine the conditions requested by the Prosecution in its Response,

CONSIDERING that the Chamber decides, pursuant to paragraphs 14 and 15 of guideline 5 in the Decision of 24 April 2008, that the Prosecution will have four hours to cross-examine Witness Davor Marijan while the Prlić, Praljak and Ćorić Defence will have a total of one hour thirty minutes to cross-examine him,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 90 (F) and 94 *bis* of the Rules,

DECIDES to join the examination of the Submission, the Petković Motion for Additional Time, the Prlić Motion for Additional Time and the Ćorić Motion for Additional Time,

DECIDES that Davor Marijan will appear before the Chamber as an expert witness to be examined by the Parties and the Chamber,

DECIDES that the Stojić Defence will have four hours for the direct examination and possible re-examination of Witness Davor Marijan,

DENIES the Prlić Motion for Additional Time and the Ćorić Motion for Additional Time owing to their inadmissibility,

PARTIALLY GRANTS the Petković Motion for Additional Time and consequently authorises it to cross-examine Witness Davor Marijan for one hour thirty minutes,
AND

DECIDES that the Prlić, Praljak and Čorić Defence will have a total of one hour thirty minutes to cross-examine Davor Marijan, while the Prosecution will have four hours to cross-examine Davor Marijan.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]