UNITED
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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: 20 February 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: **20 February 2008**

PROSECUTOR

v.

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

PUBLIC

DECISION ON LUKIĆ MOTION FOR ALTERATION OF COURT SCHEDULE

Office of the Prosecutor
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Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
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 Lukić's Motion Objecting to Trial Sitting Schedule and Seeking Amendment of the Same," filed 11 February 2008, and hereby renders its decision thereon.

Submissions

1. In the Motion, the Lukić Defence argues that the current practice of the Chamber sitting a combination of four-hour days and five-hour days infringes the Accused right to a fair trial and requests the Trial Chamber to alter the court schedule so that the hearing on any one given day does not exceed four hours.[1] In support of its request for relief, the Lukić Defence argues that the Accused on five-hour days is not afforded the opportunity to avail himself of mandated medical therapy.[2] Counsel also argue that sitting extended sitting days has adversely affected their own health.[3] Preparation of the defence case, as argued by the Lukić Defence, cannot be done simultaneously with presenting evidence in the trial, and the current court schedule forces Counsel to work late into the night and then be back in court the next morning; Counsel also state that the court schedule prevents them from effectively assisting their client.[4]

2. The Lukić Defence next argues that the right to be tried without undue delay under Article 21(4)(c) of the Statute of the Tribunal

> cannot be utilized **AGAINST** the interests of the Accused to push through a speedy trial. Surely the Trial Proceedings themselves are of more substantive value than simply being a mere legal formality to be endured before a judgment is rendered (particularly in light of the requirement of the presumption of innocence).[5] [Emphasis in original.]

3. The Chamber is also informed by the Lukić Defence that the so-called "Completion Strategy" for the work of the Tribunal, as well as the decision to try the cases of the six co-Accused in a single trial, cannot "be allowed to have any impact infringing upon the rights of the Accused and thus forcing a 'speedier' trial that prevents him from fully and adequately and fairly presenting his case in chief."

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[1] Motion, paras. 1–6, 18–20, p. 5.
[2] Motion, paras. 7–10.
[3] Motion, para. 11.
[4] Motion, paras. 12–17.
[5] Motion, para. 19.

4. Finally, the argument is advanced that the court schedule violates Article 21(1) of the Statute, which states that "[a]ll persons shall be equal before the International Tribunal," because the trials of other accused before the Tribunal sit only for four-hour days.[6]

5. The Prosecution has indicated that it does not intend to respond to the Motion.

Discussion

6. The Chamber rejects the Lukić Defence's arguments that there is inadequate time for the preparation of its defence case, simultaneously with the presentation of evidence in-court. The pre-trial and trial proceedings have been on-going for years now, during which preparations for trial should have been made.[7] There is no reason for witnesses to be proofed—and for their Rule 92 *ter* statements to be prepared—upon the witnesses' arrival in The Hague to give evidence; these are routine trial preparation practices that can be done well in advance. Regarding the Lukić Defence's complaint about having to work in the evening, the Chamber considers that this cannot be cited as a source of *per se* unfairness in this trial and that no specified showing of prejudice has been made out in the Motion in relation thereto. The Chamber also notes that several extended recesses have been incorporated into the trial schedule throughout the proceedings during which preparations should have continued, the last of which was over four weeks long in December 2007 and January 2008.[8] It was only on Friday of last week that the Chamber completed a period of sittings equivalent to the last recess period. Two more recesses are planned in March and April 2008.

7. The Lukić Defence asserts that the Chamber is conducting the trial of the Accused as "a mere legal formality to be endured before a judgment is rendered" and insinuates that the Chamber is not applying the presumption of innocence to the Accused. The Chamber finds these assertions by the Lukić Defence to be unfounded and impertinent and may constitute conduct that is offensive, pursuant to Rule 46(A). The Chamber seriously considered issuing a warning under Rule 46(A) that such conduct will not be tolerated, but decided not to do so in this order and invites

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[6] Motion, para. 21.

[7] *See* Decision on Joint Defence Motion to Postpone Trial Schedule, 23 May 2007, para. 3 (recalling, in context of motion to postpone commencement of defence case, that Accused are obligated to have been planning for and preparing presentation of their evidence based upon all charges in Indictment, and not simply upon those that may survive Chamber's decision upon Rule 98 *bis* motions, and that such preparation necessitates that majority of work will have already taken place prior to rendering of Rule 98 *bis* decision, and indeed dating back to pre-trial phase of the proceedings); *see also* Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007, para. 4 (citing T. 221–223 (26 April 2006) (Pre-Trial Judge stating, at Rule 65 *ter* conference, that Defence should be preparing and reviewing material on rolling basis); *Prosecutor v. Martić*, Case No. IT-95-11-T, T. 5799–5800 (19 June 2006); *Prosecutor v. Krajišnik*, Decision on Defence Motion to Further Delay the Commencement of the Defence Case, 28 September 2005, p. 3).

[8] *See* Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007, para. 4.

Counsel to withdraw that part of the Motion.[9] In any case, 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] There is therefore no merit in the Lukić Defence's argument on this point.

8. The Chamber rejects the Lukić Defence's argument that the so-called "Completion Strategy" or the joinder of the trials has had any affect whatever upon the court schedule. The trial is being conducted by the Chamber in a fair and expeditious manner, and the Chamber would have followed the current schedule regardless of the United Nations Security Council's Resolutions regarding dates by which the Tribunal is to complete its work and regardless of whether the Accused were being tried alone or together with his co-Accused.[11]

9. Finally, the Lukić Defence's argument that the Accused is not being treated equally with other accused in other cases that only sit for four-hours per day does not succeed. The Statute's guarantee that "[a]ll persons shall be equal before the International Tribunal" does not provide that each accused before the Tribunal is to be accorded the same exact number of hours in court per day. Such an interpretation would be untenable, and impossible to implement. Some trials customarily sit five days per week, some four, and some three. Moreover, some trials do sit extended days and hours, as needed. The differences in the court schedules for the several accused before the Tribunal do not lead to the conclusion that Article 21(1) of the Statute is being violated.

10. Notwithstanding all of the above, the court schedule for the remainder of the presentation of the evidence in the Lukić Defence case, due to normal internal Registry scheduling procedures, happens to require the *Milutinović et al.* trial to sit four-hour days for a minimum of half the foreseeable sitting time over the next four weeks, which ensures that the Accused and Counsel, on every alternate sitting day, will have a full half-day out of court. The Chamber is of the view that this will enable the Accused to follow his prescribed medical regime, the one argument that the Chamber found to have some potential merit in the Motion. The request for relief has thus been rendered moot.

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[9] *See Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, T. 26157–26161 (14 January 2008).

[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).

[11] S/RES/1503 (2003); S/RES/1534 (2004).

Disposition

11. 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 as moot.

12. The Trial Chamber, pursuant to Rule 46(A) of the Rules of Procedure and Evidence of the Tribunal, hereby FINDS that the assertions by the Lukić Defence in paragraph 19 of the Motion may constitute conduct that is offensive and INVITES Counsel to withdraw that part of the Motion.

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

Judge Iain Bonomy
Presiding

Dated this twentieth day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]