



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: 25 April 2008
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French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 25 April 2008

THE PROSECUTOR

v.

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

PUBLIC

DECISION ALLOCATING TIME TO THE DEFENCE TO PRESENT ITS CASE

The Office of the Prosecutor:

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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

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”) will hear the presentation of the Defence case in *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić* commencing on 5 May 2008. Pursuant to the provisions of the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence of the Tribunal (“Rules”), it shall ensure that the proceedings are fair and expeditious, with full respect for the rights of the Accused.

2. In the “Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting a New Schedule” dated 28 January 2008, the Chamber accepted the request of Counsel for the Accused (“Defence”)¹ to postpone the commencement of the Defence case to 5 May 2008, in particular in order to grant additional time to the Defence to prepare the lists pursuant to Rule 65 *ter* (G) of the Rules (“65 *ter* List(s)”). It also set out how the meetings provided by Rule 65 *ter* (G) of the Rules would be conducted and announced the date of the conference set forth pursuant to Rule 73 *ter* of the Rules for 21 April 2008 (“73 *ter* Conference”).

3. During the meeting held in accordance with Rule 65 *ter* (G) on 17 March 2008, the foreseeable duration of the Defence case was discussed and the Defence teams informed the Chamber of their estimates with regard to time.²

4. Subsequently, the six Defence teams filed their 65 *ter* Lists on 31 March 2008.³

5. After a preliminary examination of the 65 *ter* Lists, on 9 April 2008 the Chamber rendered an “Order to Provide Additional Information Regarding the 65 *ter* Lists”. Anxious to avoid any unnecessary loss of time and make good time of the appearance of witnesses, the Chamber asked the six Defence teams for additional information. An examination of the 65 *ter* Lists revealed first that some of the Defence teams had indicated on their lists the names of witnesses, including expert witnesses, also appearing on the list of other Defence teams,

¹ Counsel for the Accused Prlić, (“Prlić Defence”); Counsel for the Accused Stojić (“Stojić Defence”); Counsel for the Accused Praljak (“Praljak Defence”); Counsel for the Accused Petković (“Petković Defence”); Counsel for the Accused Ćorić (“Ćorić Defence”) and Counsel for the Accused Pušić (“Pušić Defence”).

² Court Transcript in French (“T(F)”) pp. 27239-27248.

³ “Jadranko Prlić’s Rule 65 *ter* Witness List”, confidential, 31 March 2008; “Bruno Stojić’s 65 *ter* Submission”, confidential, 31 March 2008; “Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*”, public with confidential Annexes, 31 March 2008; “Petković Defense Submission Pursuant to Rule 65 *ter*”, public with confidential Annexes, 31 March 2008; “Valentin Ćorić’s Submission Under Rule 65 *ter*”, confidential, 31 March 2008; “Berislav Pušić’s Submission of Lists Pursuant to Rule 65 *ter* (G)”, confidential, 31 March 2008.

without indicating whether these were common witnesses, and second many of the witnesses who were to come would testify on subjects that could be relevant for all of the Accused.

6. On 14 April 2008, the six Defence teams provided clarifications concerning the witnesses who were on the 65 *ter* Lists of several Defence teams.⁴

7. In order to prepare the 73 *ter* Conference, after the Chamber examined the 65 *ter* Lists and the Supplemental Submissions, it provided the Parties with the agenda of the 73 *ter* Conference indicating the time that it planned to allocate to each of the Defence teams to present its case.⁵ During the 73 *ter* Conference, the Chamber wanted the Parties to inform it of their observations regarding the estimations of time it had made. Thus, in the Agenda of the 73 *ter* Conference, the Chamber informed them that it was considering the following division of time: 80 hours for the Defence for the Accused Prlić, 54 hours for the Defence for the Accused Stojić, 50 hours for the Defence for the Accused Praljak, 50 hours for the Defence for the Accused Petković, 45 hours for the Defence for the Accused Ćorić, and 22.5 hours for the Defence for the Accused Pušić, or a total of 301.5 hours for the presentation of the Defence case.⁶

8. Before indicating to each of the six Defence teams the time that the Chamber has henceforth decided to allocate for the presentation of their case, the Chamber would first recall that in the present case, the time allotted for the presentation of the case of the Office of the Prosecutor (“Prosecution”) was first reduced from 400 hours to 293 hours.⁷ In the interests of justice, the Chamber nevertheless decided to grant it 23 additional hours,⁸ thus setting the total number of hours allocated to the Prosecution at 316 hours.

9. The Chamber thus finds that the Prosecution had 316 hours (in the end it only used 296) to present its case. It should be noted that the Prosecution case concerned six Accused. In

⁴ “Jadranko Prlić’s Notice Pursuant to the Trial Chamber’s Order of 9 April 2008 Concerning Supplemental Information on 65 *ter* Lists”, confidential, 14 April 2008; “Notice of Bruno Stojić Providing Time Estimates for Common Defence Witnesses Pursuant to *Ordonnance portant complément d’information des Listes 65 ter* dated 9 April 2008”, confidential, 14 April 2008; “Slobodan Praljak’s Submission Pursuant to the Trial Chamber’s Order of 9 April 2008 Regarding Witnesses Expected to be Called by Multiple Accused”, confidential, 14 April 2008; “Petković Defence Notice Pursuant to Trial Chamber’s *Ordonnance portant complément d’information des Listes 65 ter* of 9 April 2008”, confidential, 14 April 2008; “Valentin Ćorić’s Submission Pursuant to *Ordonnance portant complément d’information des Listes 65 ter*”, confidential, 14 April 2008; “Notice on Behalf of Berislav Pušić Pursuant to the Trial Chamber’s *Ordonnance portant complément d’information des Listes 65 ter*”, confidential, 14 April 2008; (together “Supplemental Submissions of 14 April 2008”).

⁵ “Decision Amending Agenda for Pre-Defence Conference of 21 April 2008”, 18 April 2008 (“Agenda of the 73 *ter* Conference”).

⁶ Agenda of the 73 *ter* Conference, p. 3.

⁷ “Decision on Adoption of New Measures to Bring the Trial to an End Within a Reasonable Time”, 13 November 2006 (“Decision of 13 November 2006”).

this regard, during the 73 *ter* Conference, the Prosecution furthermore recalled that the Chamber had decided to substantially reduce the time that it would have to present its case.⁹ And yet it was up to the Prosecution to retrace the full and coherent history of the case and to establish beyond reasonable doubt each of the constitutive elements of the crime ascribed to the Accused.¹⁰ The Prosecution also explained that on the other hand, the Defence had to try and find loopholes, flaws in the Prosecution case, which required both less time and fewer witnesses.¹¹

10. The Chamber recalls that “the principle of equality of arms between the prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee”¹² and that, if nothing more, this principle obliges the Chamber to ensure “that neither party is put at a disadvantage when presenting its case”.¹³ Further, Rule 82 of the Rules lays down that “[i]n joint trials, each accused shall be accorded the same rights as if such accused were being tried separately”.

11. Nevertheless, as the Appeals Chamber has already recalled, this does not necessarily mean that an Accused is entitled to precisely the same amount of time for hearings or the same number of witnesses as the Prosecution and that the principle of proportionality is to be applied rather than a strictly mathematical principle when determining the number of hours to be allocated for hearings.¹⁴

12. Hence, the present Decision is the result of a thorough examination of each 65 *ter* List by the Defence and not of a strictly mathematical calculation of time allocation.

13. In its examination of the 65 *ter* Lists, the Chamber first considered the time proposed by the Defence for each witness and the relevance of such testimony on the basis of the summaries provided with the 65 *ter* Lists regarding the Amended Indictment of 16 November 2005 (“Indictment”). The Chamber went on to consider the possibility of a better use of the 92 *bis* and 92 *ter* procedures which would save time for hearings.¹⁵ The Chamber also took into

⁸ “Decision Allocating Additional Time for Completion of Case-in-Chief”, 22 August 2007.

⁹ T(F) pp. 27449-27450.

¹⁰ T(F) pp. 27450-27451.

¹¹ T(F) p. 27451.

¹² To this effect see in: *The Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, “Interlocutory Decision on Length of Defence Case”, 20 July 2005 (“Orić Decision”), para. 7.

¹³ *Idem*.

¹⁴ Orić Decision, para. 7. See also: *The Prosecutor v. Milan Martić*, Case No. IT-95-11-T, “Decision on Time Available for the Defense for Presenting Its Evidence”, confidential, 14 August 2006, p. 2.

¹⁵ The Chamber took the same position with regard to the Prosecution in its Decision of 13 November 2006, para. 21.

account the observations formulated by the Parties during the 65 *ter* (G) meeting held on 17 March 2008, the 73 *ter* Conference,¹⁶ and in the Supplemental Submissions of 14 April 2008.

14. Finally, the Chamber agrees with the Defence that the appearance of witnesses for hearings allows it to tender documents in the proceedings. The Chamber recalls that it prefers that these documents be admitted into evidence through witnesses who can shed light on their reliability, relevance and probative value. Nevertheless, in evaluating the time needed for the testimony of Defence witnesses, the Chamber also took into account the fact that the Defence could tender the documents by way of written motions, in keeping with the Chamber's Guidelines.¹⁷

15. The Chamber also wants to point out that in assessing the time, it had no intention of undertaking an assessment of the Defence strategies. This would have been in any case inappropriate since the Defence teams have not yet commenced their presentation nor have they presented their opening statement pursuant to Rule 84 of the Rules to the Chamber.

16. The Chamber has expressed its opinion essentially bearing in mind the failure to take recourse to Rules 92 *bis* to *quater*, the repetitiveness of certain testimony, the excessive time allocated for certain testimony and the witnesses called to testify on acts and facts not in the Indictment or which relate to it very loosely.

17. In addition, after a recapitulation of the time requested by each Defence team and the arguments they raised therein, primarily during the 73 *ter* Conference, the Chamber will state its reasoning for each of the teams and the motives for its decision.

A. On the Prlić Defence requests:

a. Background of the Prlić Defence claims

18. The Chamber notes that the Prlić Defence intends to call 24 *viva voce* witnesses, of whom two as expert witnesses. The Prlić Defence also wishes to call eight witnesses on the basis of the 92 *bis* procedure.

¹⁶ T(F), pp. 27349-27452.

¹⁷ "Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008 ("Chamber's Guidelines").

19. The 65 *ter* Lists submitted by the Prlić Defence can be divided into two series. The first series is composed of witnesses called to testify on subjects which the Prlić Defence indicates are common to all the Accused, such as the joint criminal enterprise, and also of expert witnesses. The Prlić Defence envisages 66 hours for this first series of witnesses. The second series is composed of witnesses called to testify on the HVO, on the municipalities as well as on the “Croatisation” of Herceg-Bosna. The Prlić Defence seeks 62 hours for this second series. Therefore, for all its *viva voce* witnesses the Prlić Defence requests to be allocated **128 hours**.

20. In its 65 *ter* Lists, the Prlić Defence failed to indicate whether the Accused Prlić wishes to testify and, therefore, has not taken into account the time it would consequently use for such a testimony. The Chamber notes however that during the 65 *ter* meeting on 17 March 2008, the Prlić Defence announced that the Accused Prlić would testify for 24 hours,¹⁸ which is what it also confirmed at the 73 *ter* Conference.¹⁹ On this point, the Prlić Defence informed the Chamber during the 73 *ter* Conference, that the time it sought, that is 128 hours, did not include the time envisaged for the testimony of the Accused Prlić.²⁰ The Chamber therefore notes that, in reality, the Prlić Defence requests **152 hours**, which includes the time needed for the testimony of the Accused. Further, the Prlić Defence has not taken recourse to Rule 92 *ter* and, in its Supplemental Submissions of 14 April 2008, the Prlić Defence informed the Chamber that three of its *viva voce* witnesses seem also to have been cited by the other Defence teams but that this does not affect the time it estimated for their interrogation.

b. The Chamber’s assessment

21. The Chamber first notes that the Prlić Defence takes limited recourse to the 92 *bis* procedure as it concerns only eight witnesses, while three *viva voce* witnesses presented by the Prlić Defence have already testified in other trials before the Tribunal. Further, the Prlić Defence has presented no witness under the 92 *ter* procedure. In line with its earlier decisions on the time allocation for the presentation of the Prosecution case, the Chamber considers it also necessary that the Defence teams resort to the provisions of Rules 92 *bis* and 92 *ter*.²¹ Further, with respect to the *viva voce* witnesses, the Prlić Defence has given very high time

¹⁸ T(F), p. 27272.

¹⁹ T(F), pp. 27375-27376.

²⁰ T(F), p. 27427.

²¹ To that effect *see*: Decision of 13 November 2006, para. 21.

estimates²² while some of the witnesses are redundant or are to come forth to testify on different subjects which, at times, are of minor relevance to the Indictment.

22. For example, the Chamber notes that the dysfunction of BiH is a subject for which the Prlić Defence requests a great number of hours for its examination-in-chief while it could at times take recourse to Rule 92 *ter* to diminish the trial time. Furthermore, the Chamber notes that a number of testimonies refer to the acts and conduct of Alia Izetbegović and his entourage or, also, to the Žepče HVO or the situation in Maglaj. Finally, the Chamber notes that the Prlić Defence has not taken into account the fact that one of its *viva voce* witnesses was also cited as a *viva voce* witness by the Petković Defence.²³ Hence, this circumstance also has to be taken into account as a justification for the reduction of the overall time for the presentation of the Defence case.

23. At first, all these conclusions led the Chamber to assess the time needed for the presentation of the Prlić Defence case at 80 hours, including the time needed for the testimony of the Accused Prlić. Nevertheless, the Chamber finds that, when justifying its initial request for the allocation of 152 hours at the 73 *ter* Conference, the Prlić Defence insisted on several points, among which: the importance of its witnesses (ministers, ambassadors. . .)²⁴ and that it made a selection from among more than 500 potential witnesses it met with²⁵ and, in the end, presented only 23 *viva voce* witnesses; that the Prosecution challenged the Accused Prlić for the entire period covered by the Indictment which would necessitate the tendering of numerous documents and witnesses in defence therein;²⁶ the circumstance that the Prlić Defence is the first of the six Defence teams to present its case also obliges it to choose a strategy where it will give weight to witnesses on the joint criminal enterprise, rather than on the case unique to the Accused Prlić, and this should, *in fine*, benefit all the Defence teams.²⁷

24. The Chamber takes note of the concerns presented by the Prlić Defence at the 73 *ter* Conference and decides to modify its initial proposition to allocate 80 hours.²⁸ Hence, the Chamber considers that by allocating the Prlić Defence **95 hours**, including the time needed for the testimony of the Accused Prlić, it has taken due account of the imperative for a fair and

²² For example, for seven of its *viva voce* witnesses the Prlić Defence seeks 8 hours of interrogation for each one of them.

²³ The Chamber notes that for one of its *viva voce* witnesses the Prlić Defence seeks 6 hours for the examination-in-chief while this witness has also been called to testify for 2 hours by the Petković Defence.

²⁴ T(F), p. 27429.

²⁵ T(F), p. 27431.

²⁶ T(F), p. 27435.

²⁷ T(F), p. 27391.

²⁸ Agenda of the 73 *ter* Conference, p. 3.

expeditious trial and considers that the Prlić Defence will thus have sufficient time to present its case and not be prejudiced.²⁹

B. On the Stojić Defence requests:

a. Background of the Stojić Defence claims

25. The Chamber notes that the Stojić Defence sought **68 hours** for the presentation of its case and that the Accused Stojić will not testify.³⁰ The Stojić Defence intends to call 24 *viva voce* witnesses and has not taken recourse to Rules 92 *bis* to *quater*. It also requests the appearance of two expert witnesses. In its Supplemental Submissions of 14 April 2008, the Stojić Defence informed the Chamber that one of its *viva voce* witnesses is also called by the Petković Defence but has not proposed to reduce the time for the interrogation of this witness.³¹

b. The Chamber's assessment

26. First, the Chamber notes a certain repetitiveness in the subjects treated by the witnesses of the Stojić Defence. For example, the Chamber notes that many witnesses must appear to testify on the acquisition and distribution of the material and technical resources of the HVO or on the provision of treatment irrespective of ethnic affiliation. The Chamber further notes that several witnesses have been called to appear to testify on subjects very loosely linked to the Indictment such as, for example, the link between the civil and military authorities in Neum or the ABiH attack against the Sarajevo HVO in November 1993. Thus, the Chamber considers it possible to have the duration for the examination-in-chief of certain witnesses reduced, which would help save a number of hours (for many of the witnesses, the Stojić Defence seeks two or three hours of interrogation even though these witnesses could testify in a shorter period of time). Further, the Chamber finds that recourse to 92 *ter* and 92 *bis* procedures for some witnesses of the Stojić Defence would also save time substantially.

²⁹ Orić Decision, para. 8, and *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, "Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case", 6 February 2007 ("Decision of 6 February 2007"), para. 14.

³⁰ T(F), p. 27276 and p. 27416.

³¹ The Stojić Defence seeks 5 hours for the examination-in-chief of this witness and the Petković Defence 1 hour.

Finally, the Chamber notes that the fact that one of the witnesses proposed by the Stojić Defence has also been called by another Defence team to appear *viva voce* also has to be taken into account when justifying the reduction of time for the presentation of the case.³² Initially, all of these conclusions had led the Chamber to assess the time needed for the Stojić Defence to present its case at 54 hours.

27. However, in order to justify its initial request, namely 68 hours, at the 73 *ter* Conference the Stojić Defence informed the Chamber of the following: that it gave a very restrictive assessment of time and that it sought only the necessary minimum for the presentation of its case;³³ that if it appeared that certain witnesses were to testify on the same subjects they were actually not going to testify on the same facts;³⁴ that the Prosecution has tendered in evidence a considerable amount of documents the Stojić Defence would like to be able to invalidate through its witnesses at the trial hearings.³⁵

28. Although the Chamber has taken note of the arguments of the Stojić Defence presented at the 73 *ter* Conference, it nevertheless finds that they do not affect the conclusions the Chamber has already reached, primarily: that there has been no recourse to the procedures in Rules 92 *bis* to *quater* and that a number of witnesses are redundant. In order, however, to enable the Stojić Defence to present its case, the Chamber decides to allocate it **59 hours** instead of the 54 hours³⁶ initially accorded. Bearing in mind the imperative for a fair and expeditious trial, the Chamber considers that the Stojić Defence will dispose of sufficient time to present its case and not be prejudiced.³⁷

³² It is to be noted that the Stojić Defence also proposes three other *viva voce* witnesses who are on the 65 *ter* List of the Praljak Defence. Yet, the Praljak Defence proposes that these witnesses be 92 *bis* witnesses. The Chamber also notes that during the 73 *ter* Conference the Stojić Defence stated it intended to proceed with a four-hour examination-in-chief of an expert witness on behalf of all the Defence teams (T(F), p. 27392). The other five teams confirmed that the expert witness was, in fact, a common witness.

³³ T(F), p. 27436.

³⁴ T(F), p. 27436.

³⁵ T(F), p. 27437.

³⁶ Agenda of the 73 *ter* Conference, p. 3.

³⁷ Orić Decision, para. 8, and Decision of 6 February 2007, para. 14.

C. On the Praljak Defence requests:

a. Background of the Praljak Defence claims

29. The Chamber notes that in its 65 *ter* List the Praljak Defence presented 22 *viva voce* witnesses³⁸ for a total of 81 hours and 30 minutes. This list includes the testimony of the Accused Praljak for a total of 36 hours. The Praljak Defence also presented a separate list of 5 expert witnesses, of whom one is common to the Petković Defence, for a duration of 11 hours in total. A list of 37 92 *ter* witnesses for a duration of 17 hours and 30 minutes in total is attached and a 92 *quater* witness is envisaged. The Praljak Defence has also presented a list of 156 92 *bis* witnesses. In total, the Praljak Defence seeks **110 hours**³⁹ for the presentation of its case.

30. In its Supplemental Submissions of 14 April 2008 and its *Corrigendum*,⁴⁰ the Praljak Defence informs that three of its *viva voce* witnesses have also been called by the other Defence teams but that this does not affect the time initially requested in its 65 *ter* List. The Praljak Defence also informs that two of its witnesses on the 65 *ter* List, that is 92 *ter* witnesses, have also been called as *viva voce* witnesses by the Petković Defence. Also, the Praljak Defence seeks that these witnesses be *viva voce* witnesses and requests for these two witnesses time equivalent to that which it requested initially, that is 30 minutes. Finally, the Praljak Defence informs that nine witnesses whom it intended to present as 92 *bis* witnesses are in actual fact called to testify *viva voce* by the other Defence teams. Also, for these nine witnesses the Praljak Defence requests to be granted 15 minutes for the interrogation of each (consequently, these witnesses are no longer on the 92 *bis* witness list and the total number of 92 *bis* witnesses is now 147 instead of the initial 156). Therefore, the Praljak Defence requests a total of 135 supplementary minutes, that is 2 hours and 15 minutes more than the time it sought initially. The total time requested by the Praljak Defence for the presentation of its case is therefore **112 hours and 15 minutes (instead of 110 hours)** and it requests to interrogate 33 *viva voce* witnesses and 35 92 *ter* witnesses.

³⁸ When the Praljak Defence proposes to have certain *viva voce* witnesses heard as 92 *ter* witnesses, it makes mention of these witnesses twice: in its *viva voce* list and its 92 *ter* list. For our part, we mention them only once as 92 *ter* witnesses which explains the discrepancy in the number of *viva voce* witnesses between the present list (19) and that of the Praljak Defence (22).

³⁹ The Chamber observes a difference between its assessment of time and that of the Praljak Defence, as during the 73 *ter* Conference, the Praljak Defence informed the Chamber that the overall time it sought was 97 hours. See T(F), p. 27443.

⁴⁰ “*Corrigendum* to Slobodan Praljak’s Submission Pursuant to the Trial Chamber’s Order of 9 April 2008 Regarding Witnesses Expected to Be Called by Multiple Accused”, confidential, 16 April 2008.

b. The Chamber's assessment

31. First, the Chamber notes that the Praljak Defence seeks the testimony of a number of witnesses pursuant to Rule 93 of the Rules. By invoking this provision the Praljak Defence wishes to call several witnesses to testify on the good conduct of the Accused Praljak, his positive influence, his capacity to deal with difficulties but in periods or in places which fall outside the frame of the Indictment. It is to be noted that four *viva voce* witnesses and three 92 *ter* witnesses⁴¹ have been called to testify to this end, to which a 92 *quater* witness is added. Second, the Chamber notes that the Praljak Defence suggests that, to gain time, certain of its *viva voce* witnesses could be called to testify as 92 *ter* witnesses, an approach the Chamber approves of. Nevertheless, in spite of this proposal, the Chamber notes that some of the requests appear relatively excessive in terms of time, in particular for witnesses whom the Praljak Defence wants to testify on points which have little or no relation to the present case or which are repetitive. For example, a number of witnesses are to appear to testify on the humanitarian aid delivered to the Muslims; on cooperation between the Croats and Muslims in 1991 and 1992 and Serb aggression. . . The Chamber considers that for all of these witnesses the time for interrogation could easily be reduced. Third, the Chamber finds that the number of 92 *ter* witnesses whom the Praljak Defence wishes to call is particularly high, all the more since a number of these 92 *ter* witnesses are redundant or relate only very loosely to the Indictment, for example, witnesses who are to appear to testify on the Mujahidin. Finally, the Chamber considers that the fact that a number of witnesses proposed by the Praljak Defence have also been called to appear by the other Defence teams must also be taken into account to justify the reduction of the overall time allocated for the presentation of the case.

32. On the basis of all these conclusions, the Chamber first assessed at 50 hours the time needed by the Praljak Defence to present its case. To justify, nevertheless, its initial request for the allocation of 111 hours and 15 minutes at the 73 *ter* Conference, the Praljak Defence recalled that it must call witnesses to give as global as possible an understanding of the Accused Praljak and that these witnesses must come to testify on all the events and counts of the Indictment.⁴² Further, the Praljak Defence also made reference to the Orić Decision according to which “equality of arms obligates a judicial body to ensure that neither party is

⁴¹ Among these 3 92 *ter* witnesses, the Praljak Defence informs that one of them will be called to testify, only in part, pursuant to Rule 93 of the Rules.

⁴² T(F), p. 27441.

put at a disadvantage when presenting its case”.⁴³ The Praljak Defence considers that in reducing its time the Chamber would violate the principle of equality of arms and the rights of the Accused under Article 21 of the Statute which would lead to a miscarriage of justice.⁴⁴ The Praljak Defence also considers it unacceptable to be granted only 17% of the total time granted by the Chamber to the Prosecution while, according to the Praljak Defence, in a much less complex case as was *The Prosecutor v. Naser Orić*,⁴⁵ the Appeals Chamber considered that 25% was disproportionate.⁴⁶ Finally, the Praljak Defence considers that in a case where there are multiple accused, each one of them must be granted the same rights as if he were being tried on his own.⁴⁷

33. The Chamber wishes to remind the Praljak Defence that the arguments it submitted at the 73 *ter* Conference do not affect the conclusions it has already made, that is, that an excessive number of witnesses has been called to testify on events that fall outside the frame of the Indictment or that relate only very loosely to them or are totally repetitive. Nevertheless, in order to assist the Praljak Defence in the presentation of its case, the Chamber decides to allocate it **55 hours** instead of the initial 50 hours,⁴⁸ including the time needed for the testimony of the Accused Praljak. Having taken due account of the imperative for a fair and expeditious trial, the Chamber considers that the Praljak Defence will thus dispose of sufficient time to present its case without being prejudiced.⁴⁹

C. On the Petković Defence requests:

a. Background of the Petković Defence claims

34. The Petković Defence requests **91 hours** to present its case, of which 12 hours for the testimony of the Accused. It intends to present only 22 *viva voce* witnesses and has therefore not taken recourse to Rules 92 *bis* to *quater* of the Rules. In its Supplemental Submissions of 14 April 2008 and *Corrigendum*,⁵⁰ the Petković Defence indicates that the seven witnesses proposed in its 65 *ter* List are also on the lists presented by the other Defence teams. It

⁴³ T(F), p. 27440, quoting para. 7 of the Orić Decision.

⁴⁴ T(F), p. 27442.

⁴⁵ See Orić Decision.

⁴⁶ T(F), p. 27442.

⁴⁷ T(F), p. 27443.

⁴⁸ Agenda of the 73 *ter* Conference, p. 3.

⁴⁹ Orić Decision, para. 8, and Decision of 6 February 2007, para. 14.

considers, however, that this affects only one of its witnesses ,who is also in the 65 *ter* List of the Praljak Defence as a 92 *bis* witness since it now wishes to dispose of only one hour for the examination-in-chief of this witness instead of the 3 hours proposed initially in its 65 *ter* List. Thus, the total time requested by the Petković Defence is now at **89 hours**.

b. The Chamber's assessment

35. First, the Chamber notes that the testimony of a number of witnesses is repetitive and, consequently, that the time requested for them is often excessive. For example, the Chamber notes that eight witnesses are to testify on the ABiH attack against Konjić; that seven witnesses are to refer to the multi-ethnic organisation of the HVO and the betrayal of the Muslims; that three witnesses are to talk about the non-participation of Milivoj Petković in Operation "South" and that six witnesses are to present facts on the willingness of the HVO to find negotiated solutions with the ABiH. Yet, the Chamber notes that in spite of the repetitiveness of a number of testimonies, the Petković Defence takes no recourse to Rules 92 *bis* to *quater*. Further, although the Chamber notes that, in reducing by two hours the examination of one of its witnesses, the Petković Defence has, to an extent, borne in mind the imperative of a rational use of time, it has not however modified the time it initially requested for six other *viva voce* witnesses after having indicated that they were also on the other 65 *ter* Lists, either as *viva voce* or 92 *ter* witnesses. Thus, it is the opinion of the Chamber that this fact must be taken into account when justifying the reduction of the overall time allocated for the presentation of the case.

36. Initially, all of these conclusions led the Chamber to assess the time needed by the Petković Defence for the presentation of its case at 50 hours. Nevertheless, the Chamber observes that, when justifying its initial request for time at the 73 *ter* Conference, the Petković Defence recalled that if the Accused Petković had been tried separately he would have been entitled to more time; that in this instance Rule 82 of the Rules in terms of which each accused should be entitled to the same rights as if he were being tried separately is not respected.⁵¹ Further, by reducing the time, the Chamber allegedly did not take into account the fact that the witnesses the Petković Defence wished to call are to testify on documents which will then be

⁵⁰ "Corrigendum to the Petković Defense Notice Pursuant to Trial Chamber's *Ordonnance portant complément d'information des Listes 65 ter* of 9 April 2008", confidential, 15 April 2008.

⁵¹ T(F), p. 27445.

tendered in evidence.⁵² Thus, by diminishing the time, it is also the number of documents that the Petković Defence could tender which is being reduced.⁵³ The Petković Defence also considers that all the witnesses it wishes to call are essential for its case as they have to testify on all counts in the Indictment.⁵⁴

37. While the Chamber has carefully followed the arguments presented by the Petković Defence at the 73 *ter* Conference, it nevertheless considers that this does not actually affect the conclusions the Chamber has already made, that is, that there is a big number of redundant witnesses and that no recourse has been taken to Rules 92 *bis* to *quater* of the Rules. Further, regarding the specific problem of the documents, which the Chamber has taken into full account, the Chamber recalls that it will be possible, following the example of the Prosecution when presenting its case, to request the admission of evidence in writing. These motions should, nevertheless, be in keeping with the Chamber's Guidelines. The Chamber however decides to allocate to the Petković Defence **55 hours** instead of the 50 hours initially allocated,⁵⁵ which includes the time needed for the testimony of the Accused Petković. Having taken due account of the imperative for a fair and expeditious trial, the Chamber considers that the Petković Defence will thus dispose of sufficient time to present its case without being prejudiced.⁵⁶

E. On the Ćorić Defence requests:

a. Background of the Ćorić Defence claims

38. The Chamber notes that the Ćorić Defence seeks **81 hours** to present its case, of which 15 hours are for the testimony of the Accused. It intends to call 27 *viva voce* witnesses and has not take recourse to Rules 92 *bis* to *quater*. In its Supplemental Submissions of 14 April 2008, the Ćorić Defence indicates that one of its witnesses will also be called by the Pušić Defence (following an agreement between the two Defence teams) but that the time it requests for its examination-in-chief, 4 hours, remains unchanged. The Ćorić Defence also informs the Chamber that one of its witnesses is also a 92 *bis* witness in the 65 *ter* List of the Praljak Defence yet seeks the same number of hours, that is 4 hours, for this witness which it qualifies

⁵² T(F), pp. 27445-27446.

⁵³ T(F), p. 27446.

⁵⁴ T(F), p. 27447.

⁵⁵ Agenda of the 73 *ter* Conference, p. 3.

⁵⁶ Orić Decision, para. 8, and Decision of 6 February 2007, para. 14.

as a *viva voce* witness. Finally, it indicates that another of its witnesses is also on the 92 *bis* witness list of the Prlić Defence and seeks for this witness too the same trial time, that is one hour as a *viva voce* witness.

b. The Chamber's assessment

39. First, the Chamber notes a certain repetitiveness in the subjects certain witnesses are called to address by the Ćorić Defence. Hence, the Ćorić Defence intends to present six witnesses to testify for a total of 23 hours on military police tasks and to interpret relevant texts. Moreover, and as an example, the Ćorić Defence wishes to call six witnesses to testify for a total of 16 hours on the military police communications system. Further, excluding the testimony of the Accused Ćorić, fifteen witnesses are to enlighten the Chamber for 45 hours on the kind of relationship which existed between the military police and the other organs of the Croatian Community / Republic of Herceg-Bosna respectively. The Chamber acknowledges that one witness may often address several subjects at the same time and that the time for his testimony covers all the subjects. Nevertheless, taking into account the fact that the Ćorić Defence takes no recourse to Rules 92 *bis* to *quater*, the Chamber finds that the time needed for the presentation of the Defence case can be reduced.

40. All of the above conclusions led the Chamber to initially assess the time needed by the Ćorić Defence to present its case at 45 hours. Nevertheless, the Chamber observes that, when justifying its initial request for time at the 73 *ter* Conference, the Ćorić Defence recalled that it was very strict when assessing the time and witnesses in order to reduce the time for their appearance;⁵⁷ that the fact that all its witnesses are *viva voce* witnesses is because they are important and that the Ćorić Defence wishes to be able to interrogate them on documents already tendered or to be tendered through them;⁵⁸ finally, that a reduction of time would quite certainly oblige the Ćorić Defence to drop a number of witnesses.⁵⁹

41. While the Chamber has carefully followed the arguments presented by the Ćorić Defence at the 73 *ter* Conference, it considers that this does not actually affect the conclusions the Chamber has already made, that is, that a number of witnesses have been called to testify on the same subject and, in particular, that it has taken no recourse to Rules 92 *bis* to *quater* of

⁵⁷ T(F), p. 27448.

⁵⁸ T(F), p. 27448.

⁵⁹ T(F), pp. 27448-27449.

the Rules. The Chamber nevertheless decides to allocate **50 hours** instead of the 45 hours initially allocated,⁶⁰ including the time needed for the testimony of the Accused. Having taken due account of the imperative for a fair and expeditious trial, the Chamber considers that the Ćorić Defence will thus dispose of sufficient time to present its case without being prejudiced.⁶¹

F. On the Pušić Defence requests:

a. Background of the Pušić Defence claims

42. The Pušić Defence requests **22 hours and 30 minutes** to present its case. It intends to call 10 *viva voce* witnesses. In its Supplemental Submissions of 14 April 2008, the Pušić Defence indicated that two of the witnesses it intended to call are also on the 65 *ter* Lists of the Praljak Defence.

b. The Chamber's assessment

43. The Chamber considers that the request by the Pušić Defence is altogether reasonable.⁶² Consequently, the Chamber decides to grant it **22 hours and 30 minutes**.

G. Conclusion

44. The Chamber decides to allocate a total of **336 hours and 30 minutes** to the Defence to be distributed as follows:

Prlić Defence: 95 hours;

Stojić Defence: 59 hours;

Praljak Defence: 55 hours;

⁶⁰ Agenda of the 73 *ter* Conference, p. 3.

⁶¹ Orić Decision, para. 8, and Decision of 6 February 2007, para. 14.

⁶² At the 73 *ter* Conference, the Pušić Defence reiterated its request for 22 hours and 30 minutes and made no supplementary comments. *See*, with regard to this, T(F), p. 27449.

Petković Defence: 55 hours;

Ćorić Defence: 50 hours; and

Pušić Defence: 22 hours and 30 minutes.

45. The Chamber does, however, take the opportunity to clarify that it may be flexible and it may, eventually at a later date, modify the allocation of time as stated herein. However, the party requesting such modification must prove, for the purpose of fairness, that it needs to be granted more time to present the Defence case.⁶³

46. Since, pursuant to Rule 73 (B) of the Rules, this Decision “involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which [. . .] an immediate resolution by the Appeals Chamber may materially advance the proceedings”, the Chamber decides to certify as of now possible appeals by the Parties.

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statute, and Rules 54, 73 and 73 *ter* of the Rules,

DECIDES to allocate the time for the six Defence teams as stated in paragraph 44 of this Decision,

AND

DECIDES to certify possible appeals to this Decision.

JUDGE ANTONETTI appends a separate opinion.

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

⁶³ See, *mutatis mutandis*, Decision of 13 November 2006, para. 23, and the “Decision Allocating Additional Time for Completion of Case-in-Chief”, 22 August 2007. See also *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, “Decision on Prosecution Appeal Following Trial Chamber’s Decision on Remand and Further Certification”, 11 May 2007, para. 36.

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]