



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: 21 November 2007
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: 21 November 2007

PROSECUTOR

v.

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

PUBLIC

DECISION ON USE OF TIME REMAINING FOR DEFENCE PHASE OF TRIAL

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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”) *ex proprio motu* issues this Order regulating the time available to the parties for the remainder of the Defence phase of the trial.

1. On 9 October 2006, the Trial Chamber issued its “Decision on Use of Time,” allocating the Prosecution approximately 260 hours to present its case-in-chief,¹ only 166 hours of which was in fact used by the Prosecution.² At the pre-defence conference held on 22 June 2007, the Chamber, after having set out possible means by which the Defence could reduce its estimates for the presentation of its evidence—such as use of Rules 92 *bis* and *ter*, tendering of documents from the bar table, and agreement on the admission of documents—, made an oral ruling setting the time for the presentation of the Defence case at 240 hours.³ The Chamber explained that it did not intend that this time period be equally apportioned among the Accused, seeing as the Rule 65 *ter* submissions varied significantly in the estimated times for the presentation of the respective cases. The Chamber expressed its hope that the Accused would reach agreement on the ultimate allocation of time between themselves.⁴

2. As the case has unfolded, the Milutinović Defence has used approximately 23 hours to present its case-in-chief, the Šainović Defence 20 hours, the Ojdanić Defence 40 hours, and the Pavković Defence less than four hours.⁵ On 25 October 2007, the Lazarević Defence moved the Chamber for an adjournment so that it could complete preparations for its case and assured the Chamber that the presentation of its evidence was still likely to be completed by the winter recess. The Chamber granted this motion.⁶ It is now apparent that that was an unrealistic assessment. It seems to the Chamber that the Lazarević Defence failed to have proper regard for the total time likely to be consumed by examination-in-chief, cross-examination, and ancillary matters. While the Lazarević Defence has intimated that it is likely to call only 34 of the 59 witnesses on its Rule 65 *ter* list, the revised estimate would still require 93 hours in examination-in-chief. While the Lukić Defence envisages its evidence-in-chief consuming an estimated 184 hours, it has on a number of occasions submitted to the Chamber that it will require a period of three months to

¹ Decision on Use of Time, 9 October 2006, p. 6; November 2006 Report on Time, 11 December 2006, pp. 1–2, note 3.

² See March 2007 Report on Use of Time, 2 April 2007; May 2007 Report on Use of Time, 18 June 2007.

³ T. 12821–12848 (22 June 2007).

⁴ T. 12847–12848 (22 June 2007). These issues were also discussed at T. 17629–17639 (25 October 2007).

⁵ These estimates do not include time taken by the examination by co-Accused of an Accused’s witnesses pursuant to Rule 90(H), which also counts toward the global time limit and which has been taken into account in calculating the 145 hours available for the Lazarević and Lukić Defences.

⁶ T. 17629–17639 (25 October 2007).

present its case.⁷ Because the potential exists for the presentation of these two Accused's cases to far exceed the remaining time allocated to the Defence, the Chamber had hoped that the Lazarević and Lukić Defences might have endeavoured to reach agreement on division of the remaining time. It is against that backdrop that the Chamber considered it appropriate, in order to ensure the fair and expeditious conduct of the proceedings, to hear the parties' submissions on these matters.

3. That hearing took place on 16 November 2007, during which the Lazarević and Lukić Defences made certain representations regarding the allocation of time. The Lazarević Defence seemed to suggest that the remaining time be divided in half, and the Lukić Defence reiterated its consistent position that it required "three months" to present its case. In the end, the Lazarević and Lukić Defences declined the Chamber's suggestion that they try to reach agreement between themselves on how to allocate the remaining time and stated their preference for the Chamber to do it for them in a formal order.

4. According to the calculations of the Chamber, the remaining time for the Lazarević and Lukić Defences to present their evidence was 145 hours at the commencement of the Lazarević case. It is thus plain that the Lazarević and Lukić Defences must further tailor their cases, as indeed the other Accused have already done, in order for them to fit within the temporal delimitations set by the Chamber at the pre-defence conference. The Chamber notes that it has consistently informed the parties that they have at their disposal a number of procedural avenues to reduce the amount of time in-court to present their cases, and the Lazarević and Lukić Defences have informed the Chamber that they intend to utilise these options.⁸ The Chamber notes that a great deal of evidence can be dealt with via motions for the admission of documents from the bar table and through the use of Rule 92 *ter* statements, and continues to urge the Lazarević and Lukić Defences to continue their preparations in this regard.

5. During the hearing on 16 November 2007, the issue arose regarding whether evidence given by an Accused himself counts toward the global time allocated to the Defence for the presentation of the evidence. The Chamber, for the avoidance of doubt and as stated at the hearing, wishes to confirm that the global time for the presentation of the Defence case includes the time for an Accused to give evidence in his own defence, should he choose to take the stand. The procedural mechanisms referred to in the preceding paragraphs will be of use to the Lazarević Defence—and perhaps to the Lukić Defence, should Lukić decide to take the stand—in balancing the time for the presentation of the Accused's evidence with that of the other witnesses on his Rule 65 *ter* list.

⁷ *E.g.*, hearing on 16 November 2007; T. 12825, 12838 (22 June 2007).

⁸ *E.g.*, T. 12828, 12837–12840 (22 June 2007).

Moreover, the Chamber made its decision on how much time to allocate to the Defence based upon the representations that five of the Accused would give evidence.

6. The Chamber notes that Lazarević is one of three co-Accused from the Army of Yugoslavia (“VJ”), the others being Ojdanić and Pavković, and that there are a number of commonalities in the cases of Ojdanić, Pavković, and Lazarević, who were each senior officers in the VJ. On the other hand, Lukić is the only Accused from the Ministry of the Interior (“MUP”). There is a potentially not insignificant body of evidence relating to the MUP, as there is to the activities of the VJ, but the Accused in the presentation of their cases thus far have, in general, not particularly addressed the circumstances relating to the MUP. The Chamber therefore finds force in the Lukić Defence’s argument that it has “a little bit more work to do in defence” than the other Accused, based upon the fact that he is the only Accused from the MUP.⁹ It is for these reasons that the Chamber finds it appropriate to allocate the remaining time between the Lazarević and Lukić Defences so that the former has approximately 45% and the latter 55% of the 145 hours remaining in the Defence case.¹⁰

7. As a final remark, the Chamber notes that the Šainović, Ojdanić, and Pavković Defences significantly reduced their cases from the estimates given in their Rule 65 *ter* submissions and that these three Accused had initially indicated they were going to give evidence in their cases, but then decided not to. The Lazarević and Lukić Defences therefore may have had significantly less time in which to present their cases, if their co-Accused had acted differently.

8. At the hearing on 16 November 2007, the Chamber enquired with the parties regarding their preferences for the discretionary periods of recess during spring 2008 of the trial. The Chamber has taken the parties’ submissions on this issue into account in its order setting the recesses below.

9. For the foregoing reasons and pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 73 *ter* of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby ORDERS as follows:

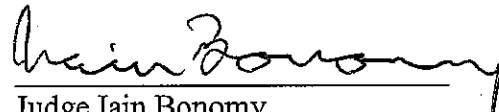
- a. The Lazarević Defence shall have 65 hours for the presentation of its evidence.
- b. The Lukić Defence shall have 80 hours for the presentation of its evidence.

⁹ T. 12826–12827 (22 June 2007).

¹⁰ The Chamber notes that 80 hours—when cross-examination, questioning by the bench, administrative time, weekends, and discretionary recess are factored in—works out to be about three months in-court time, which is the time that the Lukić Defence has consistently maintained it requires to present its evidence.

- c. The trial will not sit during the following dates:
- i. Friday, 21 March to Monday, 31 March 2008; and
 - ii. Friday, 25 April to Monday, 5 May 2008.
- d. The Trial Chamber may alter any of the orders set out above on a case-by-case basis, on good cause having been shown by a party, and issue additional orders in due course, as it deems appropriate. In deciding on such matters, the Trial Chamber may take account of the efficiency of the moving party's previous use of time.

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


Judge Iain Bonomy
Presiding

Dated this twenty-first day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]