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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-AR73.9
Date: 4 September 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrézia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 4 September 2008

PROSECUTOR
v.
JADRANKO PRLIĆ
BRUNO STOJIC
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ

PUBLIC

**DECISION ON SLOBODAN PRALJAK'S APPEAL AGAINST THE TRIAL
CHAMBER'S DECISION OF 16 MAY 2008 ON TRANSLATION OF
DOCUMENTS**

Office of the Prosecutor

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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 “Tribunal”, respectively) is seized of an appeal by Slobodan Praljak (“Praljak”)¹ against an order issued by Trial Chamber III (“Trial Chamber”) on 16 May 2008,² in which the Trial Chamber set limits to the allocation of translation facilities for the preparation of the Praljak’s defence case.

I. BACKGROUND

2. On 27 September 2007, the Trial Chamber issued a scheduling order, in which it ordered, pursuant to Rule 65(*ter*)(G) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), Praljak and his co-accused (collectively, “Accused”) to file, by 21 February 2008, the list of exhibits they intended to present in support of their case and to disclose to the Office of the Prosecutor (“Prosecution”) copies of the exhibits in question, translated into English as needed.³ On 24 January 2008, Praljak filed a motion requesting the Trial Chamber to order the Registry to take steps to translate documents deemed necessary for the presentation of his case.⁴ On 28 January 2008, the Trial Chamber rendered a decision, in which it decided that the Accused were to file the lists of exhibits and witnesses in accordance with Rule 65(*ter*)(G) of the Rules on 31 March 2008. The same day, the Trial Chamber requested the Registry to comment on the Motion.⁵ Both the Registry and Praljak filed several submissions addressing this issue.⁶

3. On 17 March 2008, a hearing was held pursuant to Rule 65*ter* of the Rules, during which the issue was discussed.⁷ On 19 March 2008, the Trial Chamber issued the “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents”, in which it granted Praljak an exception to the requirement of producing translations of the documents on the exhibit list on 31

¹ Slobodan Praljak’s Appeal of the Trial Chamber’s 16 May 2008 Decision on the Translation of Defence Evidence, 17 June 2008 (“Appeal”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Ordonnance portant sur la demande de Slobodan Praljak relative à la traduction de documents*, 16 May 2008 (“Impugned Order”).

³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Scheduling Order, 27 September 2007.

⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Motion Requesting that the Trial Chamber Order the Registrar to Facilitate Translations (Confidential), 24 January 2008 (“Motion”).

⁵ T. 26871 (28 January 2008).

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Rule 33 (B) of the Rules on Slobodan Praljak’s Motion Requesting Translations, 12 February 2008 (“Prlić Registry Submission Pursuant to Rule 33 (B)”); *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Request for Leave to Reply to the Registry’s Response to Praljak’s Motion Requesting Order to Facilitate Translation and Praljak’s Reply to the Registry’s Submission, 14 February 2008 (“Praljak Defence Request to Reply To Registry”); *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Supplemental Information Regarding Praljak’s Motion to Order the Registrar to Facilitate Translations, 28 February 2008 (“Praljak Defence Supplemental Information Regarding Motion to Order Translations”); *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Rule 33 (B) Providing Supplemental Information Related to Praljak’s Request for Translations, 3 March 2008 (“Registry Supplemental Submission Pursuant to Rule 33 (B)”). See also, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Notice Regarding Registry’s Submission of Supplemental Information on the Motion to Order the Registrar to Facilitate Translations, 4 March 2008 (“Praljak Defence Notice Regarding Registry’s Submission of Supplemental Information”).

March 2008 and instead ordered Praljak to provide a precise translated summary of the contents of each document on the list and to classify the documents according to their subject matter.⁸ Following this ruling, on 31 March 2008, Praljak filed a submission containing the lists of witnesses, exhibits, and expert witnesses he intended to present during the course of his case (“65^{ter} List”).⁹

4. On 16 May 2008, the Trial Chamber issued the Impugned Order, in which it ordered Praljak to promptly notify the Registry of the precise documents that he wanted translated and their order of priority.¹⁰ It further limited the amount of material which Praljak was entitled to have translated by the Registry translation services to 1,810 standard United Nations pages.¹¹

5. On 22 May 2008, Praljak requested the Trial Chamber to reconsider the Impugned Order or, in the alternative, grant him certification to appeal.¹² On 11 June 2008, the Trial Chamber declined to reconsider the Impugned Order, but granted the certification requested.¹³

6. On 17 May 2008, Praljak submitted his Appeal. The Prosecution did not file a response. On 3 July 2008, Praljak submitted an Additional Notice.¹⁴

II. STANDARD OF REVIEW

7. The Appeals Chamber recalls that decisions relating to the general conduct of trial proceedings are matters that fall within the discretion of the Trial Chamber.¹⁵ The Impugned Order, which limited the quantity of pages that Praljak could submit to the Registry for translation, is such a discretionary decision to which the Appeals Chamber must accord deference. This deference is based on the recognition by the Appeals Chamber of “the Trial Chamber’s organic familiarity with the day-to-day conduct of the parties and practical demands of the case”.¹⁶

⁷ T. 17 March 2008, pp. 27340-27333.

⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Slobodan Praljak’s Motion Concerning the Translation of Documents, 19 March 2008 (“Order of 19 March 2008”), p. 7.

⁹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*, 31 March 2008 (“65^{ter} List”).

¹⁰ Impugned Order, p. 10.

¹¹ Impugned Order, p. 10.

¹² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Request for Reconsideration or in the Alternative for Certification to Appeal the Trial Chamber’s 16 May 2008 Decision on the Translation of Defence Evidence, 22 May 2008 (“Praljak Defence’s Request for Reconsideration or Certification to Appeal”).

¹³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Praljak Defence Request for Reconsideration or for Certification to Appeal the Order of 16 May 2008, 11 June 2008 (“Trial Chamber’s Certification of the Interlocutory Appeal”).

¹⁴ Slobodan Praljak’s Notice Regarding the Denial of His Appeal Concerning Time to Present His Defence Case, 3 July 2008 (“Additional Notice”).

¹⁵ See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel, 1 November 2004 (“*Milošević* Decision of 1 November 2004”), para. 9.

¹⁶ See *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletic’s Interlocutory Appeal Against the Trial Chamber’s Decision on Joinder of Accused, 27 January 2006, para. 4. See also *Milošević* Decision of 1 November 2004, para. 9.

8. In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a “discernible error” resulting in prejudice to that party.¹⁷ The Appeals Chamber will only overturn a Trial Chamber’s discretionary decision 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.¹⁸ The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.¹⁹

III. DISCUSSION

9. Praljak submits that, in establishing a 1,810 UN page limit on the number of pages he may request the Registry to translate into a UN working language, the Trial Chamber based its assessment on a miscalculation.²⁰ Praljak further claims that, in any event, the Impugned Order adopted an erroneous methodology and allocated to him manifestly inadequate translation resources, thus violating Article 21 of the Tribunal’s Statute (“Statute”); Rules 3(E) and 82 of the Rules; and the principle of equality of arms.²¹ Praljak accordingly requests the Appeals Chamber to reverse the Trial Chamber’s limit on the number of pages he is entitled to request for translation.²²

A. The Alleged Error of Calculation in the Impugned Order

10. In support of his first argument, Praljak submits that the Trial Chamber appeared to reach the 1,810 page limit by taking as a benchmark the number of pages the Registry had translated for the Defence of Jadranko Prlić (“Prlić”) and then granting him approximately 300 additional pages beyond that benchmark.²³ Praljak asserts that, even if this methodology was correct, the actual calculation is not, because the Trial Chamber erroneously calculated the number of pages allotted to

¹⁷ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.4, Decision on Appeal Against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, 8 December 2006 (“Šešelj Decision of 8 December 2006”), para. 18 (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, para. 6).

¹⁸ Šešelj Decision of 8 December 2006, para. 18 (citing *Milošević* Decision of 1 November 2004, para. 9).

¹⁹ See *Prosecutor v. Rasim Delić*, Case No. IT-04-83-AR73.1, Decision on Rasim Delić’s Interlocutory Appeal Against Trial Chamber’s Oral Decisions on Admission of Exhibits 1316 and 1317, 15 April 2008, para. 6; See also Šešelj Decision of 8 December 2006, para. 18; *Milošević* Decision of 1 November 2004, para. 9; *Prosecutor v. Slobodan 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 (“*Milošević* Decision of 18 April 2002”), para. 5.

²⁰ Appeal, paras 22-25.

²¹ Appeal, paras 19-55.

²² Appeal, paras 2, 56.

²³ Appeal, para. 23.

Prlić.²⁴ The calculation adopted by the Trial Chamber failed to take into account 937 pages of Prlić material pending translation as well as additional pages that had been submitted for translation since 11 April 2008.²⁵ Praljak argues that due to this miscalculation, “the Impugned Order fails its own proposed criteria”.²⁶ Applying the Trial Chamber’s methodology correctly, he argues that he should be granted at least 2,747 pages (937 pages more than the 1,810 granted), in addition to the number of pages submitted for translation by Prlić since 11 April 2008.²⁷

11. The Appeals Chamber considers that the Trial Chamber’s calculations were indeed erroneous. The Trial Chamber reasoned in the Impugned Order that “since the co-accused must respond to similar allegations from the Prosecution, a similar number of standard United Nations pages of documents should allow each one of them to effectively ensure his own defence”.²⁸ Assuming this reasoning is appropriate in light of the specific circumstances of each accused, the total number of pages to be allocated to Praljak is to be compared with the *total* number of pages of translations received or to be received by the co-accused in question, including both the pages already translated and those pending translation.

12. In the Impugned Order, the Trial Chamber considered that

[...] CLSS informed it in an official communication dated 11 April 2008 that it **had translated**: (1) **3,506** standard United Nations pages for the Prlić Defence, (2) 382 standard United Nations pages for the Stojić Defence, (3) 1,990 standard United Nations pages for the Praljak Defence, (4) 577 standard United Nations pages for the Petković Defence, (5) 914 standard United Nations pages for the Ćorić Defence and (6) 883 standard United Nations pages for the Pušić Defence,²⁹

and that

[...] CLSS also indicated to the Chamber that the following translations **were pending**: (1) **937** physical pages for the Prlić Defence, (2) 36 physical pages for the Stojić Defence, (3) 2,130 physical pages for the Praljak Defence, (4) 268 physical pages for the Petković Defence, (5) 271 physical pages for the Ćorić Defence and (6) no physical pages for the Pušić Defence [.]

13. However, when evaluating the translation resources to be allocated to Praljak, the Trial Chamber observed that

[...] the number of translations that the co-accused of the Accused Praljak received varies from 382 to **3,506** standard United Nations Pages, [...] consequently [...] the Chamber finds that it is reasonable to allow the Accused Praljak to request the translation of a maximum of 3,800 standard United Nations pages of documents [.]³⁰

²⁴ Appeal, p. 5.

²⁵ Appeal, para. 23.

²⁶ Appeal, para. 25.

²⁷ Appeal, para. 24.

²⁸ Impugned Order, p. 8 (emphasis added).

²⁹ Impugned Order, pp. 7-8 (emphasis added).

³⁰ Impugned Order, p. 8 (emphasis added; original emphasis omitted).

14. The Trial Chamber thus concluded that, since Praljak had already received the equivalent of 1,990 standard United Nations pages of translation, it was reasonable to grant him the translation of 1,810 additional standard United Nations pages – *i.e.*, the difference between the number of pages already translated for Praljak and the 3506 pages translated for Prlić, to which the Trial Chamber added 294 pages.³¹

15. The Appeals Chamber finds that this calculation was incorrect, because it took into account only those pages already translated for Prlić's case and failed to consider those that were either pending for translation or had since been filed for translation. In other words, the Impugned Order based the page limit it assigned to Praljak on a miscalculation of the total number of pages granted to Prlić, that is, on a patently incorrect conclusion of fact. On this ground alone, the Appeals Chamber considers that the matter should be remanded back to the Trial Chamber for reconsideration.

B. The Methodology Adopted by the Trial Chamber and the Alleged Violation of Rule 82(A)

16. Praljak submits that the methodology adopted by the Trial Chamber (even correctly applied) is flawed and based on an incorrect interpretation of the governing law. In particular, Praljak argues that the Impugned Order violates his rights under Rule 82(A) of the Rules because it explicitly ties his rights to the translation choices of his co-accused.³² He claims that to deny the rights of an accused based upon the actions of co-accused, over which the accused has no control, would be a violation of the principle, enshrined in Rule 82(A) of the Rules, that each accused in a joint trial shall be accorded the same rights as if the accused were being tried separately.³³

17. The Appeals Chamber notes that the Trial Chamber justified the methodology adopted by reference to the deficiencies of the Praljak's 65^{ter} List. In particular, the Trial Chamber recalled in the Impugned Order that, in its Order of 19 March 2008, it instructed Praljak to provide a precise summary of each exhibit included in his 65^{ter} List and to classify the exhibits by subject.³⁴ The Trial Chamber also observed in the Impugned Order that Praljak's 65^{ter} List "indicates for each exhibit the subject to which it refers, but that this list includes too many different subjects, often redundant and imprecise, and does not constitute an organic whole".³⁵ The Trial Chamber further

³¹ Impugned Order, pp. 8-9.

³² Appeal, para. 33.

³³ Appeal, paras 32, 34.

³⁴ Impugned Order, p. 2.

³⁵ Impugned Order, p. 5.

considered that Praljak's 65ter List did not provide a detailed summary of each exhibit.³⁶ On this basis, the Trial Chamber concluded that Praljak's 65ter List did not allow the Trial Chamber to determine whether the numerous exhibits not yet translated were necessary to the presentation of the Praljak's Defence.³⁷ The Trial Chamber then proceeded to define the limit of the translation facilities to be allocated to Praljak by reference to the translation facilities already allocated to the other Accused.³⁸

18. In his Appeal, Praljak submits, however, that he followed all of the earlier instructions of the Trial Chamber with respect to the 65ter List, and argues that each document came with a precise English summary of the contents and that each exhibit was given a title.³⁹ He further claims that he was not informed by the Trial Chamber of the alleged deficiencies of his 65ter List until the Impugned Order was issued.⁴⁰ In any event, Praljak submits, alleged deficiencies in his 65ter List should not provide a basis for denying the translation of the documents which an accused wishes to tender.⁴¹ Further, he argues that, unless the Trial Chamber permits adequate translation of the documents to enable it to make a proper evaluation of the evidentiary weight of the documents, he is placed in an unenviable position of having to demonstrate in advance that the translation of all documents on the 65ter List is strictly necessary to his defence.⁴² In addition, Praljak submits that the Impugned Order's general assessment that he has not demonstrated the need to translate many documents included on his 65ter List is premature, because the Trial Chamber has not yet heard a full exposition of his defence case, which will be provided in his opening statement.⁴³

19. The Appeals Chamber considers that the Trial Chamber did not commit a discernable error in requesting in advance a detailed description of the documents that Praljak wanted to have translated. Without this information, the Trial Chamber could not make a reasonable assessment as to what translation resources were justifiably needed by the Defence. For the Trial Chamber to have left such an assessment until the opening of the Defence case, at which time the precise contours of the Defence case would be known, would only result in unnecessary delays in the translation process. An early assessment of the resources to be allocated to the parties ensures the smooth and expeditious conduct of the proceedings and the request of the Trial Chamber clearly falls within its discretionary power based on its familiarity with the case and its daily management of the trial.

³⁶ Impugned Order, p. 5.

³⁷ Impugned Order, p. 7.

³⁸ Impugned Order, p. 8.

³⁹ Appeal, para. 35.

⁴⁰ Appeal, para. 35.

⁴¹ Appeal, para. 37.

⁴² Appeal, para. 38.

⁴³ Appeal, para. 39.

20. While the Appeals Chamber is satisfied that the approach of the Trial Chamber fell well within its discretionary power, it is nevertheless concerned that the assessment of the Trial Chamber was in violation of the right of an accused being tried jointly to be accorded the same rights as if he were tried separately in accordance with Rule 82 of the Rules. The Appeals Chamber notes that the Trial Chamber decided on the translation resources to be allocated to Praljak by reference to those already allocated to his co-defendants without considering whether that reference point was sufficient to take into account Praljak's specific needs. If a comparison among resources to be allocated to co-defendants is relevant to ensure the fair treatment of each defendant *vis-à-vis* each other, the Trial Chamber must still ultimately make an assessment of the resources of each accused separately in order to ensure these resources are sufficient for the conduct of that accused's case pursuant to Article 21(4)(b) of the Statute.

21. The Appeals Chamber notes that the Trial Chamber gave Praljak the opportunity to provide summaries of the documents that he wished to have translated with his Rule 65*ter* List and, thereby, to identify the resources that he considered necessary for the presentation of his case. The Trial Chamber found that the information provided by Praljak was insufficient to allow it to make an assessment of the resources he would need for translation purposes and on that basis, made its assessment by reference to the translation resources allocated to his co-accused. The Appeals Chamber is not satisfied that this was a reasonable assessment. A cursory examination of the information provided by Praljak in his 65*ter* List shows in fact that Praljak made a good faith attempt to comply with the Trial Chamber's Order of 19 March 2008, submitting more than 400 pages of summaries of the documents he wished to have translated. Accordingly, the Appeals Chamber considers that the Impugned Order did not provide sufficient justification for failing to make an individualized assessment of the resources needed by Praljak for the presentation of his case.

C. The Inadequacy of the Translation Facilities Allocated to Praljak

22. Praljak claims that the translation facilities allocated to him by the Impugned Order are manifestly inadequate. He submits that at least four out of five of the witness statements he intends to tender under Rules 92*bis* and 92*ter* of the Rules will effectively be barred by the limit imposed by the Trial Chamber, and this would be so even if the Trial Chamber were to grant the additional 937 pages due applying its methodology correctly.⁴⁴

⁴⁴ Appeal, para. 28.

23. Praljak asserts that the insufficiency of resources allocated to him in the Impugned Order constitutes a violation of Article 21 of the Statute, which provides that the Accused shall be entitled to have adequate time and facilities for the preparation of his defence, including adequate facilities for the translation of materials that he intends to present as evidence.⁴⁵ He also claims that there is no ground under Rule 3(E) of the Rules for limitations on resources made available for translations by reference to budgetary or logistical concerns, and that the limitations imposed by the Impugned Order violate this provision.⁴⁶ He further submits that the rationale for Trial Chamber control over the presentation of evidence does not justify reliance on Rule 90(F) of the Rules to restrict the allocation of translation resources.⁴⁷ In particular, Praljak argues that by restricting translation resources to the Accused, the Trial Chamber prevents the presentation of evidence without having given any consideration to the probative value of that evidence.⁴⁸ He further claims that the denial of translation resources greatly increases the need for oral testimony, thus extending, rather than reducing, the length of the trial, as witnesses must be presented *viva voce*.⁴⁹

24. In addition, Praljak submits that consideration should be given to the fact that the Impugned Order is inconsistent with other requirements imposed by the Trial Chamber.⁵⁰ Specifically, Praljak notes that he followed the Trial Chamber's repeated encouragement to minimize the number of *viva voce* witnesses, substituting them with written evidence.⁵¹ As a consequence of the Impugned Order together with the Trial Chamber's Decision of 25 April 2008 – which effectively cut in half the amount of time available for the presentation of Praljak's case – Praljak is now unable to compensate with oral evidence the amount of written evidence that may not be translated due to the latest guidelines.⁵² Praljak concludes that the Trial Chamber violated his right to a fair hearing pursuant to Article 21(2) of the Statute, in that the restrictions placed on the presentation of his case have effectively barred him from presenting, in any format, most of the evidence he would like to submit.⁵³

25. The Appeals Chamber finds that Rule 3(E) of the Rules, which provides “(t)he Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages” does not preclude the Trial Chamber from imposing a reasonable limitation on what

⁴⁵ Appeal, paras 19-20.

⁴⁶ Appeal, paras 45-49.

⁴⁷ Appeal, paras 41-44.

⁴⁸ Appeal, para. 42.

⁴⁹ Appeal, para. 43.

⁵⁰ Appeal, paras 30-31.

⁵¹ Appeal, para. 30.

⁵² In its Additional Notice, Praljak notes that the Trial Chamber's Decision of 25 April 2008 has been upheld by the Appeals Chamber. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.7, Decision on Defendants Appeal Against “*Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge*”, 1 July 2008 (“Decision of 1 July 2008”).

⁵³ Appeal, paras 51-52.

translation resources should be made available to an accused to ensure a fair trial. The authority to impose such a limitation flows from the Trial Chamber's responsibility and authority of managing the proceedings before it. As such, it is within the Trial Chamber's discretion to limit the translation resources made available to the parties provided that the limitation is consistent with the statutory rights of an accused, including Article 21(4)(e) of the Statute.

26. The Appeals Chamber further notes that it is not necessarily inconsistent for the Trial Chamber to limit both the time available for oral testimony and the translation resources available for written testimony if the combined limitations do not hinder the capacity of the accused to present an adequate defence. The key requirement under Article 21(4)(b) of the Statute is that the assessment of each measure – such as the limitation on translation services – must be made in the context of the totality of the other measures taken, including the limitations on oral testimony.

27. Considering the errors in the Impugned Order already identified above, the Appeals Chamber does not need to make a specific finding of fact on the adequacy of the translation facilities allocated to Praljak in the Impugned Order. However, in reconsidering the allocation of translation resources, the Trial Chamber should give due weight to Praljak's right to a fair hearing pursuant to Article 21(2) and (4)(b) of the Statute, particularly in light of the restrictions imposed on the amount of oral evidence Praljak may present.

D. The Violation of the Principle of Equality of Arms

28. Praljak claims that, while translation resources should not be limited by reference to a comparison with other parties, if any comparison is made, it should be a comparison between his case and the Prosecution rather than his co-accused.⁵⁴ Noting the Prosecution's lengthier preparation time, the Prosecution's well-financed internal translation facilities, the absence of translation limit placed on the Prosecution, and the fact that at least 90% of the Prosecution's 40,000 standard UN pages of exhibits required translation, Praljak submits that the Impugned Order's restriction on the translation resources available to him violates the principle of equality of arms.⁵⁵

29. It is well established in the jurisprudence of this Tribunal that equality of arms does not mean equality of resources, but rather that each party must have a reasonable opportunity to defend its interests under conditions which do not place him at a substantial disadvantage *vis-à-vis* his

⁵⁴ Appeal, para. 55.

⁵⁵ Appeal, paras 54-55.

opponent.⁵⁶ In this respect, the Appeals Chamber is not persuaded by Praljak's argument that translation resources allocated to the Prosecution are relevant to the determination as to which resources should be allocated to him for the conduct of his defence.

IV. DISPOSITION

30. On the basis of the foregoing, the Appeals Chamber,

GRANTS the Appeal with respect to the arguments concerning the calculation of pages⁵⁷ and the methodology adopted in the Impugned Order resulting in violations of Article 21 of the Statute and Rule 82(A) of the Rules by denying Praljak's right to an individualized assessment of the translation resources to be allocated to him;⁵⁸

REMANDS the Impugned Order to the Trial Chamber for reconsideration in light of the errors identified by the Appeals Chamber;

DISMISSES the remainder of the Appeal.

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

Done this 4th day of September 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

⁵⁶ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras 44-55; *Prosecutor v. Zlatko Aleskovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, paras 23-25; *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement, 1 June 2001, para. 69; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, paras 23-24; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, paras 175-177; *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, paras 7-9; Decision of 1 July 2008, para. 39.

⁵⁷ *Supra*, paras 10-15.

⁵⁸ *Supra*, paras 16-21.