



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: 29 June 2006
Original: ENGLISH
French

TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel

Registrar: Mr Hans Holthuis

Decision of: 29 June 2006

THE PROSECUTOR

v.

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

**DECISION ON THE ORAL REQUEST OF THE ACCUSED
JADRANKO PRLIĆ FOR AUTHORISATION TO USE A LAPTOP
COMPUTER AT HEARINGS OR TO BE SEATED NEXT TO HIS COUNSEL**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphey for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić for Milivoj Petković
Ms Dijana Tomašegović-Tomić for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“the 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 (“the Tribunal”),

BEING SEIZED of an oral request from counsel for the accused Jadranko Prlić (“the Defence”) on 4 May 2006 (“the oral request”) asking that the Chamber authorise the accused Jadranko Prlić (“the Accused”) to use his laptop computer at hearings or, alternatively, to be seated next to his Defence in the courtroom,¹

NOTING the oral response of the Office of the Prosecutor (“the Prosecution”) that same day in which the Prosecution indicates that it has no particular opinion on the issue,²

NOTING the internal memorandum from the Registrar of the Tribunal (“the Registrar”) addressed to the Chamber on 5 May 2006 (“the Memorandum of 5 May 2006”) in which the Registrar objects to persons accused before the Tribunal being authorised to use laptop computers at the hearings,

NOTING the memorandum from the Deputy Head of the United Nations Detention Unit (“the Detention Unit”) addressed to the Deputy Registrar of the Tribunal on 7 June 2006 (“the Memorandum of 7 June 2006”) which provides a detailed explanation of the technical facilities made available to the accused at the Detention Unit,

CONSIDERING that under Article 21(4)(b) of the Statute of the Tribunal (“the Statute”) an accused shall be entitled to have adequate time and facilities for the preparation of his defence,

CONSIDERING that the right of an accused to have adequate facilities for the preparation of his defence is related to the issue of whether, under the circumstances of the case, the defence in criminal proceedings has not suffered *substantial* impairment to the preparation of its defence,

CONSIDERING that according to the case law of the European Court of Human Rights, the requirements of this right represent specific aspects of the right to a fair

¹ Hearing transcript, 4 May 2006, pp. 1216 and 1217.

trial and seek to guarantee in particular and, depending on the characteristics specific to the case, access to the criminal file or the ordering of investigative measures, for example, an expert opinion,³

CONSIDERING that, in the case in point, the documents relevant to the preparation of the defence of the Accused have been disclosed to the Accused and to the Defence in a timely manner and, in any case, before the trial proceedings relevant to those documents,

CONSIDERING that the Memorandum of 7 June 2006 points out that the Accused has a computer at the Detention Unit which makes it possible for him to familiarise himself more easily with the documents relevant to his trial,

CONSIDERING moreover that in his Memorandum of 5 May 2006, the Registrar refers to *inter alia* security reasons which would demonstrate that making a laptop computer available in the courtroom creates the risk of compromising the confidentiality of sensitive information such as the names of protected witnesses or information in confidential documents,

CONSIDERING that the Registrar, in particular in respect of the security service and the officials at the Detention Unit, must evaluate all the factors designed to guarantee security at the Detention Unit and during hearings in the courtroom,

CONSIDERING moreover that the Accused is represented by counsel who has a computer in the courtroom which allows him at all times to consult all the documents necessary for the defence of the Accused,

CONSIDERING moreover that the principle of equality of arms set out in Article 21(4) of the Statute requires that the parties to the trial must be able to present their case without suffering a manifest disadvantage,

CONSIDERING that the term “equality of arms” must not be taken literally, as evidenced by the fact that a person accused before the Tribunal is presumed innocent whereas the Prosecution must prove that person’s guilt beyond all reasonable doubt,

² Hearing transcript, 4 May 2006, pp. 1220 and 1221.

³ *Jasper v. United Kingdom*, Judgment of 16 February 2000, paras. 51 and 55-56; *Foucher v. France*, Judgment of 18 March 1997 paras. 27 and 30.

CONSIDERING that the term “equality of arms” does not require that the parties to the trial have the same financial or technical resources,

CONSIDERING therefore that the right of the Accused set out in Article 21(4)(b) of the Statute and the principle of equality of arms have been respected and that there is no reason to grant the first request of the Accused,

CONSIDERING that in the alternative the Accused asks to be seated next to his counsel in the courtroom,

CONSIDERING that among other things the configuration of the courtroom has been designed to ensure the security of the persons in the courtroom, including the security of the accused, and that, in view of the number of accused in this case, it is impossible to allow the accused to be seated next to their counsel,

CONSIDERING that at hearings the Accused can communicate with his Defence through written notes, submit to the Defence any message which he considers necessary and address the Chamber on any point which he believes is relevant,

CONSIDERING therefore that there is no reason to grant the second request of the Accused but that, as far as practicable, it would be desirable for the Registry of the Tribunal to facilitate the exchange of written notes between the accused and their counsel,

FOR THE FOREGOING REASONS

IN APPLICATION of Article 21(4) of the Statute and Rule 54 of the Rules,

RULING IN THE MAJORITY OF ITS MEMBERS,

DENIES the oral request and

INVITES the Registrar of the Tribunal to facilitate as far as practicable the exchange of written notes between the accused and their counsel in the courtroom.

Judge Antonetti's dissenting opinion to this decision is attached hereto.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of June 2006
At The Hague
The Netherlands

ŠSeal of the TribunalĆ