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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-T

Date: 29 June 2006

Original: ENGLISH
French

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

DISSENTING OPINION OF JUDGE JEAN-CLAUDE ANTONETTI, PRESIDING JUDGE OF THE TRIAL CHAMBER, CONCERNING THE 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

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1. I wish to explain the reasons for my disagreement with the majority of the Judges of the Trial Chamber concerning the decision of 27 June 2006 ("the Decision") which refused to grant to the accused Prlić the right to use a laptop computer in the courtroom or to be seated next to his counsel.

2. On 4 May 2006, the accused Prlić ("the Accused") submitted an oral request asking that the Chamber authorise him to use his laptop computer at the hearings or, alternatively, to be seated next to the Defence in the courtroom.[1] The request was initially denied by the Registrar by memorandum dated 5 May 2006 which was addressed to the Chamber and in which are set out the reasons for the Registrar's refusal related to the financial cost and security requirements.

3. The reasons given by the Registry do not hold up against a detailed examination of the facts of the case insofar as the Accused has offered to provide the computer himself and, as regards security, the fact that the computer would remain within the Tribunal, unless one is to believe that this object might be used as a weapon …

4. In its Decision, the Chamber also denied the request of the Accused on the ground that he is represented by counsel who himself has a computer in the courtroom. However, for the reasons set out below, I believe that an accused who cannot be seated next to his counsel in the courtroom must, in full equality with the Prosecution, must be allowed to have a computer during hearings.

5. Under Article 21(4) of the Statute of the Tribunal on the rights of the accused, an accused has the right, in full equality, to **the minimum** guarantees set out in the following sub-paragraphs: sub-paragraph (b) which states that he must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; sub-paragraph (d) which states that he may have legal assistance of his own choosing; and sub-paragraph (e) which states that he may examine, or have examined, a witness.

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

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6. It should be recalled that the guarantees set out in Article 21(4) are not exhaustive and, if necessary, in the name of the principle of equality of arms and, consequently, of a fair trial, the Judges must add guarantees which the Statute does not mention in order to adjust the balance, if so required, between the resources available to the parties.

7. The *Tadić* case law has defined the principle of equality of arms as being closely linked to that of fairness and clearly stated *"that equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case."*[2]

8. The crucial question which arises in this case is therefore to decide whether the fact that Defence counsel themselves have the same facilities as the Prosecution during hearings suffices to assert that the right of an accused to a fair trial has been guaranteed.

9. One should remember that the right to equality of arms is more generally a right of the accused because the Judges must ensure that the person being prosecuted, who is the most vulnerable person at the trial, is not disadvantaged in the conduct of his defence.

10. Accordingly, a judicial institution allocates significant resources to the Defence, limited however by budgetary constraints. This case is peculiar in its being a "mega-trial", not only because of the number of accused but also because of the volume of evidence, to date almost 400 witnesses and more than 9,500 documents.

11. Under these conditions, although Defence counsel at hearings have the same resources as the Prosecution, how can an accused who is present in court make his personal contributions to his counsel – who will be cross-examining witnesses and raising objections – but who does not have the same facilities in the courtroom as the Prosecution if he cannot take notes on a computer or cannot consult his own materials electronically?

[2] *The Prosecutor v. Duško Tadić*, Case no. IT-94-1-A, Judgement of 15 July 1999, para. 48..

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12. It is important to bear in mind that the answer of a witness may at that very moment make it necessary for an accused to consult a document and to communicate his observations to his counsel immediately so that, at the appropriate moment, counsel may ask the relevant question. Consequently, there is no question that, independently of his counsel, an accused may have an informed point of view on certain questions which, during the cross-examination of a witness, might lead him to present his own documents. If, in full equality with the Prosecution, he does not have available to him the materials to which a computer allows him to refer at any time, how can he fully exercise that right, which is recognised by the Statute?

13. Respect for the principle of the equality of arms between the Accused and the Prosecution cannot be considered to have reached a satisfactory threshold because Defence counsel have access to the same facilities at the hearing as the Prosecution, facilities which for technical reasons are not made available to the Accused himself even though the weight of the case in terms of presentation of evidence is considerable and would require that the judicial institution take appropriate measures.

14. The physical separation between the Accused and his counsel within the courtroom is regrettable because it precludes immediate discussion. The Accused has only his pen with which to take notes and then have these passed to his counsel. Although new technologies for the exercise of the rights of the Defence are available at the Tribunal, at present, the accused do not enjoy them in the courtroom.

15. For these reasons, I consider that, as the accused in this case are not physically seated next to their counsel in court, they should, at the very least, be able not only to use a computer to facilitate note taking and communicating those notes to their counsel but also to be in a position to consult all the materials relevant to the case at the hearing by using the e-Court system.

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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

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