



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: 19 Octobre 2006
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 19 October 2006

THE PROSECUTOR

v.

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

**Decision on the Prosecution Motion for Admission of Evidence Pursuant to Rule
92 bis of the Rules (Ashdown)**

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 and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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”);

SEIZED of the “Motion for Admission of Evidence Pursuant to Rule 92bis (A) and (D) of the Rules (Ashdown)” filed by the Office of the Prosecutor (“Prosecution”) on 19 September 2006 (“Motion”), in which the Prosecution requests the Chamber to admit, pursuant to Rule 92bis (A) and (D) of the Rules of Procedure and Evidence (“Rules”), the transcript of the testimony of Paddy Ashdown, who testified in the case *Prosecutor v. Tihomir Blaškić*¹ on 19 March 1998, and the exhibits that were admitted into evidence through him (collectively “Testimony”),

NOTING the “Joint Defence Response to Motion to Admit the Transcript of a Testimony Given Pursuant to Rule 92bis (A) and (D) of the Rules (Ashdown)”, filed jointly and confidentially by the Counsels for the six Accused (“Defence”) on 26 September 2006 (“Response”), in which the Defence opposes the Motion,

CONSIDERING that in support of its Motion the Prosecution argues that the Testimony does not go to proof of the acts or conduct of one of the Accused in the present case,

CONSIDERING that the Prosecution argues, moreover, that the Testimony corroborates the testimonies given by witnesses in court in the present case, specifically the testimony given by Witness Peter Galbraith,

CONSIDERING that the Prosecution maintains that it is neither necessary nor appropriate to summon Paddy Ashdown for cross-examination, seeing that he was already cross-examined in due form in the *Blaškić* case,

CONSIDERING that the Prosecution also argues that the Trial Chamber in the *Blaškić* case found that Mr Ashdown was a reliable source and that his testimony had probative value, and that the Prosecution stresses the fact that the Testimony has already been admitted pursuant to Rule 92bis of the Rules in other cases brought before the Tribunal,

¹ *Prosecutor v. Tihomir Blaškić*, case IT-95-14-T (“*Blaškić* Case”).

CONSIDERING that the Defence argues that the Testimony is irrelevant for the present case inasmuch as it refers to a conversation that was held on 6 May 1995 and related to how Bosnia and Herzegovina would look in 2005, while the Amended Indictment (“Indictment”) covers a period that ends in April 1994,

CONSIDERING that, pursuant to Rule 89(C) of the Rules, “a Chamber may admit any relevant evidence which it deems to have probative value,”

CONSIDERING that Rule 92*bis* (A) of the Rules provides that a Chamber “may dispense with the attendance of a witness in person, and instead admit, in whole or in part, the evidence of a witness in the form of /.../ a transcript of evidence, which was given by a witness in proceedings before the Tribunal, in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment”,².

CONSIDERING that the period covered by the Indictment ends with April 1994, because the last crimes ascribed to the Accused date from April 1994,³

CONSIDERING that the Testimony refers to a single conversation that Mr Ashdown had with Franjo Tudjman, the then President of the Republic of Croatia, on 6 May 1995,

CONSIDERING that, during this conversation, Franjo Tudjman expressed his views on how Bosnia and Herzegovina would look ten years later, that is, in 2005,

CONSIDERING that he also made remarks about Mr Izetbegović, the then President of Bosnia and Herzegovina, and the Bosnian Muslims,

CONSIDERING, however, that the Testimony provides information only about Franjo Tudjman’s frame of mind in 1995 and not about the period covered by the Indictment,

² The new version of Rule 92*bis* of the Rules entered into force on 22 September 2006. The modifications made to this Rule have no relevance for the present decision. In the old version of this Rule, the admission of transcripts of evidence given in other proceedings before the Tribunal was governed by paragraph (D). This paragraph was eliminated in the new version and the admission of transcripts of evidence is now stipulated in paragraph (A).

³ In particular, the alleged crimes related to the siege of East Mostar and the Heliodrom, Dretelj and Gabela camps.

CONSIDERING, consequently, that the Testimony is irrelevant for this case,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 89(C) and 92*bis* of the Rules,

DISMISSES the Motion.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]