



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: 10 May 2007
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: 10 May 2007

THE PROSECUTOR

v.

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

DECISION ON THE MODE OF INTERROGATING WITNESSES

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 Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

1. 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”), with a view to guaranteeing as fair and effective a trial as possible and, with the experience of over 12 months of trial, hereby renders a decision pursuant to Rules 85(B), 90(F) and (H) of the Rules of Procedure and Evidence (“Rules”) referring to several aspects of the conduct of the trial.

II PROCEDURAL BACKGROUND

2. Following the oral requests made by the Parties on 14 and 19 March 2007 regarding this issue, the Chamber held several hearings in order to obtain the opinion of the Prosecution, Counsels for the Defence and the Accused regarding the procedure established at the beginning of the trial, and to evaluate it in order to adapt it if necessary.

3. At the hearings of 22 and 29 March and 16 April 2007, the Chamber invited the Parties to present their observations and, where appropriate, proposals for the improvement of the proceedings. The Chamber thus heard the Parties’ suggestions on various issues, such as the modes of interrogating witnesses, the presentation of written evidence, the participation of the Accused in the questioning of witnesses, and the adjudicated facts.

4. Moreover, at the hearings of 2 and 7 May 2007, the Parties raised the issue of cross-examination and the possibility of asking leading questions at that time.

III SUBMISSIONS OF THE PARTIES

5. The Chamber does not find it necessary to reiterate the submissions of the Parties and refers to the transcripts of the above-cited hearings.

IV DISCUSSION

6. The Chamber shall concentrate on three principal issues discussed at the above-cited hearings: first, the modes of interrogating witnesses, second, the participation of the Accused in the trial, and third, cross-examination. The Chamber holds that the other issues raised at the hearings do not require any new action on the part of the Chamber.

7. As regards the modes of interrogation of witnesses, following the hearing of 22 March 2007, the Parties submitted jointly to the Chamber their guidelines for the examination of witnesses. The Chamber notes the guidelines proposed by the Parties and finds some of them useful inasmuch as they may protect the right of the Parties to conduct their examination and allow the Judges to ask questions at an appropriate moment. The Chamber will bear them in mind during the exercise of its right to control the mode of interrogating witnesses and the presentation of evidence pursuant to Rule 90(F) of the Rules.

8. The Chamber will now examine the issue of the participation of the Accused in the trial proceedings and in the questioning of witnesses. It recalls Guideline C of the “Decisions Adopting Guidelines on Conduct of Trial Proceedings”, its revised version of 28 April 2006:

“Article 21(e) of the Statute reiterates the right of the accused to examine, or have examined, the witnesses against him. In the present case, the Accused are represented by counsel. Witnesses shall primarily be questioned by counsel for the Accused. In exceptional circumstances and after authorisation of the Chamber, an Accused may directly address a witness and put questions to him or her.”

9. In this respect, the Chamber would stress that all the Accused are represented by experienced Counsels. Moreover, the Chamber has been very flexible in the application of the relevant guideline. Thus, it allowed the Accused, specifically the Accused Praljak, to speak and question witnesses about all issues and even, at least in part, to conduct the cross-examination himself.

10. The Chamber is not opposed, in principle, to an accused being allowed to speak and ask witnesses questions. The experience of previous months, however, has shown that the complexity of this trial compels the Chamber to strictly control the modes of witness interrogation. In every multiple-accused trial, a Chamber must make sure that the intervention of an accused does not affect the rights of other accused to an expeditious and fair trial. The Accused Praljak, although full of good intentions, had repeatedly proved to lack both the legal expertise and the experience required to interrogate witnesses in conformity with the Rules and the jurisprudence of the Tribunal. It is true that some of his questions were interesting and pertinent. Nevertheless, most of the questions were irrelevant and frequently concentrated on *tu quoque*. Many times the questions were not put to the appropriate Witness. Moreover, the Chamber has observed that the Accused Praljak sometimes makes a habit of substituting his own thoughts or elements of defence for witnesses’ answers. Rather than ask true questions, he regularly invited the witnesses to share his *opinions*. The Chamber cannot but find that interventions of this type entail a useless waste of time.

11. In view of the above reasons, the Chamber shall henceforth apply Guideline C more strictly and shall no longer allow the Accused to ask questions without its prior approval. Consequently, witnesses shall first be cross-examined by Counsel for the Accused. In exceptional circumstances and with the authorisation of the Chamber, an Accused may directly address a witness and put questions to him or her.

12. Exceptional circumstances shall be linked either to the examination of events in which an Accused personally took part or to the examination of issues about which he is specifically competent. An Accused who wishes to take the floor will previously explain to the Chamber the reasons why exceptional circumstances are involved.

13. Finally, as regards the regulations governing cross-examination, the Chamber recalls that pursuant to Rule 90(H) of the Rules, cross-examination may refer to an issue that was not raised during the examination-in-chief. This rule allows for a more rational organisation of the proceedings because it prevents the Defence from having to bring back a witness when it presents its evidence. This is, however, not cross-examination strictly speaking but another examination-in-chief. Due to this fact, the rules applying to the latter must be respected. Consequently, leading questions will

not be allowed. If this restriction were not to be applied, the Party conducting a cross-examination would enjoy an unjustified privilege which would compromise the principle of equality of arms.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 85(B), 90(F) and (H) of the Rules,

RECALLS that pursuant to Rule 85(B) of the Rules a Judge may at any stage put any question to the witness,

NOTES the Guidelines proposed jointly by the Parties on 22 March 2007,

RECALLS Guideline C of the “Decision Adopting Guidelines on Conduct of Trial Proceedings” in the revised version of 28 April 2006

AND

DECIDES that leading questions shall not be allowed when a Party asks questions during the cross-examination about an issue that was not raised during the examination-in-chief.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this tenth day of May 2007
At The Hague
The Netherlands

[Seal of the Tribunal]