



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: 25 June 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Opinion of: 25 June 2007

THE PROSECUTOR

v.

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

PUBLIC

**SEPARATE OPINION OF PRESIDING JUDGE JEAN-CLAUDE ANTONETTI
REGARDING THE DECISION ON THE APPLICATION OF ARTICLE 92^{ter} OF
THE RULES**

The Office of the Prosecutor:

Mr Kenneth Scott

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

While agreeing with the Trial Chamber judges on the Decision on the Application of Article 92*ter*, as Presiding Judge, I wish to express my opinion of the Article 92*ter* procedure currently used by the Office of the Prosecutor ("Prosecution") during the proceedings.

The main objective of Article 92*ter* of the Rules of Procedure and Evidence is to ensure that the proceedings are carried out effectively and expeditiously while respecting the rights of the accused. As soon as this Article was adopted, the Chamber encouraged the Prosecution to use it. The Chamber authorised the Prosecution to put to a witness any relevant question concerning written statements. Nevertheless, this practice has shown its limitations. Instead of a few clarifying questions or some new questions being put to a 92*ter* witness, these became very lengthy testimonies. Thus, the objective of Article 92*ter*, which is to save time, may be reversed if a party is allowed to present the maximum number of written exhibits while still asking a number of oral questions. As a result, the opposing party, in this case the Defence, must prepare not only for the written statements, but also must prepare very quickly for new oral questions, in addition to cross-examining the witness on numerous documents presented at the hearing.

For this reason, I consider that the use of Article 92*ter* by the Prosecution is not in the spirit of this Article, which was adopted, on my initiative, by the Tribunal Judges in order to speed up proceedings. The procedure needs to be more restrictive and should be used with the prior approval of the Chamber, which may wish to admit under Article 92*er* only part of the written statement and hear the rest of the testimony *viva voce*, or admit the written statement in its entirety and allow the Prosecution to ask only a few questions in order to clarify certain points or introduce one or two new items, of which the Defence should be given timely notice.

In this spirit and in order to present effectively evidence in its entirety more, in my opinion the Prosecution should first of all hear a witness only *viva voce*, who could also give statements in writing. Then, if need be, this oral testimony could be corroborated by one or several statements presented under Article 92*bis* or 92*ter* of the Rules or, in accordance with the latter, a few documents may also be introduced during the hearing.

I therefore hope that the Prosecution will be able to save time by making a judicious choice in its manner of presentation and the order in which witnesses appear. For this reason, I would like the 92*ter* procedure to be used only in specific cases and under the control of the Chamber.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twenty-fifth day of June 2007

At The Hague

The Netherlands

[Seal of the Tribunal]