



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: 4 December 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

Order of: 4 December 2007

THE PROSECUTOR

v.

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

PUBLIC

**DISSENTING OPINION OF JUDGE JEAN-CLAUDE ANTONETTI ON
THE NON-ADMISSION OF EVIDENCE PRESENTED DURING THE
TESTIMONY OF WITNESS DW**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan 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

The Trial Chamber issued a decision on the admission of evidence relative to Witness DW dated 4 December 2007 in which it denied a number of exhibits presented by several Defence teams. I consider that these exhibits should have been admitted even when Witness DW was unable to inform the Chamber about their content.

In the “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings” of 28 April 2006, the Chamber decided that, bearing in mind the scope of the trial, it should carefully analyse and evaluate documentary evidence in order to avoid being inundated by useless evidence. The Trial Chamber had furthermore noted that an exhibit had to be presented to a witness who could testify about its content. The Chamber thus indicated that *inter partes* hearings could make it possible to establish the relevance, reliability and probative value of a document.

Then, in its “Decision on the Admission of Evidence” dated 13 July 2006, the Chamber set forth criteria for the examination of each exhibit tendered for admission. Pursuant to these criteria, in order for a document to be admitted, the Chamber requires that it be presented to a witness at trial so that he may testify about its content.

I believe it is important to note that it would be mistaken to consider that evidence conforming to the admission criteria set out in Rule 89 (C) of the Rules of Procedure and Evidence may not be admitted because a witness was unable to comment on it. In this context, it is my opinion that it is not necessary for a witness to formally recognize the document. Adopting a narrow attitude in the matter is the equivalent of ignoring the *inter partes* hearing in a criminal trial. In addition, this would give a witness the power to influence the decision on the admission of an exhibit that might be relevant even though the witness may have declared that he does not recognize it or could not testify about its content.

At this stage of the trial, refusing the admission of proposed exhibits that are relevant and reliable would result in their renewed presentation by the Defence during the

presentation of the Defence case. In any case, there would be a waste of energy and extension of the hearing time devoted to these documents, to the detriment of the expeditiousness of the trial.

I thus believe that the Chamber should have admitted documents IC 00681, 3D 010088, 4D 00545, 4D 00711, 4D 00709, 4D 00713 and 4D 00742. The Chamber must demonstrate a certain flexibility towards the admission of evidence having a certain relevance with regard to the Indictment and thus of interest to the judges during the trial. Consequently, in the very interest of Justice and the Parties, these documents should be admitted, because after more than a year and a half of proceedings, the judges, who have admitted numerous documents, must be able to evaluate their relevance immediately.

The analysis below of the documents in question illustrates the fact that they should have been admitted.

Exhibit IC 00681. This is a 1:1,000,000 scale map of Mostar. This map was presented to the witness so he could locate the Bosnian Army and HVO units. It thus has definite relevance.

Exhibit 3D 01088 is a *Spabat* document about sending condolences to General Praljak. This document enables the establishment of the links between General Praljak and *Spabat*.

Exhibit 4D 00545. This is an extract of a published book written by Esad Sejtanić. Insofar as the Defence holds that the passage on page 184 is of interest to the Chamber, particularly with regard to humanitarian aid, and that the issue of humanitarian aid is part of the Indictment, this document must be admitted.

Exhibit 4D 00711. This is an order dated 25 September 1993 by General Arif Pašalić, commander of the Bosnian Army 4th Corps. This order concerns the fighting and the Bosnian Army's zones of responsibility. This document is particularly important with regard to the allegation contained in paragraphs 112 and 114 of the Indictment on the water and power cuts in East Mostar. These cuts could be attributed to the HVO and it

is useful to note by means of this document that the hydro-electric power plant might have been in the zone controlled by the Bosnian Army, and for this reason the HVO might not be the cause of the cuts.

Exhibit 4D 00709. This is an order issued by General Arif Pašalić to the commanders of the Bosnian Army operations groups. This military document can be relevant in the context of fighting between the HVO and the Bosnian Army.

Exhibit 4D 00713. This is an order by General Arif Pašalić regarding the cessation of fighting, dated 29 September 1993. Owing to its date, this document should be compared with Exhibit 4D 00711. It is particularly relevant because the Bosnian Army and the HVO fought each other throughout 1993 and this order tends to show the cessation of combat activities in September 1993.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]