



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: 26 June 2008
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: 26 June 2008

THE PROSECUTOR

v.

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

PUBLIC

**DISSENTING OPINION BY PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI TO THE DECISION ON MOTION FOR RECONSIDERATION
PRESENTED BY THE PRALJAK DEFENCE**

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

As I do not agree with the denial of the motion, I would like to formulate the reasons for my position. The Accused **Slobodan Praljak** seized the Trial Chamber of a motion to authorise him to cross-examine witnesses on events in which he took part or on questions about which he has specific expertise.

Guideline 1 regulated this matter pursuant to the Appeals Chamber decision of 24 August 2007.

From my point of view, the Accused's request expressed orally by him and attested in writing on 30 May 2008 should be examined by considering several parameters that were unknown to the Appeals Chamber at the time.

First, this request should be reviewed in the general scope of whether an accused may put questions to a witness at any stage of the proceedings and in particular during the presentation of the defence case.

The answer as far as I am concerned is obvious: he has the right pursuant to Article 21 of the Statute that provides him with the right to "examine" or "have examined". If these words have meaning, it should be concluded that he may put questions in **person** or, if he has a lawyer, have him do the examining.

Second, it should be noted that the Accused Praljak established the witness list alone or with his lawyer for personal reasons and in any case these witnesses should provide evidence for the defence case. It would be logical to allow him to put questions to his own witnesses that he himself has chosen.

Third, on a more specific level, he would like to cross-examine the witnesses of the other accused. In theory, he could examine these witnesses under certain conditions, in particular if they raise questions that are part of the Accused's sphere of expertise.

Fourth, the Accused Praljak has indicated that he will testify personally on the charges against him. This position involves a personal participation in the trial, since the Accused is not content to remain silent.

This participation in the trial should not be limited to simply giving oral evidence but also touches on other phases of the trial.

Consequently, to avoid an **injustice**, I consider that the Trial Chamber, bearing in mind the particular circumstances, should revise the guidelines published on 10 May 2007 and 24 April 2008.

Conversely, I hold that these revised guidelines should not allow an accused personally or his lawyer to cross-examine a witness called by another accused, unless the answers to the questions incriminate him.

Furthermore, I consider that this Accused with his university education and professional experience has the ability needed to put questions.

The fact that sometimes his questions do not enter strictly into the formal framework of a question can be easily corrected if the Trial Chamber gives the Accused strict instructions.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]