



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: 5 February 2009
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

Acting Registrar: Mr John Hocking

Separate Opinion of: 5 February 2009

THE PROSECUTOR

v.

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

PUBLIC

**Separate Opinion of Presiding Judge Jean-Claude Antonetti on an Order Issuing
a Warning**

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's **unanimous** decision has brought about the need for me to issue a **separate opinion**.

The decision was taken in order to safeguard the integrity of the Tribunal and the image presented of International Justice, in particular through this trial.

It is nonetheless appropriate to go back over the details of the "incident" which took place during the hearing of 27 January 2009.

The Defence for the Accused **Stojić** had asked for 10 additional minutes to explain its views on the Prosecution's attitude.¹ Mr Khan then took the floor to present his arguments.²

The Trial Chamber noted that Mr Khan had exceeded the initially allocated 10 minutes. For my part, I accepted this overrun of time, as I was very interested in his arguments on the issue of the jurisprudence arising out of confidential decisions.³

As Mr Khan had had approximately 25 minutes, the Prosecution should have also had 25 minutes to reply. Mr Scott therefore took the floor at approximately 1830 hours.⁴

The interruption of Mr Scott by Ms Nožica⁵ then prompted Mr Khan to make new arguments.⁶ In view of the time used by these two lawyers, the fact that the hearing was due to finish and that Ms Alaburić was also due to take the floor, I then indicated to Mr Scott that he had only five minutes remaining.⁷ Before Mr Scott was able to proceed, Ms Tomašegović-Tomić intervened.⁸

For no apparent reason, Mr Scott left the courtroom and, stopping at the doorway, bowed as a mark of respect to the Trial Chamber. This was what I personally observed while watching Mr Scott as he left the courtroom.

¹ Witness Davor Marijan, 27 January 2009, T(F) p. 36081.

² Witness Davor Marijan, 27 January 2009, T(F) pp. 36081 to 36090.

³ Witness Davor Marijan, 27 January 2009, T(F) p. 36085.

⁴ Witness Davor Marijan, 27 January 2009, T(F) p. 36090.

⁵ Witness Davor Marijan, 27 January 2009, T(F) p. 36094.

⁶ Witness Davor Marijan, 27 January 2009, T(F) pp. 36096, 36097 and 36098.

⁷ Witness Davor Marijan, 27 January 2009, T(F) p. 36098.

⁸ Witness Davor Marijan, 27 January 2009, T(F) p. 36098.

The Defence for the Accused Prlić then asked that Mr Scott's departure from the courtroom be reflected on the record.⁹

I then asked Ms Alaburić whether the Prosecution's presence was necessary for her remarks. After she answered yes, the hearing was adjourned.¹⁰

Upon the resumption of the hearing the next day, I indicated to Mr Scott that he had not had as much time as the Stojić Defence and that he could take the floor again if he so desired.¹¹

After Mr Scott made a few remarks, the hearing resumed its normal course.¹²

Mr Scott's departure raises a number of issues which remain unresolved:

- was his departure related to the fact that Mr Khan exceeded the time allocated to him?
- was his departure related to the objections raised by Ms Nožica and Mr Khan and to the remarks made by Ms Tomašegović-Tomić?
- was his departure related to some overriding and highly understandable obligation?
- was his departure related to other considerations?

If the departure was related to a procedural matter, Mr Scott was derelict in his duty by abandoning the Prosecution bar. Admittedly, he was at liberty to leave the bar, provided that a colleague was present to ensure that the Prosecution was represented at the trial. However, it is also possible that Mr Scott did not realize that he was alone at the Prosecution bar...

Since to date Mr Scott has made no remarks and given no explanation, the Trial Chamber, in the discharge of its functions, had a duty to render the decision issuing a warning.

⁹ Witness Davor Marijan, 27 January 2009, T(F) p. 36099.

¹⁰ Witness Davor Marijan, 27 January 2009, T(F) p. 36099 and 36100.

¹¹ Witness Davor Marijan, 27 January 2009, T(F) p. 36101.

¹² Witness Davor Marijan, 27 January 2009, T(F) pp. 36101 to 36104.

The fact that Mr Scott has been appointed by the Secretary General on the recommendation of the Prosecutor, in accordance with Article 16 (5) of the Statute, should prompt the Prosecutor of this Tribunal to demand explanations from Mr Scott through his superiors.

For my part, I am entirely willing to reconsider the decision to issue a warning in future, should satisfactory explanations be offered as to Mr Scott's early departure from the hearing of 27 January 2009, just minutes before its adjournment.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this fifth day of February 2009

At The Hague

The Netherlands

[Seal of the Tribunal]