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: 24 November 2010

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 John Hocking**

Decision of: **24 November 2010**

THE PROSECUTOR

v.

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

PUBLIC

DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE ANTONETTI IN RESPECT OF THE DECISION ON THE PETKOVIĆ DEFENCE REQUEST TO REOPEN ITS CASE

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 has decided **by a majority** to bar the admission of the exhibits tendered by the **Petković Defence** and to admit Exhibits 4D 02508, 4D 02512 and 4D 02518.

Without question, the majority is consistent, for, after admitting 6 excerpts from the Mladić Notebooks at the Prosecution's request, the majority needed, for purposes of ensuring the values of a **fair trial** and **equality of arms**, to admit these documents, in whatever measure they contradict the Prosecution's arguments in support of the notes from the Mladić Notebook, for which I must underscore that no one can guarantee 100% that they are entirely or partially his drafting, except for **General Mladić** himself or a **handwriting expert** or an **expert graphologist**.

Finding myself in dissent for a number of reasons, I am compelled to be specific as far as they are concerned, distinguishing several layers.

The first layer follows from the request relating to Exhibit 4D 02529, which is an article from the Croatian periodical **Globus** relating the doubts of "experts" as to who actually penned the documents known as the "Mladić Notebooks".

The judges of the Chamber, who decided to admit the exhibits tendered by the Prosecution, entertaining no doubt concerning the authenticity of the documents, based on the testimony of General Milovanović as well as in light of the fact that other Chambers had admitted the said Notebooks (though not all), ought to have assessed side by side the opinion of **experts** and the statements of an eyewitness who saw General Mladić draft the Notebooks yet was unable to confirm that the contents matched, for example, the statements made during the meetings or that this content was written by General Mladić before his very eyes.

As a consequence, the occurrence of this **new fact** (the authorised opinion of 2 experts) ought to have led these judges to change their position by reconsidering the previous decision, either to deny admission to the proposed exhibits based on their late filing, or to appoint an expert.

My second layer of dissent reposes on principle. Just as a judge ought not to be a weather vane, I find myself compelled to remain true to my earlier position, which led me to conclude that we should **deny** the Prosecution's request and, as a consequence, several subsequent motions resulting from the initial request to reopen.

The third layer relates to the exhibits brought by the Petković Defence, which are excluded from evidence by the majority.

Had I not asked myself questions about the late filing of the Prosecution's request and the authenticity of the Mladić Notebooks, I would have accepted the admission of documents 4D 02508, 4D 02512 and 4D 02518 without difficulty, sharing the analysis of the Chamber in paragraph 20 of the Decision.

On the other hand, regarding the other exhibits not admitted, I point out that they are exhibits originating in the entries from the Mladić Notebooks; for this reason, why should we admit some and bar others when each exhibit, in order to be properly understood, must be associated with other exhibits?

The fourth layer of my dissent goes to the expeditiousness of the trial and to the exclusion of any event likely to inconvenience the schedule recently promulgated.

The Trial Chamber recently issued a scheduling order seeking, on the one hand, to set the date for filing the parties' briefs and, on the other hand, to programme the dates for the closing arguments of the Prosecution and the Defence; I have no option but to

deny any requests likely to inconvenience this schedule, given the imperative of an **expeditious trial**.

I would be remiss if I failed to observe that we ended the hearing for the final witness on **1 April 2010** and that, for more than **6 months**, we have been waiting to enter the final term of the trial, having been "paralysed" by several factors:

- the wait for the decision of the Appeals Chamber regarding the appeal lodged by the Praljak Defence regarding the admission of 92 *bis* statements;

- the Prosecution's request to reopen its case following the discovery of the "second wave" of Mladić Notebooks (the first occurred in 2008);

- the time for ruling on the matter of the request for Judge Prandler to recuse himself and withdraw, brought by the Prlić Defence and the Praljak Defence;

- the handling of requests for certification to appeal, brought by several defence teams;

- the handling of requests to reopen, brought by the defence teams.

Under these conditions, after waiting more than **6 months**, it is now time to become **operational** and to proceed, in order to close this trial as expeditiously as possible. I insist, once again, on the fact that the reopening of a trial is a situation that was not contemplated in the earliest days, neither in the Statute nor in the Rules of Procedure and Evidence. It is a **judicial construction** that might have known an entirely different outcome if the judges seized of the first request to reopen had at the time endowed the concept of the **expeditiousness of the trial** cited in the Statute with its full range of meaning.

As to format, I consider that certain portions of the decision where I do not agree with the majority ought to have been annotated with the terms "**by a majority**". For identical reasons, I have detailed this in my dissenting opinion regarding the request of the Praljak Defence to reopen the case.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

This twenty-fourth day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]