



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 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: 25 November 2010

THE PROSECUTOR

v.

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

PUBLIC

**DISSENTING OPINION BY PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI REGARDING DECISION ON STOJIĆ DEFENCE REQUEST
TO REOPEN THE 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 Tomašević-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

The Stojić Defence has brought its request to reopen by introducing 2 motions dated 21 October 2010 and 3 November 2010.

In the first instance, I find myself confronted with a **substantial hurdle** in titling this opinion: dissenting opinion, separate concurring opinion, separate individual opinion, partly dissenting opinion?

The majority's holding denies the request, with which I am fully in agreement. At the same time, the logic adopted by the majority is not my own, which diverges for other reasons. As a result, I ultimately preferred to select the title of **dissenting opinion**, the only title capable, in my eyes, of accurately reflecting my position concerning the numerous problems raised by the request.

In a word, I support **denying** the request, but for reasons other than those put forward by the majority in the Trial Chamber.

On the other hand, if certain conditions had been met by the Prosecution in light of the diligence due following the initial search of the home of General Mladić's wife, primarily the use of an expert evaluation for the notebooks (whose admission was sought in the Popović case), I would have been **in favour** of admitting the exhibits tendered by the Stojić Defence; as I will demonstrate below, because the excerpts from the Mladić Notebooks are relevant in light of the Indictment for purposes of refuting the 6 exhibits admitted.

For **reasons of principle** already mentioned in my previous opinions regarding the requests of the Prlić, Praljak and Petković Defences, I support **denying** all of the requests, as I need to be consistent with respect to my original positions.

The second reason to support **denying** these requests relates to the issue of the expeditiousness of the trial, as we hope to prevent any loss of time, such as one perceives in handling the multiple motions resulting from the Mladić Notebooks. This thought was developed in detail in my other opinions.

Even if the matter of authenticity is not contested by the Stojić Defence, I am nevertheless compelled to recall that, given the positions taken by certain defence

teams, I would have preferred that the Chamber reconsider its decision to admit the 6 exhibits.

Finally, had the conditions for granting the Prosecution's initial motion had been met, particularly concerning the otherwise **late filing** of the motion, I would be bound to examine the documents whose admission is sought and if the conditions had been met (I do not think so), I might have ruled in favour of all of the documents.

On 21 October 2010, the Stojić Defence brought its request to reopen the case, basing itself on the exhibits admitted by the Chamber in its Decision of 6 October 2010 (P 11376, P 11377, P 11380, P 11386, P 11388 and P 11389).

In paragraph 21 of its submission, the Stojić Defence indicates that these documents were admitted because they show that the Bosnian Croats were cooperating with the Serbs in furtherance of the objectives of the joint criminal enterprise (JCE).

The Stojić Defence indicates that these exhibits that were admitted are merely a small part of the Notebooks and thus cannot reflect the relationship between the Serbs and the Croats.

In paragraph 22, the Stojić Defence indicates that the exhibits from the Mladić Notebooks contradict the Prosecution's assertions and that, on the contrary, the Serbs and Croats were engaged in open conflict during the period from June 1992 to September 1993.

Along these lines, the Stojić Defence adds that there were joint military operations, specifically **Operation Bura** between the Croats and the Muslims. For purposes of demonstrating this, the Stojić Defence has attached in Annex 2 the documents establishing the nature of the relationships and the conflicts between the Serbs and the Croats cited in paragraph 23 of its request. These are documents 2D 01534, 2D 03089, 2D 03090, 2D 03091, 2D 03092, 2D 03093, 2D 03095, 2D 03096, 2D 03099, 2D 03101, 2D 03110, 2D 03112, 2D 03142.

These 13 documents, taken mostly from the Mladić Notebooks may attest to this view of things, as they are relevant and may have some probative value.

Consequently, in the event that the Prosecution's request had not been filed late and that the Mladić Notebooks are authentic, I would have easily been able to rule in favour of admitting these documents.

In the second part of the Annex, the Stojić Defence provides a group of documents establishing joint military operations between the Croats and the Muslims.

For this purpose, the Stojić Defence includes the following documents: 2D 03102, 2D 03103, 2D 03105, 2D 03106, 2D 03107, 2D 03109, 2D 03111, 2D 03113, 2D 03114, 2D 03115, 2D 03116, 2D 03119, 2D 03121, 2D 03122, 2D 03123, 2D 03124 and 2D 03125.

There are therefore **17 documents** pulled from the Mladić Notebooks.

To the extent that there is a specific reference to this type of operation, I do not see why these documents could not be admitted subject to the conditions enumerated above.

In a third part of Annex 1, the Stojić Defence surveys the documents which, it alleges, establish "**a collaboration**" between the Serbs and the Muslims. These are documents 2D 03112, 2D 03126, 2D 03128, 2D 03129, 2D 03131, 2D 03132, 2D 3133.

The Stojić Defence is therefore submitting 7 documents in support of its theory of the case. These documents in my view are pertinent and have probative value and ought to have been admitted.

Regarding the position of the HZ-HB/HVO during the negotiations, the Stojić Defence mentions two documents: 2D 03134 and 2D 03141. These documents taken from the Mladić Notebooks and pertaining to the Geneva negotiations could be admitted subject to the conditions enumerated above.

Concerning the role of the International Community, the Stojić Defence presents the following documents: 2D 03129, 2D 03136, 2D 03137, 2D 03139 and 2D 03140.

These 5 documents concern interviews with eminent international figures, including in particular Viktor Andreev, who appears in the submission of the Prlić Defence.

Thus, in document 2D 03139, one reads “Meeting with Viktor Andreev” containing snippets of sentences spoken by “Viktor” such as, for example “**Amerika has not reached agreement with Europe**”.

Without entering into the details of these documents, it is obvious that they could be raised during the judges’ deliberations at the conclusion of the trial. Subject to the conditions indicated above, I might have been in favour of admitting these documents.

On 3 November 2010, the Stojić Defence drafted an addendum to its request, seeking the admission of the following documents: 2D 01541, 2D 01542, 2D 01543, 2D 01544, 2D 01545, 2D 01546, 2D 01547, 2D 01548, 2D 01549, 2D 01550, 2D 01551, 2D 01552, 2D 01553, 2D 01554, 2D 01555, 2D 01556, 2D 01557, 2D 01558, 2D 01559, 2D 01560, 2D 01561.

There are 21 documents establishing the lists of victims (killed or invalid). Upon first impression, I am reluctant to admit these documents, which are not taken directly from the Mladić Notebooks but which are likely to give a precise vision of the extent of the conflicts and the tragedies caused by all of the parties to the conflicts without entering into the so oft repeated “*tu quoque*” discussion.

Finally, in conclusion, I am bound to point out that, commencing in paragraph 26 of the Decision, the terms “the Chamber” ought to have been accompanied by the words “by a majority”, as I do not in any respect share the analysis performed, specifically as it concerned the “theory” of “**fresh evidence**”, because for me these exhibits are “fresh” in light of the admission of the Prosecution evidence under the Decision of 6 October 2010. The exhibits listed by the Stojić Defence or admitted thereunder become “fresh”, particularly those included in the Mladić Notebooks. The Stojić Defence could not know, prior to the Decision of 6 October 2010 and the majority’s reasoning, what descriptor might be applied to the voluminous evidence contained in the thousands of pages of these notebooks

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]