



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: 27 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

Decision of: 27 February 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION TO EXCLUDE THE TESTIMONY OF
DRAGAN PINJUH**

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

TRIAL CHAMBER III (“Chamber”) of the 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 (“Tribunal”),

SEIZED of the “Prosecution Motion Seeking to Exclude Irrelevant Evidence to be Offered by Bruno Stojić Witness Dragan Pinjuh”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 20 February 2009 (“Motion”), to which four annexes are attached, in which the Prosecution requests that the Chamber order the exclusion of the evidence of Bruno Pinjuh and the exhibits related to his evidence or, in the alternative, order the exclusion of the parts of the evidence and related exhibits which put forward the principle of *tu quoque* defence, or order the Stojić Defence to explain the relevance of this evidence,

NOTING the “Joint Defence Response to ‘Prosecution Motion Seeking to Exclude Irrelevant Evidence to be Offered by Bruno Stojić Witness Dragan Pinjuh’ dated 19 February 2009”, filed jointly by Counsel for the Accused Stojić, Prlić, Praljak, Petković, Ćorić and Pušić (“Joint Defence”) on 25 February 2009 (“Response”) in which the Joint Defence responds to the arguments put forth by the Prosecution in the Motion and requests that the Chamber deny the Motion,

NOTING the Prosecution reply to the Response presented at the hearing of 25 February 2009 (“Reply”),¹

CONSIDERING that in support of the Motion, the Prosecution first submits that Dragan Pinjuh’s evidence is not relevant since it deals with matters and locations that bear no relevance to the Amended Indictment of 11 June 2008 (“Indictment”), and principally requests that the Chamber exclude his evidence in its entirety,²

CONSIDERING that the Prosecution also argues that at least a part of Dragan Pinjuh’s evidence falls under *tu quoque* since it concerns, for instance, the detention of the witness by the Bosnia and Herzegovina Army (“BH Army”) and the BH Army

¹ Transcript in French (“T(F)”), pp. 37480 and 37841.

² Motion, para. 16.

attack on Sarajevo; that, consequently, the Prosecution requests, in the alternative, that the Chamber exclude that part of the evidence or require the Stojić Defence to explain, prior to the appearance of the witness, how this part of the evidence is relevant,³

CONSIDERING that the Prosecution submits finally that since Dragan Pinjuh's evidence is irrelevant, excluding it would in no way prejudice the Accused Stojić's right to a fair trial,⁴

CONSIDERING that in the Response, the Joint Defence argues in particular that according to Tribunal jurisprudence, objections concerning the relevance of evidence must be raised contemporaneously when this evidence is presented and not before,⁵

CONSIDERING that, in the view of the Joint Defence, the Chamber is not in a position to rule on the relevance of the evidence before hearing that evidence,⁶

CONSIDERING that the Joint Defence further recalls that the Chamber has followed the practice of other Trial Chambers according to which the party presenting its case must demonstrate the relevance of evidence that might be considered as *tu quoque* prior to requesting the admission of such evidence,

CONSIDERING that, this being the case, a Defence team should be authorized first to present its case by calling its witnesses, and then the Chamber, in the exercise of its discretionary power, may decide to exclude any line of defence it considers to fall under *tu quoque*,⁷

CONSIDERING that, with regard to the content of Dragan Pinjuh's evidence, the Joint Defence points out that it relates directly to the allegations in the Indictment and the pre-trial brief filed by the Prosecution on 2 June 2006⁸ in relation to the HVO's

³ Motion, paras. 17, 18 and 20.

⁴ Motion, para. 23.

⁵ Response, para. 4.

⁶ Response, para. 5.

⁷ Response, para. 7.

⁸ *Prosecutor v. Prlić et al.*, IT-04-74-T, Prosecution Submission of Pre-Trial Brief with Exhibit Numbers, 2 June 2006.

activities in general, and that Dragan Pinjuh's evidence refers to the HVO in general and not just the HVO in Sarajevo,⁹

CONSIDERING that the Defence next argues that Dragan Pinjuh's evidence is relevant to the extent that, for example, the Stojić Defence intends to tender three exhibits through him concerning the limits of Bruno Stojić's authority under the law applicable at the time,¹⁰

CONSIDERING that, in response to the Prosecution's argument that Dragan Pinjuh's evidence is irrelevant because it refers to locations not included in the Indictment, the Joint Defence recalls that the Prosecution led evidence aimed at proving that the policy dictated by the HVO leadership from Mostar was the same in Central Bosnia and in Herzegovina and that, consequently, the Defence must now present evidence to counter these claims,¹¹

CONSIDERING that, in response to the Prosecution's argument that a part of Dragan Pinjuh's evidence is based on the concept of *tu quoque*, the Joint Defence argues that his evidence will prove on the contrary that the HVO and BH Army fought together against the Serbs in certain municipalities which were not part of the HZ H-B during the entire period of the war, which would contradict the Prosecution's theory on the existence of a joint criminal enterprise as well as its allegations related to agreements between the Croatian and Serbian leadership aiming to partition Bosnia and Herzegovina,¹²

CONSIDERING that the Joint Defence further specifies that the evidence the Prosecution considers irrelevant provides contextual background for the events alleged in the Indictment, and complements the evidence adduced at trial thus far,¹³

CONSIDERING that the Joint Defence recalls finally that the Motion is tardy since the Prosecution has been in possession of the summary of Dragan Pinjuh's evidence

⁹ Response, para. 12.

¹⁰ Response, para. 13.

¹¹ Response, paras. 14 and 15.

¹² Response, para. 18.

¹³ Response, para. 20.

since 31 March 2008, and that the exclusion of his testimony at this late stage of the proceedings would prejudice the Stojić Defence,¹⁴

CONSIDERING that in support of the Reply, the Prosecution submits that if an adequate summary of Dragan Pinjuh's evidence had been available to it, the Chamber would not have had to wait for the witness to appear to rule on the relevance of his evidence,¹⁵

CONSIDERING that the Prosecution submits nonetheless that, on the basis of the information available to it concerning Dragan Pinjuh's evidence, the Chamber is in a position to rule on the relevance of this evidence and should exclude it for the reasons the Prosecution has set out in the Motion,¹⁶

CONSIDERING that the Chamber recalls that, pursuant to Rule 89 (C) of the Rules of Procedure and Evidence ("Rules"), it may admit any evidence which it deems relevant, and that under Rule 89 (D), it may exclude any evidence if its probative value is substantially outweighed by the need to ensure a fair trial,

CONSIDERING that, pursuant to Rule 90 (F) of the Rules, the Chamber shall exercise control over the mode of interrogating witnesses and presenting evidence,

CONSIDERING that, in view of the arguments raised by the Parties and the summary of the evidence of Dragan Pinjuh and the complements to it provided by the Stojić Defence, the Chamber holds that the Joint Defence has demonstrated that at this stage, this evidence bears sufficient indicia of relevance in respect of the Indictment since its aim in particular is to disprove the allegations of the existence of a joint criminal enterprise and to provide evidence relating to the responsibility of the Accused Stojić,

CONSIDERING that the Chamber recalls nonetheless that, should it find that a part of the examination of the witness falls under *tu quoque*, it will apply the Tribunal jurisprudence in this regard, as it has recalled in the "Order to Admit Defence Evidence Relative to Witness Christopher Beese" of 27 September 2006 and in the

¹⁴ Response, paras. 21 and 22.

¹⁵ Reply, T(F) p. 37480.

¹⁶ Reply, T(F) p. 37481.

Oral Decision on the Prosecution's Motion dated 16 February 2009 relating to the *Tu Quoque* of 17 February 2009,¹⁷

CONSIDERING that, as a result, the Chamber finds that the Stojić Defence should be given an opportunity to present Witness Dragan Pinjuh as well as the exhibits related to his testimony and that, in view of all of the evidence tendered into the record, it will determine at a later stage the weight to be attached thereto,

FOR THESE REASONS,

IN ACCORDANCE WITH Rules 89 (C) and (D) and 90 (F) of the Rules,

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ T(F) p. 36878.