



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: 4 July 2008
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 Hans Holthuis

Opinion of: 4 July 2008

THE PROSECUTOR

v.

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

PUBLIC

**DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI TO THE DECISION ON PROSECUTION MOTION
CONCERNING USE OF LEADING QUESTIONS, THE ATTRIBUTION OF
TIME TO THE DEFENCE CASES, THE TIME ALLOWED FOR CROSS-
EXAMINATION BY THE PROSECUTION, AND ASSOCIATED NOTICE
REQUIREMENTS**

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 Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

My position concerning the Prosecution Motion dated 20 May 2008 is as follows:

1. In its Motion, the Prosecution asks the Trial Chamber for four measures:
 1. During cross-examination, the Defence shall only ask questions on points that are adverse to its case;
 2. Hearing time used to examine the witness of a co-accused shall be deducted from the hearing time attributed for the presentation of their evidence;
 3. Cross-examination shall be at least equal to the total time of the Defence examination;
 4. Each Accused who intends to examine the witness of a co-accused shall submit a summary analogous to that presented under Rule 65 *ter* of the Rules.

I am in **total** agreement with the Prosecution's requests and consequently **dissent** with regard to the majority decision of the other Trial Chamber Judges.

2. With regard to point (1), it is evident, for reasons related to time and the very situation resulting from the questions, that these should bear solely on the elements that are **adverse** to their case. Cross-examination should not be a means to broach other subjects.
3. With regard to point (2), it is also evident that if questions bear on issues other than adverse elements, the time used should be deducted from the global time attributed to this Accused.
4. With regard to point (3), in view of the equality of arms, the Prosecution must dispose of the same time as the Accused as the guidelines currently stand.
5. With regard to point (4), subjects not on the list filed pursuant to Rule 65 *ter* should be disclosed in advance to the Prosecution in order to allow it to effectively cross-examine the witness.
6. This motion should be redefined within the scope of time attributed to the Prosecution and the Defence to present their cases, bearing in mind the fact that the trial must be expeditious (Article 20 of the Statute).

Is a trial that will last over four years expeditious within the meaning of the Statute of this Tribunal?

There is an obvious contradiction between the Statute's objective and the conduct of a trial subject to the goodwill of the Parties, the Judges being arbiters who do not intervene with regard to the merits of calling witnesses, except to determine the time attributed to the Parties.

The issue of cross-examination should be added to this picture, since it should normally be limited to points raised in the examination-in-chief, to points bearing on the credibility of the witness and those bearing on the case of the Party conducting the examination based on the witness's statements.

For the latter, the cross-examining Party should confront the witness with elements at its disposal that **contradict** these statements.

Rule 90 (H) is particularly clear. Unfortunately, it must be noted that in practice Rule 90 (H) (iii) is used during cross-examination without the authorisation of the Judges who, at the outset of the first questions, are unable to grasp their purpose.

The matter of "leading questions" also raised by the Prosecution in its Motion is therefore of no interest in resolving the fundamental problem. On the other hand, I completely share the analysis made by the Trial Chamber on this matter in paragraphs 11 to 20.

7. From my point of view, in order to avoid this type of motion, the following measures should be put into effect on the Trial Chamber level to ensure the expeditiousness of the trial.

1. Set the Prosecution cross-examination at **60%** of the time of the examination-in-chief of a Defence witness.
2. Restrict the cross-examination **solely** to the points raised in the examination-in-chief, points bearing on the credibility of the witness and those bearing on the Party's case, provided that the Party confronts the witness regarding elements at its disposal that contradict his statements.

3. Not to authorise questions on other subjects unless the Chamber considers it necessary, with the clarification that after more than two years at trial, the Trial Chamber should know the points raised in depth.

4. Not to allow cross-examination by the other Accused of a witness called by one of the Accused unless the testimony **incriminates** one or several Accused.

5. Drastically reduce as appropriate the time attributed to each defence in light of the hearing of their first witnesses in order to avoid repetition and redundancy by making an in-depth examination of the summaries provided by the Defence. These summaries should go into the details of the points to be raised during the examination-in-chief.

8. If at first sight the Prosecution's Motion may have the goal of better controlling the Defence time, it does not fully satisfy the real objective of modern international criminal proceedings which is to be expeditious while safeguarding the rights of the accused. With this in mind, I hold that a new decision on guidelines should be rendered *proprio motu* in light of the experience acquired during the presentation of the first Defence witnesses.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]