



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: 21 February 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Opinion of: 21 February 2007

THE PROSECUTOR

v.

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

**DISSENTING OPINION OF THE TRIAL CHAMBER'S PRESIDING JUDGE
REGARDING THREE DOCUMENTS PRESENTED BY THE ACCUSED PRALJAK THAT
WERE NOT ADMITTED IN THE ORDER TO ADMIT EVIDENCE REGARDING
WITNESS CU**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy 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 majority of the Judges of the Chamber decided to refuse to admit Exhibits 3D00682, 3D00683 and 3D00684, put to Witness CU by the Accused Praljak during the hearings which took place from 15 to 17 January 2007.

Considering the procedural question of principle raised by the refusal to admit documents, according to which the witness was not able to inform the Chamber about these documents, I believe it necessary to explain the reasons why I was in favour of admitting these documents.

First, these documents satisfy the criteria for admission defined by the Rules of Procedure and Evidence and the decisions of the Chamber taken in this regard. Second, these documents are particularly relevant in the context of Witness CU's testimony and, third, their admission would have helped to avoid the needless consumption of time.

1. Guideline 1 of the Decision 13 July 2006

“As a general rule, the party seeking to tender evidence shall do so through a witness who can attest to its reliability, relevance, and probative value. The evidence must be put to the witness at trial.”

In accordance with this Guideline, the three documents in dispute were put to the witness.

2. These documents are relevant and have some probative value

When these documents were put to Witness CU, he stated that he had seen the Accused Praljak.¹ These documents, however, may constitute an alibi for the Accused Praljak. As such, in my view, they are without question relevant and have some probative value, to the extent they may be corroborated by other evidence.

3. Needless consumption of time

Disallowing the documents at this stage will force the Accused Praljak to reintroduce them during the appearance of a Prosecution or Defence witness who could support his alibi. In my opinion, this will lead to a needless consumption of time.

¹ Witness CU (closed session) French transcript, pp. 12394-12396; 12476 and 12477.

To conclude, to the extent that the Accused Praljak argues, by presenting these three documents, that he was not present where Witness CU claims to have seen him, the relevance of these documents considered in the context of the testimony should have led the Chamber to admit them.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of February 2007
At The Hague
The Netherlands

[seal of the Tribunal]