UNITED NATIONS

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: 26 May 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**

Order of: **26 May 2010**

THE PROSECUTOR

v.

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

PUBLIC

ORDER REGARDING MOTION OF PRALJAK DEFENCE FOR THE ADMISSION OF EVIDENCE (FRANJO LOZIĆ)

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

Separate Concurring Opinion of Judge Trechsel

I am in full agreement with the disposition under the Order, as well as its logic. By contrast, I see a more fundamental challenge facing the admission of these exhibits.

It is my opinion that a step taken by a Party must be analysed on the basis of what it means in practice rather than according to whatever title it bears. The Praljak Defence formally ended presentation of its case on 13 October 2009 (certain issues will need to be resolved by the Appeals Chamber and may possibly once again fall to the Chamber). The request was presented on 20 April 2010. It so happens that Party may bring its evidence for a definite time, subject to the discretion of the Chamber. It would not be congruent with the proper administration of justice and, more particularly, with the principle of the certainty of the law (*Rechtssicherheit*), to allow for the presentation of fresh evidence after the close of that phase.

This fundamental rule does make an exception, in favour of fairness. A party may, upon satisfaction of certain conditions, request that the phase for presenting evidence be re-opened.

In my view, by way of analogy with the request for review (Rule 119 (A), Rules), re-opening can and must be permitted when the Party in question has discovered fresh evidence "[which] could not have been discovered through the exercise of due diligence ...."

I do not see how the motion of the Praljak Defence could be analyzed otherwise than as an application to re-open the presentation of its evidence. I observe that the material it wishes to have admitted involves a press conference held by leaders of the Muslim opposition of Bosnia and Herzegovina on 14 July 1993. By definition, a press conference is a public event. The Chamber has heard no argument that would allow it to conclude that the exercise of due diligence could not have led the parties to discover the occurrence of this event and the documents produced from it, as well as the identity of the participants who might have been heard as witnesses.

It is my opinion that the requirements for re-opening have not been met and thus it is primarily for this reason that the motion ought to have been denied.

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

/signed/

Stefan Trechsel

Done this twenty-sixth day of May 2010

At The Hague

The Netherlands

[Seal of the Tribunal]