



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: 15 February 2007  
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  
**Order of:** 15 February 2007

**THE PROSECUTOR**

v.

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

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**DISSENTING OPINION OF JEAN-CLAUDE ANTONETTI, PRESIDING  
JUDGE OF THE TRIAL CHAMBER, REGARDING THE REFUSAL TO  
ADMIT EVIDENCE PRESENTED BY THE STOJIĆ DEFENCE DURING  
THE TESTIMONY OF JOVAN RAJKOV**

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**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

In their order of 14 February 2007, the majority of the Judges of the Chamber partially granted the motion of the Stojić Defence to admit evidence presented during the testimony of Jovan Rajkov, who was examined on 24 and 25 January 2007.

My position regarding documents 2D00320, 2D00325, 2D00326, 2D00327 and 2D00328, which was contrary to that of other Judges, requires a detailed explanation considering the procedural principles involved.

In my opinion, the rejection of these documents is contrary to the decisions adopted by the Trial Chamber so far and may prejudice the rights of the Defence and cause a useless waste of time.

### **1. Decisions regarding the admission of evidence rendered by the Chamber**

The Trial Chamber already recalled in its decision of 28 April 2006, that it had to analyse and assess documentary evidence carefully, given the large scale of the case, in order to avoid being flooded by useless evidence.

The Trial Chamber moreover found it necessary to point out that a piece of evidence should be presented to a witness who gave evidence about its content. The piece of evidence must have probative value when it is used to prove a fact in dispute and must have a certain degree of relevance.

The Trial Chamber also noted that an *inter partes* hearing in court could be used to establish the relevance, reliability and probative value of a document.

All the above-mentioned documents produced by the Stojić Defence fall within the scope of these lines.

Indeed, a witness (Jovan Rajkov) was present in order to give his viewpoint of documents connected to his activity as a doctor in the BH Army.

During the hearing, an *inter partes* hearing was held about the documents, which enabled the parties and the Judges to assess the interest and scope of these documents.

Although Witness Jovan Rajkov was not able to corroborate the content of the documents, he did not contest their authenticity or their content either, and specified that, as far as the logistics of the BH Army war hospital were concerned, there was a hospital manager, confirming nevertheless that he may have used the medicine mentioned in the documents.

As far as I am concerned, these documents are therefore relevant for the Stojić Defence case and appear to be of use in understanding all aspects of the conflict between the BH Army and the HVO in Mostar. As regards the reliability of the documents, they offer all the normally required guarantees (document with a letterhead, document bearing a record number, document bearing an official stamp, document with a name and signature).

## 2. Possible prejudice suffered by the Defence

In its submissions (cf. paragraph 10 of the Stojić Defence pre-trial brief of 15 February 2006), the Defence contested the Accused Stojić's responsibility with respect to a joint criminal enterprise. Time and again, members of the Defence team have tried to show the help that both the Republic of Croatia and the HVO provided to the BH Army, especially by means of the documents presented during the testimony of Jovan Rajkov.

At this stage of the trial, when it is still not possible to rule on the merits of this argument, it should simply be said that these documents show that the HVO supplied medicaments to the BH Army during 1993.

It seems to me that denying the admission of these documents at his stage would mean prejudicing the Defence, especially in the sense of Rule 90(H) of the Rules, which stipulates that the party cross-examining a witness who is able to give evidence relevant to the case of the cross-examining party shall confront him with evidence which is in contradiction of his testimony.

## 3. Consumption of time

The Rules of Procedure and Evidence stipulate that the Chamber shall avoid needless consumption of time; 90(F) (ii). The Appeals Chamber recalled this obligation in its decision of 4 July 2006. The fact that the Defence was not able to have these documents admitted during the questioning of Witness Rajkov will obviously mean that:

- Either the Defence will present these document some other time to another witness for the Prosecution (a doctor, for instance)
- Or the Defence will bring its own witness who will confirm the content of the documents.

In either case, the Trial Chamber will again devote some time to the examination of these documents, which in turn will cause an obvious consumption of time and extend the duration of the trial.

Consequently, I find that the Chamber should have admitted these documents.

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

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this fifteenth day of February  
At The Hague  
The Netherlands

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