

## **Prlic and Others Make Tribunal History**

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Conflict between pre-trial judge and prosecution pushes status conference into the record books. As preparations continue for the trial of six of the top political and military Bosnian Croat leadership, the case went down in history for the longest status conference - some four hours - the tribunal has ever seen.

At issue was the continued conflict between the pre-trial judge Jean-Claude Antonetti, and the prosecution, over the shape and form of the prosecution's pre-trial brief, which, in its original 242-page form, encompassed some 9,500 documents and nearly 400 witnesses.

At the end of last year, the judge had asked the prosecution to provide additional information showing the linkages between all the elements of proof and the indictment. But at the end of last month, the prosecution declared such an order went "substantially beyond" normal requirements, and that it would take them until mid-October 2006 to complete the task.

However, at the status conference all parties agreed that, with some compromise, the trial could, potentially, start on April 25 this year.

The six Bosnian Croats, Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric and Berislav Pusic, senior political and military leaders of what was known as "Herceg-Bosna", face 26 counts of war crimes for expelling and murder of Muslims in Bosnia and Hercegovina during Croatian-Muslim conflict in 1993.

The indictment accuses them of being part of a "joint criminal enterprise to politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats" in the part of Bosnia that was claimed as part of Herceg-Bosna, and "to join these areas as part of a 'Greater Croatia'".

The joint criminal enterprise, the indictment continues, was "to engineer the political and ethnic map of these areas so that they would be Croat-dominated, both politically and demographically".

They are accused of using "force, fear or threat of force, persecution, imprisonment and detention, forcible transfer and deportation, appropriation and destruction of property and other means" to achieve their aims.

However, one of judge Antonetti's challenges to the prosecution was that he could not see, in the current - already twice reshaped - prosecutor's pre-trial brief, the evidence to support these assertions.

The judge warned prosecutor Kenneth Scott that his job is to prove the allegation of joint criminal enterprise and show how the witnesses will illustrate it. "When I'm reading your pre-trial brief I don't see anything about it. No indications," he explained.

The judge explained that he had confirmed the indictment in March 2004 after going through "two cubic metres" of documents from the prosecution. "We face a great problem," he said, if, eight years after the

prosecutor began investigations, he cannot say which document is connected to which witness.

Judge Antonetti warned the prosecution that in the search for peace, justice and truth in the former Yugoslavia, "truth can only be established when evidence has been produced, and witnesses have been heard".

The judge's concern about how not to sink in the sea of documents during the trial was given added urgency by his estimation that the trial will take at least two years to complete because of its complexity. The tribunal is due to wind up its trials by 2008 and appeals by 2010.

Scott defended the prosecution's method of presenting the pre-trial brief, saying that this indictment is the most complex of all those ever submitted to the tribunal.

The judge agreed, but added that he saw his role as an arbiter who would not allow one side in the case to bury another with documents, which can't be challenged.

Scott continued to disagree with the judge's assessment, stating that their office had completed all that was required of it under the tribunal's normal practice, on time. He accused the judge of "changing the rules of the game in the last moment", by asking for a more detailed pre-trial brief.

Scott concluded by saying that prosecution is ready for the trial to begin on the basis of what they have already prepared.

Judge Antonetti dismissed the idea that he had been changing the rules. While explaining that he had to clarify some things before the trial could start, he acknowledged the problem of lack of time and resources for the prosecution to complete the charts he had requested.

In the end, the judge compromised, saying he would give a written ruling to order the prosecutor to present the detailed charts relating the documents with just the first couple of witnesses.

The judge's criticisms of the prosecutor's work chimed in with those of the defence. They have argued that these problems relating to a "sea of documents", originate with the tribunal's practice of first raising an indictment and then gathering evidence for years.

Prić's defence lawyer, Michael Karnavas, appealed to the judge to keep the pressure up on the prosecutor to present a better-explained indictment, in order to enable the defence to do its job of responding to the prosecutor's accusations.

Bruno Stojić's defence lawyer, Senka Nožica, alleged that the prosecutor had not complied with the judge's order to clarify and support his indictment, with the purpose, said the lawyer, of making defence's work more difficult.

As the defence had failed to get the prosecutor to explain the indictment, said Milivoj Petković's counsel, Vesna Alburić, the "defence consider itself lucky to get you [Antonetti] as a judge, who realized [the

problem] too”.

All the defence teams supported the judge in his insistence that there should be a more specific chart which connects the 399 prosecution witnesses with the 9,490 documents of evidence, so they can respond on accusations better.

This status conference, like the previous one held just a few weeks ago, included a number of interventions from one of the accused, Slobodan Praljak.

Praljak has been in dispute with the Registry over whether or not he has the money to fund his own defence. The registry says that because Praljak has supplied insufficient information on his resources, they cannot pay for a lawyer for him.

However, the court has now decided that he must have counsel, because “the accused has no legal education”. The co-accused counsels have complained that if he isn’t represented that could prejudice the fairness of the trial, that the trial is “complex”, and it is about to start.

In the decision dated February 15, the judges though said that Praljak would have to answer more questions from the Registry about his personal finances within the next three weeks.

When Judge Antonetti mentioned this decision, and confirmed that Praljak would then lose his right to address the court directly, Praljak immediately requested permission to follow up cross examinations of witnesses after his lawyer. “You are initiating a new problem,” Judge Antonetti dryly observed.

Praljak went on to describe himself as better qualified than most of the eight defence lawyers currently present in the courtroom, due to the various functions he had held during his life.

“I graduated in philosophy and sociology,” he proudly told the court, “I graduated in theatre direction and I graduated electronics and I feel intellectually capable to discuss crucial issues, for which I sometimes believe attorneys, no matter their professional careers as lawyers, are not so fitted.”

Because of the conditions of his provisional release, which forbid him from making political statements, Praljak has been prevented from making his usual bombastic noises to the Croatian media. It appears that the former theatre director has decided that the tribunal may offer him an alternative stage.

Praljak followed up his assessment of his own worth by offering to lend the prosecution his own computer expert in order to provide the judge with the evidence charts he is seeking, “if they can't do it themselves”.

Judge Antonetti scheduled a further status conference for April 24, one day before the proposed date for the commencement of the trial, to see if all the preparations have been made.

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