



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: 2 September 2009
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

Decision of: 2 September 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PRALJAK DEFENCE MOTION TO ADD TWO 92 *BIS*
WITNESSES AND TWO 92 *BIS* STATEMENTS TO ITS 65 *TER* LIST**

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

TRIAL CHAMBER III ("Chamber") of the 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 ("Tribunal"),

SEIZED of the "Slobodan Praljak's Motion to Add Two Witnesses and their Statement to the Praljak Defence Rule 65 *ter* (G) List" filed by Counsel for the Accused Slobodan Praljak ("Praljak Defence") on 26 June 2009 with three annexes ("Motion"), in which the Praljak Defence asks the Chamber to allow it to add to its list of witnesses and to its list of exhibits filed pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence ("65 *ter* List(s) "; "Rules"), the names of Helge Cramer and Charles Shrader as witnesses called pursuant to Rule 92 *bis* of the Rules and their statement taken pursuant to the same rule,

NOTING the "Prosecution Response to Praljak Motion to Add Two Witnesses to the Praljak Defence Rule 65 *ter* (G) List" filed by the Office of the Prosecutor ("Prosecution") on 10 July 2009, in which the Prosecution does not oppose the part of the Motion relating to Witness Helge Cramer but does oppose the part of the Motion relating to Witness Charles Shrader,

NOTING the "*Decision portant sur la Demande de la Défense Praljak d'ajouter trois vidéo à sa liste 65 ter*" rendered by the Chamber on 9 June 2009 ("Decision of 9 June 2009"), in which the Chamber allowed the addition of a video tape numbered ERN V000-8140 and made, according to the Praljak Defence, by Helge Cramer ("Cramer Video") to the 65 *ter* List of the Praljak Defence,

CONSIDERING that in support of the part of the Motion relating to Helge Cramer, the Praljak Defence first maintains that Helge Cramer's statement was taken by the Prosecution on 15 April 2009 and disclosed to the Praljak Defence on 4 May 2009 and that the addition of the Cramer Video to the List 65 *ter* authorised by the Decision of 9 June 2009 justified the presentation of this part of the Motion,¹

CONSIDERING that it further maintains that Helge Cramer's statement briefly describes the making of documentaries on the destruction of the Old Bridge in Mostar

and other related video documents, as well as their provision to the Prosecution, and that the presentation of Helge Cramer's statement could help the Chamber in its assessment of these video documents,²

CONSIDERING that it adds that depending on the report of the Expert Witness appointed by the Chamber to examine the video tapes of the destruction of the Old Bridge in Mostar and the decision of the Chamber on the admission of the report by expert Janković, the Praljak Defence may need to present further evidence on the destruction of the Mostar Old Bridge,³

CONSIDERING that in support of the part of the Motion relating to Charles Shrader, the Praljak Defence claims that the presentation of the statement only became necessary when Slobodan Praljak decided to testify at length about the book entitled *The Muslim-Croat Civil War in Central Bosnia: A Military History 1992-1994* which was written by Charles Shrader, and after the Chamber indicated that such a statement would be helpful,⁴

CONSIDERING that it adds that Charles Shrader's statement is a brief attestation to the truthfulness of his book and to the professional manner in which it was produced, and that the presentation of this statement could assist the Chamber in evaluating the testimonies regarding this book and, if need be, the admission of the book in question,⁵

CONSIDERING, finally, that the Praljak Defence puts forth that both the statement of Helge Cramer and that of Charles Shrader only supplement and back up evidence that, if need be, could be admitted or testimony already provided,⁶

CONSIDERING that in its Response, the Prosecution puts forth that it does not oppose the part of the Motion that relates to Witness Helge Cramer but does oppose the part that relates to Charles Shrader,⁷

¹ Motion, paras 8 and 10.

² Motion, para. 8.

³ Motion, para. 8.

⁴ Motion, para. 11.

⁵ Motion, para 7.

⁶ Motion, para. 12.

⁷ Response, para. 1.

CONSIDERING that in support of its opposition to the part of the Motion that relates to Charles Shrader, the Prosecution first submits that the presentation of the testimony of Charles Shrader is late insofar as it appears more than five years after the Second Amended Indictment was signed on 11 June 2008 ("Indictment") and the initial appearance of the Accused, more than three years after the Pre-Trial Brief of the Praljak Defence was filed, more than nine years after Charles Shrader appeared as Expert Witness in *The Prosecutor v. Kordić and Čerkez* case ("*Kordić and Čerkez* Case") and, finally, more than 15 months after the Praljak Defence filed its 65 *ter* Lists,⁸

CONSIDERING that the Prosecution adds that the Chamber in the *Kordić and Čerkez* Case in fact rejected the testimony of Charles Shrader in its entirety,⁹

CONSIDERING, moreover, that according to the Prosecution, the request to add Charles Shrader's statement was introduced only after the Praljak Defence had presented more than three quarters of its evidence, adding to the lateness of presenting this statement,¹⁰

CONSIDERING, further, that the Prosecution submits that the statement of Charles Shrader consists only of his "brief attestation" about his book and therefore assumes only minimal importance; that this statement is only intended as a precursor to the tendering into evidence of the work in questions, which the Prosecution opposes,¹¹

CONSIDERING that the Prosecution moreover notes that the testimony of Charles Shrader is cumulative to other testimonies already presented,¹²

CONSIDERING, finally, that the Prosecution argues that the Chamber's intervention supposedly in favour of producing a statement by Charles Shrader in reality was not for that purpose but to develop reasons for which such a testimony cannot be taken into consideration,¹³

⁸ Response, paras 3 and 5.

⁹ Response, para. 4.

¹⁰ Response, para. 10.

¹¹ Response, paras 6 and 10.

¹² Response, paras 2, 3 and 10.

¹³ Response, paras 7 to 9.

CONSIDERING that the Chamber recalls that in order to consider favourably a request to add exhibits to the 65 *ter* List, the exhibits must be disclosed in good time to Parties, considering that they will be put to the witness in court, in order not to hinder the preparation of their cross-examination,

CONSIDERING that the Chamber recalls that the "Decision Adopting Guidelines for the Presentation of Defence Evidence" rendered on 24 April 2008 and, in particular Guideline 8 which stipulates that in order to consider favourably a request to add an exhibit to the 65 *ter* List, the Parties concerned must file, prior to the appearance of the witness to whom it wants to put these exhibits, a motion with the Chamber to add this or other exhibits to the 65 *ter* (G) List, to show the essential nature of the exhibit or exhibits to the case and the reasons why it or they are not on the list filed pursuant to Rule 65 *ter* (G) of the Rules,

CONSIDERING that when there is a request to add an exhibit to the 65 *ter* (G) List, the Chamber always starts with a *prima facie* evaluation of the reliability, relevance and probative value of the documents that are presented,

CONSIDERING, first, that with regard to the part of the Motion relating to Helge Cramer's statement, the Chamber finds that the Praljak Defence has shown valid reasons to justify its late disclosure and that the Prosecution does not oppose it being added to the 65 *ter* List of the Accused Praljak,

CONSIDERING, further, that the Chamber finds that the statement of Helge Cramer concerns the production and provision to the Prosecution of the video which he made himself of the destruction of the Old Bridge in Mostar, as alleged in Paragraph 116 of the Indictment,

CONSIDERING that among the video documents, there is a video whose addition to the 65 *ter* List was authorised by the Chamber on 21 May 2009,¹⁴ as, according to the Praljak Defence, the Cramer Video,

CONSIDERING that the Chamber is of the opinion that, although of relative importance, the Helge Cramer statement could assist the Chamber in evaluating the

¹⁴ See "Decision portant sur la demande de la Défense Praljak d'ajouter deux pièces à sa liste 65 *ter*", 21 May 2009.

reliability of the video documents listed above, in case the Praljak Defence seeks their admission,

CONSIDERING that the statement of Helge Cramer is *prima facie* reliable and relevant and has a certain probative value,

CONSIDERING, therefore, that the Chamber finds that it is in the interest of justice to allow the addition of the statement of Helge Cramer and add his name to the 65 *ter* List of the Praljak Defence,

CONSIDERING, second, that with regard to the part of the Motion concerning the statement of Charles Shrader, the Chamber finds that the Defence Praljak has not produced valid reasons to justify its late presentation,

CONSIDERING, first of all, that the work entitled *The Muslim-Croat Civil War in Central Bosnia: A Military History 1992-1994*¹⁵ has been available since 2003, the date of its publication,

CONSIDERING, moreover, that the Chamber is not satisfied with the argument that the need for Charles Shrader to produce a statement arose when the Accused Praljak decided, during his own testimony, to testify at length about this work,

CONSIDERING that to admit such an argument would effectively amount to admitting the addition of an unknown quantity of documents to the 65 *ter* Lists and to circumventing the purpose of diligence valid for the filing of the witness and exhibit lists of the parties to the case,

CONSIDERING, moreover, that the Chamber does not agree with the interpretation of the Praljak Defence of the Chamber's intervention with regard to the possible testimony of Charles Shrader,

CONSIDERING that, contrary to what the Praljak Defence claims, the Presiding Judge did not call on the Praljak Defence to produce, at this stage of the trial, the type of statement that was presented by the Praljak Defence in the Motion, but indicated to the Praljak Defence, following an objection by the Prosecution, which procedure the Praljak Defence should have normally followed, if it had been diligent, namely to

include the name of Charles Shrader on the 65 *ter* List of witnesses to be heard pursuant to Rule 92 *ter* of the Rules when it filed this list in March 2008,¹⁶

CONSIDERING that in these circumstances, the Chamber does not consider that it is in the interest of justice to allow the addition of the statement of Charles Shrader or his name to the 65 *ter* List of the Praljak Defence, .

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 *ter* of the Rules,

PARTIALLY GRANTS the Motion,

ALLOWS the addition of the statement of Helge Cramer to the 65 *ter* List of exhibits of the Praljak Defence and the addition of the name of Helge Cramer to the 65 *ter* List of 92 *bis* witnesses of the Praljak Defence, **AND**

DENIES, by a majority, the request to add the statement of Charles Shrader and his name for the aforementioned reasons.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this second day of September 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ See 65 *ter* Exhibit 3D 02637.

¹⁶ Transcript in French of 25 May 2009, pp. 40644 and 40646.