



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: 1 April 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

**Decision of:** 1 April 2010

**THE PROSECUTOR**

v.

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

***PUBLIC***

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**DECISION ON PRALJAK DEFENCE REQUESTS FOR CERTIFICATION  
TO APPEAL THE DECISIONS OF 16 FEBRUARY AND 17 MARCH 2010**

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**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 “Slobodan Praljak’s Request for Certification to Appeal the ‘Decision on Slobodan Praljak’s Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules’”, filed publicly with public Annexes, pursuant to Rules 54, 73 and 82 of the Rules of Procedure and Evidence (“Rules”), by Counsel for the Accused Praljak (“Praljak Defence”) on 8 March 2010 (“First Request”), in which the Praljak Defence requests that the Chamber certify the appeal it intends to lodge against the “Decision on Slobodan Praljak’s Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules” rendered confidentially, by a majority, by the Chamber on 16 February 2010 (“92 *bis* Decision”),

**SEIZED**, furthermore, of “Slobodan Praljak’s Request for Certification to Appeal the ‘*Ordonnance portant sur la demande de la Défence Praljak d’obtenir une suspension du délai ordonné par la Chambre pour déposer 20 déclarations écrites ou comptes rendus de dépositions en vertu de l’article 92 bis du Règlement*’” filed publicly by the Praljak Defence, pursuant to Rules 54, 73 and 82 of the Rules, on 22 March 2010 (“Second Request”), in which the Praljak Defence requests that the Chamber certify the appeal it intends to lodge against the “Order on Request of Praljak Defence Seeking a Stay on the Time Limit Ordered by the Chamber for Filing 20 Written Statements or Transcripts of Evidence Pursuant to Rule 92 *bis* of the Rules”, rendered publicly, by a majority, by the Chamber on 17 March 2010 (“Order of 17 March 2010”),

**NOTING** “Jadranko Prlić’s Submissions in Support of Accused Praljak’s Request for Certification to Appeal the Majority Decision Related to his Submission of 92 *bis* Statements & his Request for a Temporary Adjournment” (“Prlić Submission”), filed publicly by Counsel for the Accused Prlić (“Prlić Defence”) on 26 March 2010,

**NOTING** the “Prosecution Response to Slobodan Praljak’s Request for Certification to Appeal Dated 22 March 2010 and Request for a Temporary Adjournment Dated 23

March 2010” (“Prosecution Response”), filed publicly by the Prosecution on 26 March 2010,

**NOTING** the 92 *bis* Decision in which the Chamber decided to send back to the Praljak Defence the written statements and transcripts of testimonies sought for admission pursuant to Rule 92 *bis* of the Rules and ordered the Praljak Defence to file a new request containing a maximum of 20 statements or transcripts of testimonies within a three- week time limit,<sup>1</sup>

**NOTING** the Order of 17 March 2010, in which the Chamber denied the Praljak Defence request to stay the three-week time limit within which to file the 20 written statements or transcripts of testimonies in accordance with the admissibility criteria of Rule 92 *bis* of the Rules, and ordered the Praljak Defence to file them by 22 March 2010 at the latest,<sup>2</sup>

**CONSIDERING** that the other Defence teams have not filed a response to the First Request or to the Second Request,

**CONSIDERING**, *in limine*, that the Chamber notes that the Prlić Submission, however, presented in reference to the Second Request and the request for a temporary adjournment<sup>3</sup> which are not the subject of this decision, intends in reality to respond principally to the merits of the First Request; that the part of this Submission pertaining to the First Request was filed out of time, namely on 26 March 2010 whereas it should have been filed on 22 March 2010 at the latest; that the Prlić Defence did not request of the Chamber an extension of the time limit within which to file its submission; that the existence of the Second Request filed by the Praljak Defence on 22 March 2010 did not mean that the time limit for filing the responses to the First Request had been extended; that, consequently, the Chamber will not take into consideration the arguments presented by the Prlić Defence with regard to the response to the First Request,

**CONSIDERING** that pursuant to Rule 73 (B) of the Rules, “Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which

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<sup>1</sup> 92 *bis* Decision, p. 20.

<sup>2</sup> Order of 17 March 2010, p. 4.

<sup>3</sup> “Slobodan Praljak’s Request for a Temporary Adjournment”, 23 March 2010, public and urgent.

may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.”,

**CONSIDERING**, consequently, that certification to appeal is a matter for the discretionary power of the Chamber which must, in any event, make a preliminary assessment that the two cumulative requirements set forth in Rule 73 (B) of the Rules have been met in this case,<sup>4</sup>

**CONSIDERING** that the Chamber recalls that in its 92 *bis* Decision, it sent back the requests for admission presented in accordance with Rule 92 *bis* of the Rules to the Praljak Defence on the ground that the significant volume of the written statements and transcripts of testimonies sought for admission were contrary to the admissibility conditions of Rule 92 *bis* (A) of the Rules and that the problems of form prevented the proper management of the said statements and transcripts of testimonies,<sup>5</sup>

**CONSIDERING** that in its 92 *bis* Decision, the Chamber found that, if in other circumstances the Chamber itself could have proceeded with redacting the inadmissible passages on a case-by-case basis,<sup>6</sup> the size of the material sought for admission, the length of the submitted written statements and the transcripts of testimonies, their repetitive nature, their lack of relevance, the noted problems of form and the confusion between the statements and/or transcripts of testimonies and their bearing on the acts and conduct of the Accused as charged in the Amended Indictment of 11 June 2008 (“Indictment”) and those not charged in the Indictment, prevent the Chamber from making a case-by-case assessment,<sup>7</sup>

**CONSIDERING** nevertheless that, since the Praljak Defence case closed on 13 October 2009<sup>8</sup> and that it is no longer in a position to call *viva voce* witnesses, the Chamber found in the 92 *bis* Decision that it was not appropriate to deny without

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<sup>4</sup> *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, “Decision on Defence Motion for Certification”, 17 June 2004, para. 2.

<sup>5</sup> 92 *bis* Decision, paras 36-46.

<sup>6</sup> “Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* of the Rules (Heliobrom and Generally)”, 12 December 2007, confidential; “Decision on Admission of Evidence Pursuant to Rule 92 *bis* (A) of the Rules (Brix-Anderson)”, 23 January 2008, public.

<sup>7</sup> 92 *bis* Decision, para. 47.

<sup>8</sup> Date of the appearance of the last witness called by the Praljak Defence.

exception the requests for admission filed by the Praljak Defence; out of a concern for fairness, the Chamber, therefore, decided to send back the requests for admission filed pursuant to Rule 92 *bis* specifying to the Praljak Defence that it was their responsibility to proceed with a new selection, notably taking into consideration the Chamber's instructions.<sup>9</sup>

**CONSIDERING** that the Chamber consequently ordered the Praljak Defence to file within a three-week deadline a maximum of 20 written statements or transcripts of testimonies satisfying the admissibility criteria as set forth in Rule 92 *bis* of the Rules, and not exceeding a reasonable number of pages, that is, thirty pages for the written statements,<sup>10</sup>

**CONSIDERING** that in the First Request, the Praljak Defence requests certification to appeal the 92 *bis* Decision by submitting principally that the Chamber has abdicated the responsibility incumbent upon it to rule on requests for admission;<sup>11</sup> that the 92 *bis* Decision is arbitrary,<sup>12</sup> capricious<sup>13</sup> and based on erroneous analysis;<sup>14</sup> that this constitutes a violation by the Chamber of the rights of the Accused to present his case in a fair and equitable manner,<sup>15</sup>

**CONSIDERING** that the Chamber finds that the First Request raises a question of principle relating to the use and application of Rule 92 *bis* of the Rules, and that this issue would significantly affect the fair conduct of the proceedings and its outcome in that it is, according to the Praljak Defence, crucial to the presentation of its case,

**CONSIDERING**, furthermore, that Article 21 (2) of the Statute which guarantees the Accused's right to a fair trial is central to the issue raised by the Praljak Defence in requesting certification to appeal the 92 *bis* Decision,

**CONSIDERING**, consequently, that although the Chamber, by a majority, is satisfied that the 92 *bis* Decision is well-founded, it considers that the Praljak Defence has demonstrated that the 92 *bis* Decision deals with an issue that would significantly

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<sup>9</sup> 92 *bis* Decision, para. 47.

<sup>10</sup> 92 *bis* Decision, paras 38 and 48.

<sup>11</sup> First Request, paras 4-7.

<sup>12</sup> First Request, paras 22-26.

<sup>13</sup> First Request, paras 27-28.

<sup>14</sup> First Request, paras 29-30.

<sup>15</sup> First Request, paras 8-21.

affect the fair conduct of the proceedings or its outcome, and that the immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings,

**CONSIDERING** that in the Second Request, the Praljak Defence requests certification to appeal on the grounds that the Order of 17 March 2010 constitutes a prejudice in that it obliges the Defence to select 20 written statements and disregard the remaining written statements and transcripts of testimonies;<sup>16</sup> that it submits that the First Request and the Second Request form an undivided whole<sup>17</sup> and that the Chamber fails to justify the need to impose a three-week deadline,<sup>18</sup>

**CONSIDERING** that with regard to the Second Request, the Chamber notes that the Prosecution opposes the certification to appeal on the ground that the Praljak Defence does not establish that the Order of 17 March 2010 constitutes an error<sup>19</sup> or cause him prejudice<sup>20</sup> that would justify the certification to appeal, and that, consequently, the Praljak Defence presents no issue that would significantly affect the fair and expeditious conduct of the proceedings where the immediate resolution of the issue by the Appeals Chamber could materially advance the proceedings,<sup>21</sup>

**CONSIDERING** that the Chamber notes that the Prlić Defence supports the certification to appeal the Second Request by referring to the Dissenting Opinion of the Presiding Judge attached to the Order of 17 March 2010 and to the arguments submitted by the Praljak Defence,<sup>22</sup>

**CONSIDERING** that the Chamber recalls that in the Order of 17 March 2010 it held that the obligation imposed on the Praljak Defence to comply with the provisions of the 92 *bis* Decision and file 20 written statements or transcripts of testimonies within the time limit ordered by the Chamber stood distinct from the request for certification to appeal the 92 *bis* Decision;<sup>23</sup> that the said Request for certification to appeal did not justify in itself the stay of time limit ordered by the Chamber, until such time as the

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<sup>16</sup> Second Request, paras 11-15.

<sup>17</sup> Second Request, para. 22.

<sup>18</sup> Second Request, paras 30-31.

<sup>19</sup> Prosecution Response, para. 14.

<sup>20</sup> Prosecution Response, para. 17.

<sup>21</sup> Prosecution Response, para. 14.

<sup>22</sup> Prlić Submission, paras 7-8.

<sup>23</sup> Order of 17 March 2010, p. 3.

issue of the certification to appeal, or possibly, of the appeal, has been resolved;<sup>24</sup> that, furthermore, in support of the request for a stay of the time limit within which to file the 20 written statements or transcripts of testimonies, the Praljak Defence did not cite any further argument aside from the need to anticipate the settlement of the issue of the certification to appeal,<sup>25</sup>

**CONSIDERING**, however, that the Chamber notes that it was seized of the Second Request from the Praljak Defence on the last day of the three-week time limit within which to file the 20 written statements and transcripts of testimonies,

**CONSIDERING** that under these circumstances and out of concern for the integrity of the proceedings, it is in the interests of justice to join the Second Request to the appeal relating to the First Request, and thus authorise the certification of the two Requests,

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<sup>24</sup> *Ibidem.*

<sup>25</sup> *Ibidem.*

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 73 (B) of the Rules,

**DENIES** the Prlić Submission with regard to the First Request in that it was filed out of time,

**GRANTS** the First Request and the Second Request, **AND**

**CERTIFIES** the appeals of the 92 *bis* Decision and the Order of 17 March 2010,

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

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this first day of April 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**