



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: 22 June 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: 22 June 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRALJAK DEFENCE REQUEST FOR CERTIFICATION TO
APPEAL THE ORDER OF 20 MAY 2010 (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

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 of 20 May 2010 (Franjo Lozić)”, filed publicly by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 26 May 2010 to which is attached a Confidential Annex (“Request”), wherein the Praljak Defence asks the Chamber to certify the interlocutory appeal it intends to bring against the “Order on Praljak Defence Motion to Admit Evidence (Franjo Lozić)”, issued publicly by the Chamber on 20 May 2010 (“Order of 20 May 2010”),

NOTING the Order of 20 May 2010, wherein the Chamber denied the request for admission pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) of the written statement of Franjo Lozić (3D 03779), of the written transcript from a press conference of Muslim opposition leaders from Bosnia and Herzegovina, held on 14 July 1993 (3D 03780), as well as four documents from the Forensic Institute of the Dutch Ministry of Justice (3D 03817, 3D 03818, 3D 03819 and 3D 03820) (“Proposed Exhibit(s)”),

CONSIDERING that the other parties have not filed responses to the Request,

CONSIDERING that, in support of the Request, the Praljak Defence submits that the Order of 20 May 2010 would impose upon it a new procedural obligation, namely, an obligation to notify the Chamber of the receipt of a document that it might conceivably tender at some unknown point in the future; that this new obligation, introduced at this late stage of the proceedings and subsequent to the filing of its original request for the admission of evidence, would interfere with its ability to perform the obligation and would thereby violate the right of the Accused to a fair trial, denying the Praljak Defence all prospect of seeing its exhibits admitted,¹

¹ Request, paras 10-18.

CONSIDERING that the Praljak Defence likewise recalls in support of its Request the circumstances in which it filed its original request to admit the Proposed Exhibits,² notes that none of the parties has claimed any prejudice resulting from the date on which it filed its request for admission³ and submits, particularly, that the Chamber ought to have admitted the evidence in the interests of justice,⁴

CONSIDERING that the Praljak Defence argues that this new obligation to notify, imposed by the Chamber in matters involving the admission of evidence is unjustified and burdens the admission of evidence, which they allege to cause real and immediate prejudice for the Praljak Defence and would warrant immediate resolution of this issue by the Appeals Chamber,⁵

CONSIDERING that the Chamber observes that, in the Request, the Praljak Defence based itself principally upon a so-called new obligation to notify, created by the Chamber in the Order of 20 May 2010, which due to non-compliance, purportedly led the Chamber to exclude the Proposed Exhibits,

CONSIDERING that the Chamber recalls that it barred the admission of the Proposed Exhibits on grounds that the original request was not promptly filed, taking into account that the Praljak Defence had been finished with its case since 13 October 2009; that in support of this decision, the Chamber likewise recalled that the Praljak Defence did not react to this observation by notifying the Chamber that it had taken steps to authenticate some of the Proposed Exhibits that had recently come into its possession and which it hoped to subsequently tender for admission,⁶

CONSIDERING that the Chamber nevertheless wishes to emphasise that if the Praljak Defence had duly informed the Chamber of the particular circumstances surrounding the discovery of the Proposed Exhibits and the possibility that they might be tendered for admission following the close of the Praljak Defence case, the Chamber might, most exceptionally, have examined the request and possibly allowed delayed production of the said Exhibits,

² Request, paras 19-22.

³ Request, paras 19-22.

⁴ Request, paras 26-28.

⁵ Request, paras 29-31.

⁶ Order of 20 May 2010, pp. 4 and 5.

CONSIDERING indeed that, far from being an obligation, providing notice to the Chamber concerning hardships encountered or potential delays in producing evidence can help to explain certain situations and thereby contribute to the proper administration of justice; that the Praljak Defence cannot, moreover, be wholly unacquainted with this custom, as Counsel for the Accused Bruno Stojić (“Stojić Defence”) on several occasions informed the Chamber of the difficulties they encountered trying to get Witnesses Mandić⁷ and Arlović⁸ to appear; that these hardships were taken into account by the Chamber, which properly informed was now able to timely – that is, before the close of the presentation of the Stojić Defence case – authorise the said Defence to bring these two witnesses before the Tribunal, if it wished to following closure of its case,⁹

CONSIDERING, furthermore, that the Chamber reminds the Praljak Defence that in the “Decision on Jadranko Prlić’s Motion to Be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008”, rendered publicly on 23 July 2008, the Chamber had recalled that allowing a party to “present evidence after the presentation of its case or until all the Accused have presented their cases would be detrimental not only to the Prosecution but also to the other Accused, since such a practice could considerably delay the pronouncement of the judgement in this case”; that this should thus be all the more evident when, as here, a party requests the admission of evidence at a time when the parties have all concluded presentation of their cases,¹⁰

⁷ Letter sent by Counsel Nožica to the Chamber and to the parties by means of electronic mail regarding the deposition of Momčilo Mandić, 13 April 2009; Notice of Bruno Stojić Regarding the Deposition of Momčilo Mandić, 23 February 2010, confidential; Correspondence from Counsel Nožica to the Chamber (with copies to the parties) regarding the testimony of Momčilo Mandić, 26 April 2010.

⁸ Notice by the Stojić Defence at the Hearing of 6 April 2009, Transcript in French, (“T(F)”), pp. 38805 and 38806; “Notice of Bruno Stojić Regarding the Testimony of Expert Witness Mato Arlović”, 24 February 2010.

⁹ See, e.g., the use made by the Chamber of the information disclosed by the Stojić Defence in the Oral Decision of 20 April 2009 regarding the filing of motions by the Stojić Defence pursuant to Guideline 9, public document, 20 April 2009, T(F) pp. 38866-38867; “Decision on Stojić Defence Motion Regarding the Filing of Motions Pursuant to Guideline 9”, public document, 5 May 2009.

¹⁰ Although the Chamber notes that while it was not until 13 May 2010 that it was informed by means of “Berislav Pušić’s Notice Regarding Motion for the Admission of Documentary Evidence” that the Pušić Defence did not intend to file a request for the admission of documentary evidence pursuant to Rule 89 (C) of the Rules of Procedure and Evidence, it is noteworthy that Counsel for the Accused Valentin Čorić concluded presentation of their case on 1 April 2010; and that by “Berislav Pušić’s Notice Regarding Presentation of Evidence in the Defence Case” of 7 April 2010, Counsel for the Accused Berislav Pušić did in fact signal their intention to refrain from calling *viva voce* witnesses and from requesting admission of the written testimony of witnesses pursuant to Rules 92 *bis*, 92 *ter* and 92 *quarter* of the Rules.

CONSIDERING, moreover, that the Chamber observes that the Praljak Defence does not explain why the Proposed Exhibits are so important that their exclusion would significantly affect the fair and expeditious conduct of the trial and why an immediate resolution of the matter by the Appeals Chamber would materially advance the proceedings,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 (B) of the Rules of Procedure and Evidence,

DISMISSES the Request for Certification to Appeal.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]