



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: 16 December 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: 16 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JOINT MOTION FROM PRALJAK, STOJIĆ, PETKOVIĆ
AND ĆORIĆ DEFENCE TEAMS REGARDING RECONSIDERATION OF
THE REGISTRY DECISION OF 9 NOVEMBER 2010 (means of Defence
financing)**

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 Zoran Ivanišević 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 “Joint Motion for Remedial Measures to Restore Equality of the Parties and Notice Regarding the Unfeasibility of Continuing to Work Without Being Paid”, filed jointly as a public document by Counsel for the Accused Slobodan Praljak (“Praljak Defence”), Counsel for the Accused Bruno Stojić (“Stojić Defence”), Counsel for the Accused Milivoj Petković (“Petković Defence”) and Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 6 December 2010, to which four confidential annexes are attached (“Motion”) and in which the Praljak, Stojić, Petković and Ćorić Defence teams jointly ask the Chamber to inform the Registry of the judicial activity currently taking place in the trial or to order the Registry to revoke its Decision of 9 November 2010 amending the financing of the Defence teams for the month of November 2010 and upcoming months,¹

NOTING “Jadranko Prlić’s & Berislav Pušić’s Joint Motion in Support of Joint Motion for Remedial Measures to Restore Equality of the Parties and Notice Regarding the Unfeasibility of Continuing to Work Without Being Paid”, filed as a confidential document by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) and Counsel for the Accused Berislav Pušić (“Pušić Defence”) on 6 December 2010, in which the Prlić and Pušić Defence teams join in the Motion (“Joinder”),²

NOTING the Registry’s Decision of 9 November 2010 sent by email from the Office of Legal Aid and Detention Matters to the Praljak, Stojić, Petković, Ćorić, Prlić and Pušić Defence teams (together “Defence Teams”), in which the Registry ordered a change in the manner of financing the Defence Teams, effective as of November 2010,³

NOTING the “Order Requesting Further Information of the Registrar Subsequent to its 9 November 2010 Decision (Means of Defence Financing)”, rendered as a

¹ Motion, paras 1, 3 and 38; confidential Annex A to the Motion.

² Joinder, p. 2.

³ The Chamber learnt of this email from confidential Annex A to the Motion.

confidential document on 10 December 2010, in which the Chamber ordered the Registrar to disclose, no later than 15 December 2010, the grounds for rejecting the motions for reconsideration of his Decision of 9 November 2010 filed by the Pušić and Praljak Defence teams, and any further information in his possession that might justify a change in the financing of the Defence Teams as of November 2010 (“Order of 10 December 2010”),⁴

NOTING the “Association of Defence Counsel (ADC-ICTY) Motion for Leave to Appear as *Amicus Curiae*”, filed as a public document by the Association of Defence Counsel practicing before the ICTY (“ADC”) on 10 December 2010 in which the ADC respectfully asks the Chamber for leave to file a submission regarding the Motion as *amicus curiae* (“ADC Motion”),⁵

NOTING the “Registry Submission Pursuant to Rule 33 (B) Following the Trial Chamber’s Order of 10 December 2010”, filed as a confidential and *ex parte* document by the Deputy Registrar on 15 December 2010 pursuant to Rule 33 (B) of the Rules of Procedure and Evidence (“Rules”), in accordance with the Order of 10 December 2010 (“Registry Report”), in which the Deputy Registrar respectfully asks the Chamber, on the one hand, to reject the Motion on the ground that the Defence Teams did not seek the appropriate remedy in this case, namely seizing the President of the Tribunal pursuant to Rule 31 (C) of the Directive on the Assignment of Defence Counsel revised on 29 June 2006 (“Directive”), arguing that the Trial Chamber does not have the authority to rule on the Motion before all available remedies have been exhausted by the Defence teams⁶ and, on the other hand, asks the Chamber, should it decide to declare itself competent in the matter, to deny the Motion on the ground that the Decision of 9 November 2010 is fair and reasonable,⁷ that it does not violate the principle of equality of arms⁸ and that this Decision represents an appropriate exercise of the administrative powers conferred on the Registry,⁹

⁴ Order of 10 December 2010, p. 5.

⁵ ADC Motion, paras 5-9.

⁶ Registry Report, paras 3, 4 and 66.

⁷ Registry Report, paras 5, 43-54 and 65.

⁸ Registry Report, paras 5 and 55-57.

⁹ Registry Report, paras 5 and 58-64.

NOTING Article 31 (C) of the Directive which states that in case a dispute between a Defence Team and the Registry “(...) involves a sum greater than 4,999 euros, an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President [of the Tribunal] for his determination. Before making a determination, the President shall request submissions from the aggrieved party and the respondent. The [Tribunal] President’s determination shall be final and binding upon the parties,¹⁰

CONSIDERING that the Office of the Prosecutor informed the Chamber in an email dated 6 December 2010 that it did not intend to file a response to the Motion,

CONSIDERING that in support of the Motion and the Joinder, the Defence teams jointly request the Chamber’s assistance so as to guarantee equality of the parties, notably in the preparation of their final trial briefs and closing arguments, as well as the fairness and expeditiousness of the trial,¹¹

CONSIDERING, more specifically, that the Defence teams respectfully ask the Chamber to intervene to have the Registry reconsider its Decision of 9 November 2010 by which it decided to amend the means of financing the Defence Teams from November 2010 onwards,¹²

CONSIDERING, in support of the Motion, that the Defence Teams recall the right of the Accused to be represented by their Defence Counsel during the final stage of the trial,¹³ point out the need to be reimbursed adequately and timely,¹⁴ describe the ongoing judicial activity that they have been engaged in since April 2010 during this crucial phase in the proceedings¹⁵ and argue the importance of maintaining the principle of an equality of arms between the parties, specifically in order to ensure the quality of the upcoming final trial briefs,¹⁶

CONSIDERING, by way of the Order of 10 December 2010, that the Chamber noted that the subject of the Motion and the Joinder, namely the financing of the Defence

¹⁰ Directive, Art. 31 (C).

¹¹ Motion, paras 1, 2, 23-26, 28 and 29; Joinder, paras 1 and 3-5.

¹² Motion, paras 3 and 28-38; Joinder, page 2.

¹³ Motion, paras 17 and 18.

¹⁴ Motion, para. 19.

¹⁵ Motion, paras 20-22.

¹⁶ Motion, para. 23-27.

Teams, was linked to the right of an accused to have the facilities needed to prepare his defence and the right of an accused to benefit from the assistance of appointed counsel or counsel of his choosing, as established under sub-paragraphs (b) and (d) of Article 21 4. of the Statute of the Tribunal (“Statute”);¹⁷ that the Chamber deemed that, since the subject of the Motion deals with the rights of the accused as established in the Statute, the matter it was seized of does lie within its competence and that, consequently, it is appropriate at this stage to stay a decision on the Motion pending the Registrar’s submission,¹⁸

CONSIDERING, on the basis of the submission disclosed by the Deputy Registrar in the Registry Report, that the Chamber notes that when the Registry was seized of the motions for reconsideration of its Decision of 9 November 2010 filed by the Praljak and Pušić Defence Teams, it had not, *a priori*, in accordance with the procedure set out under Article 31 (C) of the Directive, referred the matter to the President of the Tribunal before deciding on the motions for reconsideration of the Decision of 9 November 2010,

CONSIDERING that the Chamber notes that the Registry informed the Defence Teams that their motions for reconsideration of its Decision of 9 November 2010 were denied in an email dated 30 November 2010, which seems to bear no mention of any consultation with the President of the Tribunal in accordance with Article 31 (C) of the Directive;¹⁹ that the Chamber notes furthermore that the detailed grounds for rejection that should have been disclosed to the Defence Teams within one week have yet to be disclosed to the said teams,²⁰

CONSIDERING that the Chamber can only note, contrary to what was argued in the Registry Report,²¹ that it is not up to the Defence Teams to directly seize the President of the Tribunal of this issue; that it more specifically reminds the Registry that Article 31 (C) of the Directive explicitly states that once the Registrar is seized of requests for reconsideration concerning a dispute for which the remedy is described in the said

¹⁷ Order of 10 December 2010, p. 3.

¹⁸ Order of 10 December 2010, pp. 3-5.

¹⁹ Motion, confidential Annex D.

²⁰ Motion, confidential Annex D; Report, paras 37-39.

²¹ Registry Report, paras 3 and 38.

article, he must himself refer the matter to the President of the Tribunal so that the latter may decide on it,²²

CONSIDERING that the Chamber notes furthermore on the basis of the information disclosed in the Registry Report that the last consultation between the Registry and the President regarding the policy applicable to legal aid was on 19 May 2010,²³

CONSIDERING that the Chamber deems, in light of the additional facts set out in the Registry Report, that it is not for it to rule on the merits of the Motion, whose dispute originally derives from an administrative dispute between the Defence Teams and the Registrar, who, in this case, did not take into account the information presently available to the Chamber, information which affects respect for the principle of equality of arms between the parties; that it is appropriate, therefore, to send the Defence Teams back to the Registrar so that he may, in accordance with the procedure under Article 31 (C) of the Directive, conclude the procedure of a reconsideration of his Decision of 9 November 2010 by referring the matter to the President of the Tribunal,

CONSIDERING, on the basis of the above-mentioned grounds and the Chamber's decision to send the Defence Teams back to the Registrar, that the Chamber deems that it is not for it to receive the submission of the ADC on the Motion and that, consequently, it is appropriate to reject the ADC Motion,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

REJECTS the Motion,

REJECTS the ADC Motion **AND,**

²² Directive, Art. 31 (C).

²³ Registry Report, para. 65, footnote 51.

INVITES the Registrar to respond to the Motion for reconsideration of its Decision of 9 November 2010 in accordance with the procedure under Article 31 (C) of the Directive.

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

Presiding Judge Jean-Claude Antonetti attaches a concurrent opinion to this Decision.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixteenth day of December 2010
The Hague (The Netherlands)

[Seal of the Tribunal]