



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: 17 March 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

Order of: 17 March 2010

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIC
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

**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 92bis OF THE RULES**

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 Stojic
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 92bis of the Rules’” filed publicly by Counsel for the Accused Praljak (“Praljak Defence”) with public annexes on 8 March 2010 (“Request for Certification to Appeal”),

NOTING the “Decision on Slobodan Praljak’s Motion to Admit Evidence Pursuant to Rule 92bis of the Rules”, issued confidentially by the Chamber on 16 February 2010 (“92bis Decision”), wherein the Chamber, notably, directed the Praljak Defence to submit within three weeks 20 written statements or transcripts of evidence in compliance with the Chamber’s instructions in the 92bis Decision,

NOTING the oral decisions of 17 February 2010¹ and of 23 February 2010² granting the Praljak Defence one week to file its request for certification to appeal the 92bis Decision, once they have received the English translation of said decision, including the Dissenting Opinion of the Presiding Judge annexed thereto,

CONSIDERING that in its Request for Certification to Appeal, the Praljak Defence asks the Chamber to certify the appeal it intends to bring against the 92bis Decision and to stay the time limit ordered by the Chamber in said Decision for submitting within three weeks no more than 20 written statements or transcripts of evidence until such time as the issue of the certification to appeal, or possibly, of the appeal, has been resolved,³

CONSIDERING that it is in the interests of justice to decide now on the issue of the stay of time limit without prejudice to the Request for Certification of an Appeal in its own right, which will be taken up later by the Chamber,

¹ Transcript of Hearing in French (“T(F)”), pp. 49564-49568.

² T(F), pp. 48826-48827.

³ Request for Certification to Appeal, para. 40.

CONSIDERING that the Chamber notes that the Praljak Defence has not brought forth any argument in support of its request to stay the time limit other than the need to wait for a ruling on the issue of the certification to appeal or, possibly, of the appeal,⁴

CONSIDERING that the Chamber observes that the obligation imposed on the Praljak Defence to comply with the ambit of the *92bis* Decision to file 20 written statements or transcripts of testimonies within the time limit ordered by the Chamber stands distinct from the Request for Certification to Appeal, which would not in and of itself justify the stay of time limit ordered by the Chamber, until such time as the issue of the certification to appeal or, possibly, of the appeal, has been resolved.

CONSIDERING therefore that the Chamber observes that a stay of the time limit is not justified in this instance,

CONSIDERING, nevertheless, that insofar as the initial time limit of three weeks expired on 9 March 2010, the day after the submission of the Request for Certification to Appeal, and in light of present circumstances, out of concern for the integrity of the proceedings, it is then proper to order an extension of the original time limit of three weeks, which did not start to run until the *92bis* Decision and the Dissenting Opinion of the Presiding Judge were translated into English, that is to say, as of 1 March 2010,⁵

CONSIDERING that the time limit afforded the Praljak Defence to comply with the *92bis* Decision and to file no more than 20 written statements or transcripts of testimonies will thus expire on 22 March 2010,

⁴ Request for Certification to Appeal, para. 40.

⁵ The translations of the *92bis* Decision and the Dissenting Opinion of the Presiding Judge disclosed on 24 February and 1 March 2010, respectively.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 126 (A) of the Rules of Procedure and Evidence,

REJECTS by majority the supplemental request to stay the time limit yet does so without prejudice to the anticipated decision of the Chamber concerning the Request for Certification to Appeal,

DECIDES to extend the original time limit of three weeks ordered in the *92bis* Decision,

AND

INSTRUCTS the Praljak Defence to file within three weeks, starting from the date of filing of the translations of the appeal of the *92bis* Decision and the Dissenting Opinion of the Presiding Judge, that is, by 22 March 2010 at the latest, no more than 20 written statements or transcripts of evidence which satisfy the criteria set forth in the *92bis* Decision.

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

The Presiding Judge annexes a dissenting opinion hereto.

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of March 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

The Trial Chamber has decided by majority to reject more than 100 witness statements pursuant to Rule 92*bis* of the Rules.

In the majority decision, the Trial Chamber asked the Praljak Defence to file **20 written statements**.

I am then led to conclude that the request for certification to appeal and the request for a stay of time limit now form **an undivided whole**.

If the Trial Chamber certifies the request to appeal, it will then fall to the Appeals Chamber to **uphold or invalidate** the majority decision.

What advantage could there possibly be in forcing the hand of the Defence prior to judicial consideration of the appeal, unless it is a foregone conclusion that no certification to appeal shall occur and the majority is already persuaded of a sound basis for its decision?

Underlying this dissenting opinion one observes the boycott of the Accused Praljak, who refuses to attend hearings on grounds that his trial is unfair.

In his submissions, his Counsel has elaborated the Accused's position as follows: "Slobodan Praljak hopes that the Honorable Judges will appreciate his *bona fide* critique with an open mind and a spirit of good will. Slobodan Praljak has endeavored throughout the proceedings to be of maxim assistance to the Trial Chamber in its quest to finding a fair outcome of this extraordinarily long and complex trial. Having come to the conclusion however that the proceedings are fundamentally flawed and having lost confidence that the proceedings will improve to the extent that he will ultimately enjoy his fair-trial rights as purportedly guaranteed by the ICTY Statute, Slobodan Praljak mere seeks to put on record his decision to halt his participation in the trial as well as his views of the situation that caused his decision to withdraw from the trial."

The absence from the courtroom of an accused party raises a grave problem for International Justice.

Several issues must be considered:

1. Is the accused mocking his Judges?
2. Does the accused have reasons for boycotting his hearings?
3. Have the Judges done as much as they can to ensure tranquil proceedings and the effective participation of the Accused in his own trial?

In this trial, this is not the first time that a defendant has manifested his displeasure by leaving the courtroom, however, it is the first time that a defendant has expressed his desire in writing to no longer attend and to place his future destiny in the hands of the Judges, stating in black and white that his trial is rigged.

As for me, I cannot accept these terms, for I have personally insisted that the defendant be allowed to produce evidence and to express himself as desired.

The **majority decision denying** the request to stay the time limit while awaiting the certification to appeal and the decision of the Appeals Chamber evidences **closed**, rather than **open**, reasoning.

It seems unavoidable, in my view, that the Appeals Chamber be seized by the Defence of the key issue of its refusal to admit more than 100 instances of testimony or statements, especially inasmuch as the Judges are of one mind on this issue and that the Appeals Chamber **alone** holds the solution by upholding or nullifying the decision.

The Judge, in his role, must otherwise expect to be censured via appeal should the parties contest his ruling.

This is not simply a matter related to the admission of a document that can in any case be shown to a witness right until the end of the trial, but rather, a **definitive**, “**watershed**” decision, deserving of an appeal.

A failure to certify could substantially violate the rights of the Defence.

The Praljak Defence, in its submissions, has indicated the relevance of these testimonies and statements in respect of the Indictment as well as the reliability thereof.

The entirety of this testimony completes and corroborates the testimony received until this time and meets the requirements of Rule 92*bis*.

It is evident, in my view, that a unanimous decision ordering both the certification to appeal and the stay of the time limit would have allowed the Chamber to demonstrate “**an open mind and a spirit of goodwill**”.

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of March 2010
At The Hague
Netherlands

[Seal of the Tribunal]