



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: 10 May 2007  
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 Hans Holthuis

**Decision of:** 10 May 2007

**THE PROSECUTOR**

v.

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

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**DECISION ON SLOBODAN PRALJAK'S REQUEST FOR THE  
PRODUCTION OF RULE 68 EXCULPATORY MATERIAL IN RELATION  
TO DOMESTIC PROCEEDINGS**

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**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Daryl Mundis

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Peter Murphy 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");

**HAVING** been seized of "Slobodan Praljak's Request for the Production of Rule 68 Exculpatory Material in Relation to Domestic Proceedings" filed by the Counsel for Slobodan Praljak ("Praljak Defence") on 23 March 2007, in which the Praljak Defence requests the Chamber to compel the Office of the Prosecutor ("Prosecution") to obtain and disclose to the Defence, pursuant to Rule 68 of the Rules of Procedure and Evidence ("Rules"), all documents related to criminal proceedings before the courts in Bosnia and Herzegovina for crimes committed in Stupni Do during the period covered by the amended Indictment ("Indictment").<sup>1</sup>

**NOTING** the Request by the Accused Prlić of 26 March 2007 ("Jadranko Prlić's Joinder to Slobodan Praljak's Request for the Production of Rule 68 Exculpatory Material in Relation to Domestic Proceedings"), in which the Accused Prlić joins the Request;

**NOTING** the Request by the Accused Stojić of 27 March 2007 ("Joinder of Bruno Stojić in Praljak Request for Production of Rule 68 Material in Relation to Domestic Proceedings") in which the Accused Stojić joins the Request;

**NOTING** the "Prosecution's Response to Slobodan Praljak's Request for the Production of Rule 68 Exculpatory Material in Relation to Domestic Proceedings of 23 March 2007" filed by the Prosecution on 10 April 2007 ("Response") in which it opposes this Request;

**CONSIDERING** that the Praljak Defence refers to Rule 68 of the Rules, which stipulates the Prosecution's continuing obligation;<sup>2</sup>

**CONSIDERING** that the Praljak Defence claims, in support of its Request, that the requested documents are of an exculpatory nature;<sup>3</sup>

**CONSIDERING** that it cites, in support of its Request, the Bosnia and Herzegovina Law on Criminal Proceedings which stipulates that a commander's obligation to punish subordinates is fulfilled if he notifies the proper authorities so that they can further investigate the crimes that have been brought to their attention;<sup>4</sup>

**CONSIDERING** that, according to the Praljak Defence, the existence of criminal proceedings in Bosnia and Herzegovina shows that the Accused discharged their obligation to punish subordinates;<sup>5</sup>

**CONSIDERING** that the Praljak Defence reports that the process of obtaining documents from the Bosnia and Herzegovina authorities is long and often produces no

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<sup>1</sup> Request, para. 1.

<sup>2</sup> Request, paras. 6-8.

<sup>3</sup> Request, paras. 2-5.

<sup>4</sup> Request, paras. 2-5.

<sup>5</sup> Request, paras. 2-5.

results,<sup>6</sup> and claims that the Prosecution could have obtained the documents in question through its close contacts with the Public Prosecutor's Office of Bosnia and Herzegovina;<sup>7</sup>

**CONSIDERING** that in its response, the Prosecution claims to have discharged its obligation ensuing from Rule 68, having disclosed, among others, all the documents in its possession concerning local cases that come under the Rules of the Road programme;<sup>8</sup>

**CONSIDERING** that the Prosecution notes that the Praljak Defence does not show any specific knowledge of a particular document nor does it request that document in specific terms;<sup>9</sup>

**CONSIDERING** that the Prosecution states that proceedings instituted by BH authorities years after the facts covered by the Indictment do not affect the crimes committed by the Accused in 1993 and are not of a nature to exonerate of any of the Accused;<sup>10</sup>

**CONSIDERING** that as a result, the Prosecution claims that the Praljak Defence did not show any connection between the Accused and the proceedings initiated before the BH courts;<sup>11</sup>

**CONSIDERING** that the Prosecution maintains that it cannot disclose what it does not have and that the Prosecution's mere knowledge of exculpatory evidence in the hands of a third party does not suffice to engage the responsibility of the Prosecution under Rule 68;<sup>12</sup>

**CONSIDERING** that the Prosecution submits that the Praljak Defence should try to obtain the documents it is requesting through the means available to it before putting in any request and that the Prosecution maintains it does not have superior means available to it;<sup>13</sup>

**CONSIDERING** that the Chamber reminds the Prosecution of the obligation imposed on it by Rule 68 to disclose as soon as possible to the Defence any relevant material which in the actual knowledge of the Prosecution may be of an exculpatory nature or affect the credibility of Prosecution evidence;<sup>14</sup>

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<sup>6</sup> Request, para. 15.

<sup>7</sup> Request, paras. 16-20.

<sup>8</sup> Response, paras. 6-7.

<sup>9</sup> Response, para. 13.

<sup>10</sup> Response, para. 9.

<sup>11</sup> Response, paras. 9 and 14.

<sup>12</sup> Response, para. 12.

<sup>13</sup> Response, paras. 11 and 14.

<sup>14</sup> *The Prosecutor v. Kajelijeli*, case no. ICTR-98-44A-T, Decision on Kajelijeli's Urgent Motion and Certification with Appendices in Support of Urgent Motion for Disclosure of Materials Pursuant to Rule 66(B) and Rule 68 of the Rules of Procedure and Evidence, 5 July 2001, para. 13; *The Prosecutor v. Ignace Bagilishema*, case no. ICTR-95-1A-T, Decision on the Request of the Defence Pursuant to Rule 73 of the Rules of Procedure and Evidence for Summons on Witnesses, 8 June 2000, para. 15; *The Prosecutor v. Zejnil Delalić, Zdravko Mucić, alias "Pavo", Hazim Delić, Esad Landžo, alias "Zenga"*, case no. IT-96-21-T, Decision on the Request of the Accused Hazim Delić Pursuant to Rule 68 for Exculpatory Information, 24 June 1997, paras. 12, 13, 15, 18.

**CONSIDERING** that, under certain conditions, the Prosecution may be put under the obligation to try to find one or more specific documents that it does not have after the Defence has attempted to obtain it/them by its own means;<sup>15</sup>

**CONSIDERING** that the Chamber notes that the Prosecution asserts it has disclosed all the documents in its possession relating to domestic matters pertinent to the case,<sup>16</sup> and states that it does not have the documents requested;

**CONSIDERING** that the Request resembles a "fishing expedition", in the sense that the Defence has requested the Prosecution to obtain and disclose "all material relevant to criminal proceedings in the courts of Bosnia and Herzegovina regarding acts perpetrated in Stupni Do", instead of indicating precisely which documents are relevant,<sup>17</sup>

**CONSIDERING** that, in other respects, the Chamber agrees with the Prosecution's argument that the fact that BH law includes provisions on a commander's responsibility does not constitute in itself exculpatory evidence and, in addition, the Praljak Defence does not show that there is any connection between the Accused and the proceedings taking place in Bosnia and Herzegovina and, in particular, their role in carrying out their duties;<sup>18</sup>

**CONSIDERING** that the Chamber finds that the Praljak Defence did not attempt to obtain the documents in question through its own means before putting in a Request, merely putting forward the lengthy and bureaucratic process of submitting a request to the Bosnian authorities;<sup>19</sup>

**CONSIDERING** furthermore that the Chamber reminds the Defence that in cases where its attempts to obtain documents prove unsuccessful, it may, like the Prosecution, invoke the procedure provided by Rule 54 *bis* and ask the Chamber to issue an order for a State to produce documents or information; consequently, the Chamber does not subscribe to the Defence's argument that the Prosecution has superior means of obtaining the documents in question;

**CONSIDERING** that, consequently, the Request does not fulfil the conditions laid out in Rule 68 (i);

**CONSIDERING**, however, that this decision will not prevent the Chamber pursuant to Rule 98 of the Rules of Procedure and Evidence from requesting the production of documents from the criminal proceedings against persons being prosecuted or sentenced by local courts for crimes committed in Stupni Do or in any other place covered in the Indictment;

**FOR THE FOREGOING REASONS,**

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<sup>15</sup> *The Prosecutor v. Casimir Bizimungu, JustitN Mugenzi, Jérôme Bicomumpaka, Prosper Mugiraneza*, case no. ICTR-99-50-T, Decision on Motion of Accused Bicomumpaka for Disclosure of Exculpatory Evidence, 23 April 2004, para. 9.

<sup>16</sup> Response, para. 7.

<sup>17</sup> Request, para. 1.

<sup>18</sup> Response, para. 9.

<sup>19</sup> Request, para. 15.

**PURSUANT TO** Rule 68 (i) of the Rules of Procedure and Evidence,  
**REJECTS** the Request.

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

Jean-Claude Antonetti  
/signed/  
Presiding Judge

Done this tenth day of May 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**