



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 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: 16 May 2007

THE PROSECUTOR

v.

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

**DECISION ON MOTION FOR RECONSIDERATION, OR IN THE
ALTERNATIVE, REQUEST FOR CERTIFICATION TO APPEAL THE
CHAMBER'S DECISION OF 3 APRIL 2007 TO ADMIT EVIDENCE
REGARDING WITNESS JOSIP PRALJAK**

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”),

SEIZED of the “Prosecution Motion for Reconsideration, or in the Alternative, Request for Certification for Appeal”, filed by the Office of the Prosecutor (“Prosecution”) on 10 April 2007 (“Motion”) whereby the Prosecution requests the Chamber to reconsider its decision of 3 April 2007 to admit evidence regarding Witness Josip Praljak (“Decision of 3 April 2007”), or in the alternative, to dispense with the condition requiring the filing of a written motion, or in the further alternative, to grant it leave to appeal the Decision of 3 April 2007 pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the Decision of 3 April 2007 whereby the Chamber partially granted the Prosecution request to admit evidence regarding Witness Josip Praljak by admitting 48 of the 1033 documents proposed for admission, and denied the Prosecution request in all other respects on the grounds that it betrayed the principles set out by the Chamber in its two decisions on the procedure for the admission of evidence,¹

CONSIDERING that, principally, the Prosecution moves for reconsideration of the Decision of 3 April 2007 on the grounds that: (a) all of the documents proposed for admission are relevant and were tendered through an appropriate witness;² (b) the Decision of 3 April 2007 is contrary to Tribunal jurisprudence and practice;³ (c) the *Prlić* case is to a large extent based on documentary evidence;⁴ (d) the Decision of 3 April 2007 runs contrary to the principle that it is for the Prosecution to put forward its case, and (e) the Decision of 3 April 2007 and the Chamber’s approach to the admission of evidence deny the victims, the Prosecution and the international community a fair trial,⁵

¹ Decision on Admission of Evidence, 13 July 2006 (“Decision of 13 July 2006”) and Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006, 29 November 2006 (“Decision of 29 November 2006”).

² Motion, paras. 2-4.

³ Motion, paras. 8-11.

⁴ Motion, para. 18.

⁵ Motion, para. 19.

CONSIDERING that, in the alternative, the Prosecution requests the Chamber to relieve it from the condition set out in Guideline 6 (a) (iv) of the Decision of 29 November 2006 on the grounds that: (a) the collection of such information is labour-intensive, time-consuming and costly, and the tables of evidence provided by the Prosecution on 4 September 2006 already present the evidence in detail;⁶ (b) the structure and nature of the information requested may lend themselves to an artificial and misleading approach to the evidence,⁷ and (c) it is up to the Prosecution, and not the Chamber, to present its case,⁸

CONSIDERING that, in the further alternative, the Prosecution requests leave to appeal the decision of 3 April 2007 in accordance with Rule 73 (B) of the Rules on the grounds that an immediate resolution of this issue by the Appeals Chamber will materially advance the proceedings,⁹

CONSIDERING that the Counsel for the six Accused did not file any response to the Motion,

CONSIDERING that with respect to the Prosecution's principal request, a Trial Chamber has the inherent power to review its own decisions and that, for a request for reconsideration to be granted, the requesting party must demonstrate to the Chamber that the reasoning of the impugned decision contains a clear error or that particular circumstances, which may include new facts or new arguments,¹⁰ justify its reconsideration in order to avoid injustice,¹¹

CONSIDERING that if the requesting party fails to demonstrate the existence of a clear error or of particular circumstances, it must seize the Chamber directly of a request for certification to appeal pursuant to Rule 73 (B) of the Rules,

⁶ Motion, para. 21.

⁷ Motion, para. 21.

⁸ Motion, para. 22.

⁹ Motion, paras. 24-25.

¹⁰ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witness, 9 May 2002, para. 8.

¹¹ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing in particular *The Prosecution v. Zdravko Mucić et al.*, Case No. IT-96-21A-Bis, Appeals Judgment on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 bis, 19 October 2006, p. 4.

CONSIDERING that in this case, the Chamber is not convinced that the Prosecution has identified any clear error or particular circumstances which would justify the review of its decision of 3 April 2007,

CONSIDERING that the arguments in support of the Prosecution's principal request regarding the Chamber's approach to the admission of documentary evidence were already presented in previous written submissions giving rise to the Decisions of 13 July and 29 November 2006,¹²

CONSIDERING that the Chamber responded extensively to those arguments in the two aforementioned decisions and, consequently, refers to the reasons amply set out therein,

CONSIDERING that the Chamber further notes that the Decision of 13 July 2006 and the Decision of 29 November 2006, which came at the end of an adversarial debate, were not the subject of a Prosecution request for certification to appeal,

CONSIDERING moreover that the principles and approach adopted in the two aforementioned decisions now share a consistent and strong practical basis to the extent that these principles and approaches have been applied for ten and six months, respectively, and that the Prosecution did not seek certification to appeal the decisions taken in accordance with the said policy decisions,

CONSIDERING, consequently, that for all of the reasons explained above, the Prosecution request need not be granted,

CONSIDERING that with respect to the Prosecution's request in the alternative, the Chamber first recalls that pursuant to Guideline 6 (a) (iv) of the Decision of 29 November 2006, the Prosecution must refer in the said written motion to the witnesses who have already appeared in the case and to the documents admitted as evidence dealing with the same paragraphs in the Indictment as the documents it seeks to tender by way of written motion,

CONSIDERING that the Chamber's *ratio* for inserting point (a) (iv) of Guideline 6 was to envisage the admission, by way of a written motion, of documents in particular

¹² See "Prosecution Submission on the Admission of Documentary Evidence, 6 November 2006", paras. 18, 19, and 24 and "Prosecution Submission on the Admission of Documentary Evidence", 15 June 2006.

whose content is corroborated by the testimony of witnesses who have appeared before the Chamber and/or by documents which have already been admitted as evidence in this case,¹³ thereby enabling it to better assess the indicia of the probative value of the documents proposed for admission,

CONSIDERING that this *ratio* is very different from the spirit in which the request was made for the tables of evidence of 4 September 2006,

CONSIDERING that the objective of the tables of 4 September 2006 was to enable first the Pre-Trial Judge and then the Chamber to have both general and specific insight into all the evidence to be presented during the trial and, more specifically, to establish the nexus between the witnesses, the exhibits and the specific information related to the facts and the responsibility of the Accused set out in the Amended Indictment,¹⁴

CONSIDERING that while some information contained in the tables of 4 September 2006 may serve as grounds for the written motion under Guideline 6, it must be noted that points (a) (iv), (vi), and (vii) pursue a different and independent objective, as set out in the decision of 29 November 2006,¹⁵

CONSIDERING, therefore, that the Chamber cannot be satisfied solely with the information provided in the tables of 4 September 2006 to rule on the written motions requesting the admission of documents,

CONSIDERING furthermore that, to date, the written motions filed by the Prosecution in accordance with Guideline 6 of the Decision of 29 November 2006 have satisfied point (a) (iv),¹⁶ which has substantially assisted the Chamber in its assessment of the admissibility of evidence submitted,

CONSIDERING moreover that, as explained above, the Prosecution did not seek certification to appeal the Decision of 29 November 2006 containing Guideline 6,

¹³ Decision of 29 November 2006, p. 5.

¹⁴ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Guidelines for Drawing Up the List of Witnesses and Exhibits, 30 November 2005, p. 3.

¹⁵ Decision of 29 November 2006, p. 5.

¹⁶ See "Prosecution Supplementary Motion for Admission of Documentary Evidence", Annex, 7 December 2006; "Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes", 26 January 2007.

CONSIDERING that, for the foregoing reasons, the very existence of point (a) (iv) of Guideline 6 need not be called into question,

CONSIDERING, conversely, that the Chamber is aware that the unique nature of the documents the Prosecution proposes for admission in this case, essentially documents dealing with the administration and internal organisation of the Heliodrom, makes it difficult to corroborate this evidence with witnesses who have already appeared in the case and with documents admitted as evidence dealing with the same paragraphs in the Indictment,

CONSIDERING that, based on his position at the Heliodrom, Witness Josip Praljak was the Prosecution witness best placed to testify on the administration and internal organisation of the Heliodrom; that the Chamber finds that the Prosecution no longer plans to call other witnesses through whom it could tender these documents and that the presentation of prosecution evidence dealing with the administration and internal organisation of the Heliodrom seems to be complete,¹⁷

CONSIDERING, therefore, that the Chamber invites, should the need arise, the Prosecution to seize it of a written motion in accordance with Guideline 6 of the Decision of 29 November 2006, to admit the documents dealing with the administration and internal organisation of the Heliodrom and that, exceptionally, for the reasons explained above, the Chamber is inclined to grant the Prosecution relief from providing, for those specific documents, the information required under point (a) (iv) of the said Guideline,

CONSIDERING, finally, that the Chamber considers that the Prosecution request in the further alternative need not be examined since its request in the alternative has been granted,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules,

DENIES the Prosecution's principal request,

¹⁷ See letter from the Prosecution to the Chamber dated 11 April 2007 regarding the updated version of the 65 *ter* list of Prosecution witnesses.

GRANTS the Prosecution request in the alternative, **AND** consequently

RELIEVES the Prosecution from the requirement under Guideline 6 (a) (iv) of the Decision of 29 November 2006 only for the Witness Josip Praljak.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this sixteenth day of May 2007

At The Hague

The Netherlands

[Seal of the Tribunal]