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CASE/AFFAIRE NO. IT-04-74-T DATE 10 September 2007

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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: 30 August 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 30 August 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JADRANKO PRLIĆ'S REQUEST FOR RECONSIDERATION
OF THE DECISION OF 29 NOVEMBER 2006**

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 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 "Jadranko Prlić's Request for Reconsideration of the *Decision Amending the Decision on the Admission of Evidence dated 13 July 2006*" filed by the Accused Prlić ("Accused") on 11 July 2007 ("Request") in which the Accused asks the Chamber to reconsider Guideline 6 as amended by the Chamber in its "Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006" rendered on 29 November 2006 ("Decision of 29 November 2006"),

NOTING the Decision of 29 November 2006, in which the Chamber amended the "Decision on Admission of Evidence" rendered on 13 July 2006 ("Decision of 13 July 2006") and Guideline 6 by allowing the Office of the Prosecutor ("Prosecution"), by means of more flexible conditions, to seize the Chamber of a written motion requesting the admission of documents that had not been presented to a witness in court,¹

CONSIDERING that the Accused asked the Chamber to reconsider the Decision of 29 November 2006 and to permit the Defence, in the presentation of its case, to seize the Chamber of a motion requesting the admission of documentary evidence that has not been presented to a witness in court,²

CONSIDERING that the Accused holds that by not being able to benefit from the same possibilities as the Prosecution, Guideline 6 infringes his right to a fair trial³ and

¹ Guideline 6 as amended by the Decision of 29 November 2006 reads as follows:

Subject to the following conditions, the Prosecution may request the Chamber, by way of written motion, to admit documents which were not put before a witness in court.

a. The said motion, stating the reasons, must contain the following information or it may be denied:

- i. Number, title and description of the document;
- ii. Source of the document and its indicia of reliability;
- iii. References to relevant paragraphs of the Indictment;
- iv. Reference to the witnesses who have already appeared before the Chamber and to the documents admitted as evidence dealing with the same paragraphs in the Indictment;
- vi. Reasons why the party considers the document important for the determination of the case.

b. The Defence shall have 14 days to respond and make objections, if need be, to each document proposed for admission in this manner.

² Request, p. 2.

³ Request, pp. 2 and 3.

his right to cross-examine Prosecution witnesses,⁴ since the Accused has neither the possibility of requesting the admission of documents directly related to cross-examination and intended to question the credibility of the witness and his reliability, nor to put his case to Prosecution witnesses as prescribed by Rule 90 (H)(ii) of the Rules of Procedure and Evidence (“Rules”),⁵

CONSIDERING that the Accused also holds that Guideline 6 frustrates the provisions of Rule 98 *bis* of the Rules since it prevents him from making use of all the available relevant and probative evidence and would also prevent the Chamber from having vital evidence necessary for a fair determination of the case,⁶

CONSIDERING that the Accused then holds that Guideline 6 violates his right to be presumed innocent, since it would be fundamentally unjust, at this stage of the proceedings, for the Chamber to proclaim that he will have a chance to introduce his documentary evidence during the presentation of his case,⁷

CONSIDERING, finally, that the Accused holds that Guideline 6 would negatively impact his right to be tried within a reasonable period of time since he will be compelled to recall certain witnesses,⁸

CONSIDERING that in the Decision of 13 July 2006, the Chamber clarified the Guidelines on the admission of evidence as set out in the “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings”, dated 28 April 2006,

CONSIDERING that Guideline 6 as set out in the Decision of 13 July 2006, reserves the Prosecution the right to submit a written motion to the Chamber asking for the admission of evidence that was not presented in court,

CONSIDERING that in the Decision of 29 November 2006 amending the Decision of 13 July 2006, the Chamber recalled that at this stage of the proceedings, i.e. during

⁴ Request, p. 3.

⁵ Request, pp. 2 and 3.

⁶ Request, pp. 3 and 4.

⁷ Request, p. 4.

⁸ Request, p. 4.

the presentation of the Prosecution case, the possibility of seizing the Chamber of a written motion pursuant to Guideline 6 was only offered to the Prosecution,⁹

NOTING that Rule 73 (B) and (C) of the Rules sets out the conditions with regard to appealing decisions rendered by a Trial Chamber,

CONSIDERING that the Chamber notes the absence of a request for certification to appeal by the Accused with regard to the Decision of 13 July 2006 and the Decision of 29 November 2006, decisions reached after due hearing of the Parties,

CONSIDERING nevertheless that the Trial Chamber has the intrinsic power to reconsider its own decisions and may receive a request for reconsideration if the requesting Party shows the Chamber that the reasoning of the impugned decision involves a manifest error or that specific circumstances, which could be new facts or arguments,¹⁰ justify its reconsideration in order to avoid an injustice,¹¹

CONSIDERING that the Accused's request to be able, the same as the Prosecution, to present written requests for the admission of documents that were not presented in court was already put forward during the debates that preceded the adoption of the Decision of 29 November 2006,¹²

CONSIDERING that this request was denied by the Chamber in its Decision of 29 November 2006,¹³

CONSIDERING that the Chamber recalls that limiting the application of Guideline 6 to the Prosecution at this stage of the proceedings does not infringe the rights of the Defence as set out in Article 21(4)(e) of the Statute and Rule 90 (H) of the Rules insofar as, first, the Defence may always submit evidence during the cross-

⁹ Decision of 29 November 2006, p. 6.

¹⁰ *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 *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 Witnesses, 9 May 2002, para. 8.

¹¹ *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 *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A-bis, Judgement on Sentence Appeal, 8 April 2003, para. 49; *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.

¹² Decision of 29 November 2006, p. 3 and Court Transcript in French of 6 November 2006, p. 9534.

¹³ Decision of 29 November 2006, p. 6.

examination of witnesses and in this way test their credibility and introduce evidence dealing with its case,

CONSIDERING that in support of this consideration the Chamber notes, second, that the Defence always has the possibility of responding within a time-limit of 14 days to the written motions of the Prosecution submitted on the basis of Guideline 6 and to express, if need be, its objections with regard to each of the documents proposed for admission in this manner,¹⁴

CONSIDERING that the Chamber finds that the Defence may, if need be, within the presentation of exculpatory evidence, seize the Chamber of such written requests under similar conditions to those provided to the Prosecution by Guideline 6,¹⁵

CONSIDERING also that the Chamber notes that the ground of the Accused whereby Guideline 6 allegedly frustrates the provisions of Rule 98 *bis* of the Rules and violates his presumption of innocence,¹⁶ is unfounded since the criteria that applies is whether there is evidence that would convince a reasonable trier of facts beyond reasonable doubt that the Accused is guilty of a specific count in the case,¹⁷

CONSIDERING that the Chamber recalls that the question is therefore not whether the trier would in fact pronounce a conviction beyond reasonable doubt in view of the Prosecution evidence but whether he *could*,¹⁸

CONSIDERING furthermore that when evidence exists such that its strength or weakness depends on the view taken of the credibility of the witness or the Chamber's

¹⁴ Guideline 6 as amended by the Decision of 29 November 2006.

¹⁵ Court Transcript in French, 26 June 2007, p. 20482.

¹⁶ Rule 98 *bis* of the Rules provides:

At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

¹⁷ *Prosecutor v. Goran Jelišić*, IT-95-10-A, Appeals Chamber, Judgement of 5 July 2001 ("Jelišić Appeals Judgement"), para. 37 and *Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23-T and IT-23-1-T, Decision on the Motion for Acquittal, 3 July 2000, para. 10

¹⁸ *Prosecutor v. Enver Hadžihasanović, Amir Kubura*, IT-01-47-T, Decision on Requests for Acquittal Pursuant to Article 98 *bis* of the Rules of Procedure and Evidence, 27 September 2004, paras. 13 and 15 and *Prosecutor v. Milutinović et al.*, IT-05-87, Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules, 18 May 2007, ("Milutinović Decision"), Court Transcript in French, p. 12772.

analysis of evidence presented by the Parties, a request pursuant to Rule 98 *bis* will be rejected,¹⁹

CONSIDERING also that the Chamber recalls that in any case, the probative value of evidence is not determined until the end of the presentation of all the evidence,²⁰

CONSIDERING that taking these elements into account, the Chamber holds that the circumstance whereby the Defence may not present evidence based on Guideline 6 at this stage of the proceedings has no effect on the issues taken into account by the Chamber when examining Rule 98 *bis* of the Rules,

CONSIDERING that in response to the other grounds raised by the Accused, the Chamber recalls that the principles and the method adopted in the Decision of 13 July 2006 and in the Decision of 29 November 2006 are now firmly established in the Tribunal's practice,

CONSIDERING that these principles and methods have been applied for 13 and 9 months respectively and the Accused submitted no certification to appeal decisions taken in application of the above-mentioned decisions,²¹

CONSIDERING finally that the Chamber is not convinced by the argument of the Accused that the application of Guideline 6 would have detrimental consequences on the duration of the proceedings,

CONSIDERING consequently that for all of the reasons presented above, there is no cause to grant the request of the Accused and reconsider the Decision of 29 November 2006,

¹⁹ Milutinović Decision, Court Transcript in French, p. 12772.

²⁰ See, in this regard, the Jelišić Appeals Judgement, para. 37.

²¹ On this point, see (unofficial translation of the original French) "Decision on Prosecution Motion for Reconsideration or in the Alternative, Request for Certification to Appeal the Chamber Decision of 3 April 2007 on the Admission of Evidence Related to Witness Josip Praljak", 16 May 2007, p. 4.

FOR THE FOREGOING REASONS,
PURSUANT TO Rules 54 and 89 of the Rules,
DENIES the request of the Accused,

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this thirtieth day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]