



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: 8 October 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: 8 October 2007

THE PROSECUTOR

v.

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

Public

**DECISION ON REQUEST FOR RECONSIDERATION AND
CERTIFICATION TO APPEAL THE DECISION FOR ADMISSION OF THE
STATEMENT OF JADRANKO PRLIĆ**

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 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

I. INTRODUCTION

1. 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”) has been seized first of the “Request of the Accused Stojić, Praljak, Petković, Ćorić and Pušić for Reconsideration, Alternatively for Certification for Appeal of Decision of Trial Chamber to Admit Statement of Jadranko Prlić” filed by Counsel of the Accused Stojić, Praljak, Petković, Ćorić and Pušić (“Joint Defence”) on 29 August 2007 (“Joint Request”) in which the Joint Defence requests the Chamber to reconsider or alternatively certify the appeal of the “Decision on Request for Admission of the Statement of Jadranko Prlić” rendered on 22 August 2007 (“Impugned Decision”) by the Chamber, and not to allow the Prosecution to use the statement in court. Secondly, the Chamber has been seized of “Jadranko Prlić’s Request for Certification to Appeal the Decision on Request for Admission of the Statement of Jadranko Prlić” filed on 5 September 2007 (“Prlić Request”) by Counsel for the Accused Prlić (“Prlić Defence”) in which they request certification to appeal the Impugned Decision.

II. Procedural Background

2. On 22 August 2007 the Chamber rendered the Impugned Decision in which, pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”), it admitted the statement made by the Accused Prlić to the Prosecution on 13 and 14 December 2001 (“Prlić Statement”).

3. At the hearing of 23 August 2007 the Chamber granted the oral request of the Prlić Defence for a five day delay upon completion of the English translation of the

Impugned Decision to file a request for certification of appeal.¹ The English translation was filed on 31 August 2007.²

4. On 29 August 2007, the Joint Defence filed the Joint Request and on 5 September the Prlić Defence filed the Prlić Request.

5. The Office of the Prosecutor (“Prosecution”) has not filed a response.

III. SUBMISSIONS OF THE PARTIES

6. The Joint Defence first requests that the Chamber reconsider the Impugned Decision. In support of its request, the Joint Defence submits that the Chamber failed to consider the “Decision on Prosecution's Motion for Clarification of Oral Decision Regarding Admissibility of Accused's Statement” rendered on 18 September 2003 by the *Blagojević & Jokić* Chamber.³ The Joint Defence submits that unlike the *Blagojević and Jokić* Chamber, in the Impugned Decision the Chamber failed to fully consider the fact that when giving a statement to the Prosecution a suspect wants to exonerate himself and place the blame on others. Thus, the Joint Defence cites paragraph 24 of the *Blagojević and Jokić* Decision in support of its argument that a statement given by a suspect is never reliable and that a Trial Chamber cannot base a conviction on such a statement.⁴

7. Furthermore, the Joint Defence submits that in arguing that the Defence failed to show wherein the statements made in the Prlić Statement are false the Chamber erroneously laid the burden of proof on the Defence.⁵

8. In support of its request for certification to appeal, the Joint Defence submits that the issue of how to protect the interests of the other Accused if an earlier

¹ Transcript, pp. 21455 and 21558.

² “Decision on Request for Admission of the Statement of Jadranko Prlić (Incorrect English translation)”. A revised translation was filed on 6 September 2007: “Decision on Request for Admission of the Statement of Jadranko Prlić (Corrected English translation)”.

³ *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, “Decision on Prosecution's Motion for Clarification of Oral Decision Regarding Admissibility of Accused's Statement”, 18 September 2003 (“*Blagojević and Jokić* Decision”).

⁴ Joint Request, paras. 11 and 12.

⁵ Joint Request, para. 14.

statement made by a co-accused is admitted is novel one.⁶ It is of the opinion that the use of the Prlić Statement by the Prosecution for its own case would inevitably and irreversibly affect the rights of the other accused.⁷ Consequently, it also requests that the Prosecution be ordered not to make use of the statement against the other accused pending the decision of the Appeals Chamber on the Joint Request.⁸

9. In the Prlić Request, the Prlić Defence requests a certification to appeal the Impugned Decision on the bases that it impacts the right of the Accused Prlić to remain silent and to assistance of counsel of his choice (Article 21(4)(d) and (g) of the Statute of the Tribunal); that it directly impacts the overall strategy and theory of defence and, more specifically, the presentation of the defence case; and that it impacts the length and scope as well as the outcome of the trial should the Impugned Decision be reversed by the Appeals Chamber.⁹ Furthermore, it submits that an immediate resolution of the issue by the Appeals Chamber could materially advance the proceedings.¹⁰

IV. DISCUSSION

11. A Trial Chamber has an inherent power to reconsider its own decisions. It can receive a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error of reasoning in the impugned decision or of particular circumstances, new facts or new arguments,¹¹ justifying its reconsideration in order to avoid injustice.¹²

⁶ Joint Request, para. 17.

⁷ Joint Request, para. 19.

⁸ Joint Request, paras. 20 and 21.

⁹ Prlić Request, para. 15.

¹⁰ Prlić Request, para. 16.

¹¹ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, “Decision on Defence’s Request for Reconsideration”, 16 July 2004, p. 2, citing *The Prosecution 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.

¹² *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, “Decision on Defence’s Request for Reconsideration”, 16 July 2004, p. 2, citing *The Prosecutor 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.

12. Firstly, the Chamber recalls that the Joint Defence in its submission preceding the Impugned Decision already raised the argument of unreliability of a suspect statement.¹³ Thus, in the Joint Response, the Joint Defence submits that for there to be a fair trial the Chamber should exclude the Prlić Statement as evidence against the co-accused. It maintained that in the Prlić Statement the Accused Prlić attempted to exonerate himself by placing the blame on the other suspects.¹⁴

13. The Chamber reminds the Defence that establishing the reliability of a suspect statement and whether it can be admitted in a trial with multiple accused is the main issue of the Impugned Decision.¹⁵ The Chamber noted that the transcript of a suspect interview carried out pursuant to Rules 42 and 43 of the Rules, offers sufficient indicators of reliability to be admitted.¹⁶ It found:

“As a result, the Chamber maintains that the transcript of a suspect interview, taken in conformity with Rules 42 and 43 of the Rules, may be admitted and used without cross-examination even if it goes to the acts and conduct of the co-Accused. Nonetheless, the Chamber stresses the importance of the jurisprudence of the European Court of Human Rights as adopted by the Appeals Chamber of the Tribunal, whereby a Chamber may not base a conviction solely or substantially upon evidence not subjected to cross-examination.”¹⁷

14. Although the Chamber does not expressly cite the *Blagojević and Jokić* Decision, it explored the question of whether the Prlić Statement should be excluded pursuant to Rule 89 (D) of the Rules since its probative value is substantially outweighed by the need to ensure a fair trial.¹⁸ The Chamber, not being bound by the *Blagojević and Jokić* Decision, did not hold that a suspect statement was necessarily unreliable. It preferred a case by case approach.¹⁹ In this respect it is to be noted that the *Blagojević and Jokić* Chamber did not exclude the statement of the Accused Jokić on the sole basis that he was a suspect at the time he made his statement. Such a

¹³ “Response of the Accused Stojić, Praljak, Petković, Ćorić and Pušić to Prosecution Motion for Admission into Evidence of the Statement of the Accused”, 5 April 2007 (“Joint Response”), para. 16.

¹⁴ Joint Reponse, para. 16.

¹⁵ Impugned Decision, paras. 17-28.

¹⁶ Impugned Decision, para. 27.

¹⁷ Impugned Decision, para. 28.

¹⁸ Impugned Decision, para. 32.

¹⁹ Impugned Decision, para. 32.

decision indicates that there were other reasons to deny the admission of the statement such as a possible conflict of interests between the Accused Jokić and his Counsel at the time.²⁰ While, in this case, the Prlić Defence asserts that the Impugned Decision affects the right of the Accused Prlić to have the assistance of counsel of his choice, the Chamber recalls that this issue was already dealt with in the pre-trial phase and that the Prlić Defence raised no new arguments in this regard.²¹

15. The Joint Defence submits that the Chamber distinguishes between, on the one hand, a written statement made by an accused and, on the other hand, a suspect statement made pursuant to Rules 42 and 43 of the Rules.²² Regarding this, the Joint Defence cites paragraph 26 of the Impugned Decision:

“This being said, the Chamber considers that it is essential to distinguish between the written statement of a suspect who becomes an accused that has been prepared for criminal proceedings before the Tribunal and goes to the acts and conduct of the accused, and the transcript of a suspect interview taken pursuant to Rules 42 and 43 of the Rules.”

In this passage the Chamber does not make a distinction between an accused and a suspect but between a written statement of a suspect and a suspect statement taken pursuant to Rules 42 and 43 of the Rules. This distinction also follows from paragraph 27 of the Impugned Decision:

“Indeed, the transcript of a suspect interview that was carried out pursuant to Rules 42 and 43 of the Rules, offers further indications of reliability with regard to the written statements taken pursuant to Rule 92 *bis* (B) of the Rules.”

16. Further, the Chamber emphasises that it never claimed that the burden of proof lay on the Defence. The issue in this case is not to establish whether it is the Prosecution or the Defence that should prove the guilt or innocence of all the accused.

²⁰ *Blagojević and Jokić* Decision, paras. 25, 26 and 27.

²¹ Impugned Decision, para. 30, with reference to *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, “Decision on Prlić Motion to Suppress Statement”, 14 March 2006.

²² Request, paras. 8 and 12.

What is to be established is whether there are sufficient reasons to exclude the Prlić Statement in keeping with Rule 89 (D) of the Rules.²³ Since it is the Defence that argues that the Prlić Statement offers certain pertinent, probative and reliable indicators²⁴ it is upon the Defence to demonstrate that this probative value substantially outweighs the need to ensure a fair trial.

17. Consequently, the Chamber is not of the opinion that there are justifiable reasons for the reconsideration of the Impugned Decision.

18. However, the Chamber considers that there is good reason for certification of the appeal pursuant to Rule 73 (B) of the Rules. The Chamber may certify the appeal to the Impugned Decision pursuant to Rule 73 (B) of the Rules if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Impugned Decision deals with an issue not yet determined by Tribunal case law, that is the admission and use of a statement made by an accused which concerns the other accused in a joint trial. This issue could affect the fairness of the trial to the extent to which it bears upon the right of these accused to examine, or have examined, witnesses against them pursuant to Article 21(4)(e) of the Statute of the Tribunal. If the Prosecution wishes to use the Prlić Statement with other witnesses in court, an urgent ruling of the Appeals Chamber could, in this case, expedite the proceedings. However, in order to continue with the examination of the Prosecution witnesses and to avoid having to call them again, the Chamber dismisses the Joint Defence request for prohibition of use of the Prlić Statement in court. If the Appeals Chamber reverses the Impugned Decision, the Chamber will disregard the information obtained on the basis of the Prlić Statement.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 73 (B) of the Rules,

²³ Impugned Decision, para. 32.

²⁴ Impugned Decision, paras. 29 and 31.

GRANTS the request for certification of appeal **AND**
DISMISSES the Joint Request in all other respects

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this eighth day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]