



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: 4 April 2008
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: 4 April 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON SLOBODAN PRALJAK'S MOTION ON THE APPLICATION
OF RULE 67 (A) 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 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 “Slobodan Praljak’s Motion under Rule 6 (D) Requesting that the Amendment of Rule 67 Not Operate to Prejudice the Rights of the Accused”, filed on 11 March 2008 (“Motion”) by Counsel for the Accused Praljak (“Defence”), wherein the Defence respectfully requests the Chamber to find that Amended Rule 67 does not apply in this case, or, alternatively, that neither the Chamber nor the Office of the Prosecutor (“Prosecution”) may rely on it to oblige the Defence to act or to refrain from action;

NOTING the “Joinder of the Accused Stojić and Ćorić in Slobodan Praljak’s Motion under Rule 6 (D) Requesting that the Amendment of Rule 67 Not Operate to Prejudice the Rights of the Accused”, filed on 12 March 2008 by Counsel for the Accused Stojić and for the Accused Ćorić wherein they join the Motion;

NOTING the “Joinder of the Petković Defence in Slobodan Praljak’s Motion under Rule 6 (D) Requesting that the Amendment of Rule 67 Not Operate to Prejudice the Rights of the Accused”, filed on 13 March 2008 by Counsel for the Accused Petković wherein they join the Motion;

NOTING the “Motion on Behalf of Berislav Pušić to Join Slobodan Praljak’s Motion under Rule 6 (D) Requesting that the Amendment of Rule 67 Not Operate to Prejudice the Rights of the Accused”, filed on 13 March 2008 by Counsel for the Accused Pušić wherein they join the Motion;

NOTING the “Prosecution Response to Slobodan Praljak’s Motion under Rule 6 (D) Requesting that the Amendment of Rule 67 Not Operate to Prejudice the Rights of the Accused” filed on 13 March 2008 (“Response”) by the Prosecution wherein it objects to the Motion;

CONSIDERING that in support of its Motion, the Defence argues that Rule 6 (D) of the Rules of Procedure and Evidence (“Rules”) protects the Accused from the application of Amended Rule 67 of the Rules, should it be prejudicial to the Accused.¹

CONSIDERING that, to substantiate that a prejudice exists, the Defence first submits that Amended Rule 67 of the Rules burdens the Defence by limiting the possibility to obtain protective measures;²

CONSIDERING that the Defence furthermore argues that Amended Rule 67 (A) imposes new obligations on the Defence with no countervailing benefit³ and that it restricts the right of the Accused to deny the Prosecution permission to inspect certain documents or to deny the disclosure of certain statements;⁴

CONSIDERING that the Prosecution refutes the idea that Rule 6 (D) of the Rules precludes the operation of Amended Rule 67 (A) in this case since it does not prejudice the rights of the Accused;⁵

CONSIDERING that the Prosecution submits that common sense dictates that Amended Rule 67 (A) only applies subject to any order issued pursuant to Rule 75 of the Rules, Rule 67 (A) being implicit therein;⁶

CONSIDERING furthermore that, according to the Prosecution, the fact that the previous rules of the Rules did not impose any obligation on the Defence to disclose documents to the Prosecution or to permit the Prosecution to inspect them is not a right protected under Rule 6 (D) of the Rules but rather “advantages . . . which are frequently described as rights”;⁷

¹ Motion, para. 9.

² Motion, paras. 10 – 12.

³ Motion, para. 13.

⁴ Motion, paras. 17 and 18.

⁵ Response, para. 5.

⁶ Response, paras. 8 and 9.

⁷ Response, paras. 10-15.

CONSIDERING that the Prosecution submits that if Rule 6 (D) were interpreted to bar the application of Amended Rule 67 (A), this would render moot the amendment as it would not be applicable in any pending case before the Tribunal;⁸

CONSIDERING that the Chamber notes that the Defence submits that there exists a prejudice without having argued that the Prosecution requested in actual fact the disclosure of documents pursuant to Amended Rule 67 (A) of the Rules;

CONSIDERING that the Chamber nevertheless decides to rule on the Motion since it ensues from the Response that the Prosecution seems to want to apply to Amended Rule 67 (A);

CONSIDERING that Amended Rule 67 (A) of the Rules issued on 3 March 2008 provides that:

“(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall:

- (i) permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence’s custody or control, which are intended for use by the Defence as evidence at trial; and
- (ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.”

⁸ Response, paras. 18 and 19.

CONSIDERING that, pursuant to Rule 6 (D) of the Rules, this amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of the accused;

CONSIDERING that, in keeping with the case-law of the Tribunal, a distinction is to be made between the rights envisaged under Rule 6 (D) and the multiple advantages which are frequently described as rights;⁹

CONSIDERING that the Appeals Chamber interpreted the term “right” referred to in Rule 6 (D) in the context of the referral of an indictment to another jurisdiction in keeping with Rule 11 *bis* of the Rules and concluded:

“ [. . .] that the rights referred to in Rule 6(D) of the Rules encompass only those prerogatives that an accused, acquitted or convicted person is legally entitled to. The Referral Bench correctly reasoned that while the initial text of Rule 11 *bis* might not have enabled the referral of a case to a state which was not the state of arrest, that could not be understood as granting a right to an accused [. . .]”.¹⁰

CONSIDERING that the Chamber finds, as does the Prosecution and in keeping with the above-cited case-law, that the mere fact that the previous version of the Rules did not impose certain disclosure obligations on the Defence does not constitute the right to deny such disclosure;

CONSIDERING further that the Chamber finds that a systematic and teleological interpretation of the Rules shows that Amended Rule 67 (A) applies subject to Rules 69, 70, 75 and 79 of the Rules on the delayed disclosure of the identity of witnesses and on protective measures;

⁹ *The Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-PT, “Decision on the Prosecutor’s Motion for Referral of Case Pursuant to Rule 11 *bis*”, 20 July 2005 (“Mejačić Decision”), para. 123, case-law applied in *The Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, “Decision to Refer the Case to Bosnia and Herzegovina Pursuant to Rule 11 *bis*”, 12 April 2006, para. 51.

¹⁰ *The Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-AR11*bis*.1, “Decision on Joint Defence Appeal against Decision on Referral under Rule 11 *bis*”, 7 April 2006, para. 85 wherein the Mejačić Decision, para. 125, is confirmed (our emphasis).

CONSIDERING that the Chamber also finds that Rule 67 (A) is a rule of procedure, which in no way impinges on the rights of the Defence as guaranteed under Article 21 of the Statute of the Tribunal;

CONSIDERING that the Chamber finds in this regard that Amended Rule 67 (A) is in keeping with the other obligations of disclosure set out in the Rules, such as Rule 65 *ter*(G)(ii), an obligation which is fully recognised by the Defence;

CONSIDERING consequently that the Chamber finds that Amended Rule 67 (A) of the Rules does not impinge on the rights of the accused within the meaning of Rule 6 (D) of the Rules and that it is therefore fully applicable in the present case;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 6 (D) and Amended Rule 67 (A) of the Rules,

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]