



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: 26 June 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: 26 June 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTION FOR RECONSIDERATION PRESENTED BY THE
PRALJAK DEFENCE**

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 for Reconsideration of the Denial of His Right to Conduct a Cross-Examination per the Guidelines for the Presentation of Defence Evidence” (“Motion”), presented by Counsel for the Accused Praljak (“Praljak Defence”) on 30 May 2008, in which it requests the Chamber to authorise the Accused Praljak to cross-examine witnesses about events in which he personally took part or questions of which he has specific expertise,

NOTING the “Prosecution’s Response to Slobodan Praljak’s Motion for Reconsideration of the Denial of His Right to Conduct a Cross-Examination per the Guidelines for the Presentation of Defence Evidence” (“Response”), presented by the Office of the Prosecutor (“Prosecution”) on 6 June 2008 in which the Prosecution objects to the Motion,

NOTING the “Decision on the Mode of Interrogating Witnesses”, rendered by the Chamber on 10 May 2007 (“Decision of 10 May 2007”) and Guideline 1 set out in the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”), whereby an Accused may only directly examine a witness with the leave of the Chamber and under exceptional circumstances linked either to the examination of events in which an Accused personally took part or to the examination of issues about which he has specific expertise,¹

NOTING the “Decision on Praljak’s Appeal of the Trial Chamber’s 10 May 2007 Decision on the Mode of Interrogating Witnesses”, rendered by the Appeals Chamber on 24 August 2007 (“Decision of 24 August 2007”) in which the Appeals Chamber upheld the Decision of 10 May 2007,

¹ Decision of 10 May 2007, para. 12 and Decision of 24 April 2008, Guideline 1, para. 3. (“Guideline 1”).

CONSIDERING that the Praljak Defence submits first that the Chamber violated the Accused's right to a fair trial since no interpretation of Guideline 1 can be valid if it violates the basic right of the Accused to actively participate in the trial,²

CONSIDERING that in support of the Motion, the Praljak Defence next maintains that the Chamber has at times been unduly narrow in its interpretation of the Decision of 10 May 2007 by allowing the Accused Praljak to ask questions solely of a military nature,³

CONSIDERING that the Praljak Defence submits that the Accused Praljak is competent not only in military matters but also in several other fields such as philosophy, sociology, electronics, mathematics, theatre, film, television, statistics and demography,⁴

CONSIDERING that in view of this varied expertise, the Praljak Defence requests that the Chamber authorise the Accused Praljak to cross-examine Defence witnesses on any issue which falls within the above-mentioned fields,⁵

CONSIDERING that in support of the Response, the Prosecution submits in particular that the Motion seeks to change the guidelines governing the presentation of Defence evidence by requesting that the requirement be removed that "exceptional circumstances" must exist in order for an accused to be authorised to interrogate a witness,⁶

CONSIDERING that the Prosecution also submits that an Accused does not have the right to personally raise objections since the practice of objecting is a procedural question that is entirely legal in nature,⁷

CONSIDERING that the Prosecution next pleads that the Praljak Defence argument that the Accused Praljak should be able to cross-examine virtually all of the witnesses

² Motion, paras. 16 and 17.

³ Motion, para. 4.

⁴ Motion, paras. 5-6.

⁵ Motion, para. 6.

⁶ Response, para. 2.

⁷ Response, para. 3.

since he is competent in quite numerous fields would amount to nullifying the application of Guideline 1 in his regard,⁸

CONSIDERING that a Trial Chamber has the intrinsic power to review its own decisions and may receive a request for review if the requesting party satisfies the Chamber of the existence of a clear error of reasoning in the impugned decision or of particular circumstances, which could be new facts or new arguments,⁹ that justify its reconsideration in order to avoid injustice,¹⁰

CONSIDERING that the Chamber would first recall that it was in order to protect the rights of the Accused, and in particular those of the Accused Praljak to a fair trial, that it imposed restrictions on the mode of interrogating witnesses personally by the Accused,¹¹

CONSIDERING next that the Chamber, while recognizing the extent of the Accused Praljak's training and experience in numerous fields, recalls that he has shown on several occasions that he has neither the legal expertise nor the necessary experience to conduct the interrogation of witnesses in accordance with the rules established by the Rules of Procedure and Evidence ("Rules") and Tribunal case-law, which it already noted in the Decision of 10 May 2007,¹²

CONSIDERING that the Chamber also recalls that the Appeals Chamber put forth this argument to uphold the Decision of 10 May 2007,¹³

CONSIDERING that the Chamber would furthermore recall that pursuant to Rule 90 (F) (i) and (ii) of the Rules, it may limit the cross-examination of a witness by an accused in order to guarantee that the presentation of evidence is effective and to avoid the needless consumption of time,

⁸ Response, para. 8.

⁹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4, 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 Witnesses, 9 May 2002, para. 8.

¹⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4, citing in particular *The Prosecutor v. Zdravko Mucić et al*, Case No. IT-96-21A^{bis}, Judgement on Sentence Appeal, 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.

¹¹ Decision of 10 May 2007, para. 10.

¹² Decision of 10 May 2007, para. 10.

¹³ Decision of 24 August 2007, para. 13.

CONSIDERING that this being the case, the Chamber holds that there is no clear error or particular circumstance justifying a review of the Decision of 24 April 2008 in order to avoid an injustice,

CONSIDERING that the Chamber nevertheless holds that, in the interest of justice, the criteria of “specific expertise” established in Guideline 1, paragraph 3 of the Decision of 24 April 2008, should be explained in further detail,

CONSIDERING that the Chamber holds that this “specific expertise” refers to the expertise held by an Accused at the time of the alleged facts and owing to which he was charged in the Amended Indictment of 11 June 2008,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 and 89 of the Rules,

DENIES the Motion by a majority and

DECIDES by a majority that the criteria of “specific expertise” shall be interpreted as set out in the present decision.

The Presiding Judge of the Chamber attaches a dissenting opinion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]