



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: 1 October 2008
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: 1 October 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PETKOVIĆ DEFENCE MOTION FOR RECONSIDERATION
OF OR CERTIFICATION TO APPEAL TWO ORDERS DATED
1 SEPTEMBER 2008**

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 Čorić
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 “Motion of Milivoj Petković for (A) Reconsideration of 1 September 2008 Orders Refusing Admission of 4 Exhibits Presented through Witness Buntić and Žužul; or (B) Certification under Rule 73 (B) for Interlocutory Appeal Against Such Refusal”, filed by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 8 September 2008 (“Motion”), in which the Petković Defence principally requests the Chamber to reconsider the “Order Admitting Evidence Related to Witness Zoran Buntić” (“Buntić Order”) and the “Order to Admit Evidence Regarding Miomir Žužul” (“Žužul Order”), issued by the Chamber on 1 September 2008 or, should the Chamber deny this motion, to certify the appeal it intends to bring against these two orders in accordance with Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Prosecution Response to Motion of Milivoj Petković for (A) Reconsideration of 1 September 2008 Orders Refusing Admission of 4 Exhibits Presented Through Witness Buntić And Žužul; or (B) Certification Under Rule 73 (B) for Interlocutory Appeal Against Such Refusal”, filed by the Office of the Prosecutor (“Prosecution”) on 17 September 2008 (“Response”), in which the Prosecution indicates, on the one hand, that it does not dispute the conclusions of the Chamber in the two orders dated 1 September 2008 and requests, on the other hand, the Chamber not to grant the Petković Defence motion for certification on the ground that the conditions of Rule 73 (B) of the Rules have not been met,

NOTING the oral decision rendered by the Chamber during the hearing of 22 September 2008 in which the Chamber granted the Petković Defence leave to file a reply to the Response,¹

NOTING the “Reply by Milivoj Petković to Prosecution Response to Motion of Milivoj Petković for (A) Reconsideration of 1 September 2008 Orders Refusing Admission of 4 Exhibits Presented Through Witness Buntić And Žužul; or (B) Certification Under Rule 73 (B) for Interlocutory Appeal Against Such Refusal, filed

¹ Transcript in French (“T(F)”), p. 32486.

by the Petković Defence on 22 September 2008 (“Reply”), in which it repeats the arguments already put forth in the Motion,

NOTING the Buntić Order and the Žužul Order dated 1 September 2008, in which the Chamber denied the admission of Exhibits 4D 01105 and 1D 01659 and Exhibits 4D 01052 and 4D 01118, respectively, on the ground that the Petković Defence failed to specify which pages of the documents it was requesting for admission, as so required by paragraph 30 of the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 (“Decision of 24 April 2008”),²

CONSIDERING that the other Parties did not file a response to the Motion,

CONSIDERING that in support of the Motion, the Petković Defence submits that the Chamber erroneously interpreted Guideline 8 related to the admission of evidence through a witness as provided for in the Decision of 24 April 2008 and that it did not receive a reasonable warning indicating that the Chamber would interpret Guideline 8 in this fashion,³

CONSIDERING that the Petković Defence also submits that the Chamber erred by stating that the Petković Defence was requesting the admission of excerpts and not of the four documents in their entirety,⁴

CONSIDERING that in the Motion, and in the alternative, the Petković Defence argues that the Chamber’s error of interpretation would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial,⁵

CONSIDERING that in the Response, the Prosecution notes that Guideline 8 has been consistently interpreted by the Chamber and recalls in this connection the Decision on the Prosecution motion for reconsideration of a decision or alternatively for the admission of documentary evidence (presidential transcripts), rendered on 6 September 2007 (“Decision of 6 September 2007”), in which the Chamber invited the Prosecution to indicate explicitly which excerpts of the presidential transcripts it

² Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008 (“Decision of 24 April 2008”), Guideline 8 related to the admission of documentary evidence through a witness.

³ Motion, paras. 3, 4 and 25; Decision of 24 April 2008, Guideline 8 related to the admission of documentary evidence through a witness.

⁴ Motion, paras. 6-9.

⁵ Motion, paras. 24 and 25.

intended to offer in court and to make an application explicitly seeking the admission of those excerpts,⁶

CONSIDERING that in the Response, the Prosecution raises, in the alternative, an objection to the Petković Defence request for certification under Rule 73 (B) of the Rules, on the ground that the fair and expeditious conduct of the proceedings or outcome of the trial are not jeopardized by the Chamber's refusal to admit into evidence the four exhibits identified in the Motion, and that the immediate resolution of this issue by the Appeals Chamber will not materially advance the proceedings,⁷

CONSIDERING that in the Response, the Prosecution further indicates that the Petković Defence has other avenues at its disposal for requesting the admission of these four documents, such as their admission through another witness or by way of a written motion filed in accordance with Rule 89 (C) of the Rules and the guidelines set out in the Decision of 24 April 2008,⁸

CONSIDERING that in the Reply, the Petković Defence points out that the Decision of 6 September 2007 concerned the admission of evidence that had not been presented through a witness and further submits that the four documents to which the Motion relates were offered in their entirety,⁹

CONSIDERING that a Trial Chamber has the intrinsic power to reconsider its own decisions and may receive a request for reconsideration 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,¹⁰ that justify its reconsideration in order to avoid injustice,¹¹

CONSIDERING that the Chamber notes that Exhibits 1D 01659 and 4D 01105, presented through witness Zoran Buntić are, respectively, a presidential transcript

⁶ Response, para. 2.

⁷ Response, paras. 3, 6-11.

⁸ Response, para. 8.

⁹ Reply, paras. 3 and 4.

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 *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.

¹¹ *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.

from the HZ H-B dated 14 August 1992 and the code of criminal procedure of the Socialist Federal Republic of Yugoslavia and that on 21 July 2008 the Petković Defence requested the admission of these two documents in their entirety,¹²

CONSIDERING that after a second review the Chamber finds that the Petković Defence only put excerpts of the two documents to Witness Zoran Buntić during his testimony,¹³

CONSIDERING that the Chamber observes that Exhibits 4D 01052 and 4D 01118, presented through witness Miomir Žužul, are presidential transcripts dated 29 December and 26 November 1993, respectively, and that the Petković Defence requested, by way of Milivoj Petković's Request for Admission of Exhibits Tendered Through Witness Miomir Žužul, filed on 23 July 2008 ("Initial Motion of 23 July 2008), the admission of these two documents in their entirety,¹⁴

CONSIDERING that after a second review the Chamber notes that the Petković Defence only put excerpts of these two documents to Witness Miomir Žužul during his testimony,¹⁵

CONSIDERING that the Chamber recalls that in accordance with the Decision of 24 April 2008,¹⁶ a party presenting only an excerpt of an exhibit in court must limit its request for admission to this excerpt and the pages enabling the Chamber to rule on the authenticity of the exhibit and, in addition, provide the pages and/or paragraphs of the exhibit which correspond to the excerpt it intends to request for admission,¹⁷

CONSIDERING that the Chamber recalls that contrary to the claim of the Petković Defence,¹⁸ it has applied this rule consistently since 13 July 2006,¹⁹

CONSIDERING that the Chamber notes that laws and decrees may be admitted in their entirety even if the parties have only put excerpts to the witness and, as a result, decides to admit Exhibit 4D 01105 into evidence,

¹² IC 00830.

¹³ Zoran Buntić, T(F) pp. 30717, 30720 and 30723, Motion, para. 9 and Annex.

¹⁴ Motion, para. 7.

¹⁵ Miomir Žužul, T(F) pp. 31067-31073 for Exhibit 4D 01118 and pp. 31073-31083 for Exhibit 4D 01052; Motion, para. 9 and Annex.

¹⁶ ¹⁶ Decision of 24 April 2008, Guideline 8, para. 30.

¹⁷ Decision of 24 April 2008, Guideline 8 related to the admission of documentary evidence through a witness.

¹⁸ Motion, paras. 3 and 8.

¹⁹ Decision on the Admission of Evidence, 13 July 2006, p. 9, Guideline 4.

CONSIDERING that the Chamber holds that, in all other respects, the reasons given in support of the Petković Defence Motion in no way justify its failure to specify which pages of the document it was requesting for admission, as required by the Decision of 24 April 2008,²⁰

CONSIDERING therefore that the Chamber finds no clear error in the Žužul Order and in its decision to dismiss Exhibit 1D 01659 in the Buntić Order or any particular circumstance justifying a reconsideration in order to avoid injustice²¹ and, as a result, the Chamber denies the Motion in all other respects,

CONSIDERING that under Rule 73 (B) of the Rules “[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision 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”,

CONSIDERING therefore that certification to appeal is a matter within the discretionary power of the Chamber which, in any event, must first verify whether the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in this case,²²

CONSIDERING that the Chamber is satisfied of the reasonableness of the two orders dated 1 September 2008 and considers that the Petković Defence has failed to demonstrate that the subject matter of the Motion involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings,

²⁰ Decision of 24 April 2008, Guideline 8, para. 30.

²¹ *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.

²² *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

FOR THESE REASONS

IN ACCORDANCE WITH Rules 73 (B) and 89 of the Rules,

PARTIALLY GRANTS the Petković Defence motion for reconsideration,

ADMITS Exhibit 4D 01105 into evidence,

DENIES in all other respects the Petković Defence motion for reconsideration for the reasons set out in this decision **AND**

DENIES the Petković Defence motion for certification to appeal the two orders of 1 September 2008 for the reasons set out in this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this first day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]