



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: 25 November 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: 25 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE MOTION FOR ADMISSION OF WRITTEN
STATEMENTS PURSUANT TO RULE 92 *BIS***

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”) is seized of “Jadranko Prlić’s Motion for Admission of Written Statements pursuant to Rule 92 *bis*”, filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 26 October 2008 (“Motion”), in which the Prlić Defence requests the leave of the Chamber to admit into evidence, in accordance with Rule 92 *bis* (A) of the Rules of Procedure and Evidence (“Rules”) and in lieu of oral evidence, the written statements marked 1D 03042, 1D 03043, 1D 03098 and 1D 03041 (“Written Statements”) given respectively by Witnesses Wolfgang Petritsch, Carlos Westendorp, Carl Bildt and Jacques Paul Klein (“Witnesses”).

II. PROCEDURAL BACKGROUND

2. On 29 October 2008, the Prlić Defence confidentially filed “Jadranko Prlić’s Addendum to the Admission of Written Statements pursuant to Rule 92 *bis*” (“Addendum to the Motion”), in which it submitted the original documents related to the statements of Carl Bildt and Jacques Paul Klein.

3. On 10 November 2008, the Office of the Prosecutor (“Prosecution”) confidentially filed the “Prosecution Response to Jadranko Prlić’s Motion for Admission of Written Statements pursuant to Rule 92 *bis* and Motion to Make the Previous Motion and This Filing Public” (“Response”), in which the Prosecution requests the Chamber, first, to lift the confidentiality of the Motion and Response and, second, to order the in-court appearance of Witnesses Wolfgang Petritsch and Carlos Westendorp or, alternatively, to deny the Motion.

III. ARGUMENTS OF THE PARTIES

4. In support of the Motion, the Prlić Defence submits in particular that the Written Statements satisfy the criteria for admission under Rule 92 *bis* of the Rules. Accordingly, the Prlić Defence states that the Written Statements were certified in accordance with the applicable provisions of the Rules,¹ and are probative and

¹ Motion, paras. 14, 19, 24 and 29.

relevant, in particular as regards paragraphs 2 and 3 of the Amended Indictment of 11 June 2008 (“Indictment”).² The Prlić Defence also argues that none of the Written Statements goes to the acts and conduct of Jadranko Prlić since they deal with Jadranko Prlić’s work and attitude and not the acts with which he is charged.³

5. In the Response, the Prosecution first requests the Chamber to lift the confidentiality of the Motion and Response. It alleges that the Prlić Defence did not put forth any argument justifying the confidentiality of its filings and did not request protective measures for any of the Witnesses.⁴

6. The Prosecution then alleges, as acknowledged by the Prlić Defence, that the Written Statements relate to periods which fall outside the temporal framework of the Indictment. The Prosecution thus concludes that the Written Statements, if admitted into evidence, could provide no probative information in respect of the acts or state of mind of the Accused Prlić during the period relevant to the Indictment.⁵

7. The Prosecution also notes that the Written Statements are not corroborative of any previous *viva voce* testimony in the present case.⁶ The Prosecution recalls that while it is true that the cumulative nature of evidence is not a requirement under Rule 92 *bis* of the Rules, the practice of the Tribunal and, more specifically, that of the Chamber was to make this an important factor for the admission of evidence under Rule 92 *bis* during the Prosecution case. Admitting the Written Statements would amount to admitting evidence whose veracity will not have been tested through cross-examination. The Prosecution thus concludes that since the Written Statements are not related to similar *viva voce* evidence, a cross-examination is warranted. As a result, the Prosecution requests the Chamber to order that Wolfgang Petritsch and Carlos Westendorp appear for cross-examination.⁷

² Motion, paras. 15, 20, 25 and 30.

³ Motion, paras. 16, 21, 26 and 31.

⁴ Response, para. 1.

⁵ Response, para. 4.

⁶ Response, para. 6.

⁷ Response, paras. 6 to 9.

IV. DISCUSSION

8. As a preliminary matter and with regard to the confidential nature of the various filings in this case, the Chamber agrees with the Prosecution that since the Prlić Defence has not requested protective measures for the Witnesses, the confidentiality of the filings is not justified. The Chamber therefore decides that, in the interests of justice, it is appropriate to lift the confidentiality of the Motion, Addendum to the Motion and Response.

9. Then, with regard to the applicable law, the Chamber refers in this respect to the “Decision on the Prosecution Motion for Admission of Transcript of Evidence pursuant to Rule 92 *bis* of the Rules”, rendered by the Chamber on 28 September 2006, to the “Decision on Prosecution Motion for Admission of Eleven Pieces of Evidence pursuant to Rule 92 *bis* of the Rules”, rendered confidentially by the Chamber on 14 February 2007 (“Prozor Decision”), and to the “Decision on Prosecution Motion to Admit Testimonies pursuant to Rule 92 *bis* of the Rules (Jablanica)”, rendered confidentially by the Chamber on 12 July 2007.

10. Considering the applicable law and previous decisions rendered by the Chamber, the Chamber must first examine whether the Written Statements satisfy the formal admission requirements of Rule 92 *bis* of the Rules. In this respect the Chamber notes that the Written Statements were taken in accordance with the requirements of Rule 92 *bis* (B) (i) of the Rules.

11. Then, with regard to the substantive requirements for admission, the Chamber must first ensure that none of the Written Statements refers to the acts or conduct of the Accused. It is settled jurisprudence that Rule 92 *bis* (A) of the Rules excludes the admission of written evidence concerning the acts and conduct of the Accused as alleged in the Indictment.⁸

12. In that connection, the Chamber notes that the Written Statements deal solely with the role of the Accused Prlić in the period following the end of the conflict between the Muslims and Bosnian Croats, and not with his acts in the period relevant to the

⁸ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-AR73.2, Decision on interlocutory appeal concerning Rule 92 *bis* (C), 7 June 2002 (“*Galić Decision*”), para. 9; *see also The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Case No. IT-02-54-T, Decision on Prosecution’s Request to have written statements admitted under Rule 92 *bis*, 21 March 2002 (“*Milošević Decision*”), para. 22.

Indictment. In fact, the four Witnesses stated that they worked closely with Jadranko Prlić in the context of the international community's efforts beginning in 1995 to bring about ethnic reconciliation among the three peoples of Bosnia and to achieve European integration for Bosnia and Herzegovina. These Written Statements therefore refer to events that took place during periods that are not covered by the Indictment and do not relate to the present case. The Chamber therefore agrees with the Parties that the Written Statements are "character" evidence which does not go to proof of facts in the case. Therefore, if admitted, the Written Statements would be relevant only in respect of any possible determination of sentence.

13. As the Written Statements contain no reference to the acts and conduct of the Accused Prlić, the Chamber must next decide whether in the exercise of its discretionary power it may admit them into evidence. To this end, the Chamber relies on a non-exhaustive list of factors enumerated in Rule 92 *bis* (A) (i) and (ii) of the Rules.⁹ In this regard, the Chamber recalls its Prozor Decision, in particular as regards the evaluation of the cumulative nature of written statements requested for admission under Rule 92 *bis* of the Rules.¹⁰ Therein, the Chamber specified that the fact that other witnesses have already given oral testimony of similar facts to those mentioned in the written statements or transcripts requested for admission was a factor in favour of their admission. However, while the written evidence tendered for admission does not have to corroborate oral evidence that has been or will be given in court, such a circumstance nonetheless militates in favour of the admission.¹¹ The Chamber is of the opinion that this factor is meant to prevent a written statement from being the sole piece of evidence regarding an allegation charged against an accused.¹²

14. In the present case, the Written Statements do not constitute inculpatory or exculpatory evidence of facts alleged in the Indictment. Accordingly, the Chamber considers that, in itself, the fact that the Written Statements do not corroborate what witnesses have said in court does not warrant their non-admission or the need for a cross-examination. Moreover, having examined the four Written Statements, the Chamber finds that they corroborate one another to a very large extent.

⁹ *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for the Admission of Transcripts in Lieu of *Viva Voce* Testimony Pursuant to 92 *bis* (D), 30 June 2003, para. 14.

¹⁰ Prozor Decision, paras. 27 and 28.

15. The Chamber further considers that the Written Statements are reliable, relevant and probative in that they relate to the character of the Accused Prlić.

16. As the conditions set out in Rule 92 *bis* (B) of the Rules have been met, and with a view to ensuring that the proceedings are efficient and expeditious, the Chamber decides to admit the Written Statements.

V. DISPOSITION

FOR THESE REASONS

IN ACCORDANCE WITH Rules 54 and 92 *bis* of the Rules,

ORDERS that the confidentiality of the Motion, the Addendum to the Motion and the Response be lifted;

GRANTS the Motion **AND**

ORDERS the admission into evidence of the Written Statements marked 1D 03042, 1D 03043, 1D 03098 and 1D 03041.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Prozor Decision, para. 27.

¹² Prozor Decision, para. 28.