



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: 6 February 2009
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

Acting Registrar: Mr John Hocking

Decision of: 6 February 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRALJAK DEFENCE MOTION FOR ADMISSION OF
WRITTEN STATEMENTS PURSUANT TO RULE 92 *BIS* 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 the “Slobodan Praljak Motion for Admission of Written Statements Pursuant to Rule 92 *bis*”, and two annexes thereto, filed by Counsel for the Accused Praljak (“Praljak Defence”) on 27 January 2009 (“Motion”), in which the Praljak Defence requests that the Chamber admit forthwith and in accordance with Rule 92 *bis* (A) and (B) of the Rules of Procedure and Evidence (“Rules”), the written statements marked 3D 03263 and 3D 03234 (“Written Statements”) provided respectively by Witnesses Jean Paul Klein and Jakov Bienenfeld, in lieu of oral testimony,

CONSIDERING that in support of its Motion, the Praljak Defence submits that the Written Statements satisfy the requirements of Rule 92 *bis* (A) and (B) of the Rules, since they are duly certified,¹ satisfy all of the preliminary requirements under Rule 92 *bis* of the Rules,² meet several criteria set out in Rule 92 *bis* (A) (i) (a) and (b) of the Rules, justifying the admission of the Written Statements,³ and that there is no reason to rule out the admission of these Written Statements,⁴

CONSIDERING that the Praljak Defence also indicates that the Written Statements of Jean Paul Klein and Jakov Bienenfeld are cumulative of the respective testimonies of Miomir Žužul and Adalbert Rebić, defence witnesses called by Counsel for the Accused Prlić,⁵

CONSIDERING that the Praljak Defence is of the view that the admission of the Written Statements at the current stage of the proceedings would benefit all of the parties, and that there is no reason to justify postponing their admission,⁶

¹ Motion, para. 3.

² Motion, paras. 4-7.

³ Motion, paras. 8-12.

⁴ Motion, paras. 13-16.

⁵ Motion, paras. 9 and 10.

⁶ Motion, paras. 17 and 18.

CONSIDERING that the Praljak Defence believes that the immediate admission of the Written Statements would help in to present its case, and that due to restrictions on time and access to the translations of these documents, it considers it important to set out its arguments as quickly as possible, prior to the appearance of its first *viva voce* witness,⁷

CONSIDERING that the Chamber's practice concerning the admission of written statements or transcripts of testimony under Rule 92 *bis* of the Rules is justified, among other factors, by requirements related to the organization of the trial, and is predicated on these motions being filed while the party is already at an advanced stage in the presentation of its case, not when another party is presenting its case,

CONSIDERING that the Chamber notes that, even if the Praljak Defence submits that the Written Statements are cumulative of the testimony of the two defence witnesses presented by the Prlić Defence who have already appeared, the presentation of the Praljak Defence case has not yet begun,

CONSIDERING that the Chamber holds that it will be in a position to rule on a Praljak Defence motion for the admission of the written statements in lieu of oral testimony under Rule 92 *bis* when this Defence team is at an advanced stage in the presentation of its case,

CONSIDERING that the Chamber therefore finds that the Praljak Defence Motion is premature,

⁷ Motion, para. 19.

FOR THESE REASONS,

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

DENIES the Praljak Defence Motion, and

INVITES the Praljak Defence to resubmit its motion when is at an advanced stage in the presentation of its case.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]