



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: 5 May 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: 5 May 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION REGARDING THE FILING OF MOTIONS
PURSUANT TO GUIDELINE 9**

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 “Bruno Stojić’s Notice Regarding Filing of Motions for the Admission of Documentary Evidence”, filed by Counsel for the Accused Stojić (“Stojić Defence”) on 23 April 2009 (“Motion”), in which the Stojić Defence requests that the Chamber allow it to file requests for the admission of documentary evidence pursuant to paragraph 35 of the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered by the Chamber on 24 April 2008 (“Guideline 9”) in accordance with the schedule it submits,

NOTING the oral decision rendered by the Chamber on 20 April 2009, in which it called upon the Stojić Defence to inform it, before 23 April 2009, of whether or not it intended to file one or several motions under Guideline 9 and, if so, on which subjects and by which time,¹

CONSIDERING that in its Motion, the Stojić Defence proposes a schedule and requests that the Chamber allow it to file its motions pursuant to Guideline 9 as follows: two motions on 4 May 2009, three motions on 6 May 2009 and three other motions on an unspecified date.

CONSIDERING that the Stojić Defence argues that all of its witnesses raised topics that subsequently continued to be raised by other witnesses until the end of its case, which did not allow it to conclude any specific topic until its last witness had testified,²

CONSIDERING that the Stojić Defence further argues that the recent changes to its witness schedule increased its uncertainty of when a certain topic would have concluded,³

¹ Oral Decision on the filing of a motion pursuant to Guideline 9 by the Stojić Defence, 20 April 2009, Transcript in French (“T(F)”), pp. 38866 and 38867.

² Motion, para. 4.

³ Motion, para. 5.

CONSIDERING that in view of this, the Stojić Defence proposes to file two motions pursuant to Guideline 9 relating, on the one hand, to the functioning of the HVO Defence Department and, on the other hand, the legislation of the HVO HZ H-B, following the testimony of Ivan Bagarić, that is by no later than 4 May 2009,⁴

CONSIDERING that the Stojić Defence proposes to file three motions pursuant to Guideline 9 relating to the co-operation between the HVO and the ABiH on the one hand, and the co-operation between the HVO and international organisations on the other hand, and finally, the functioning of the HVO municipal brigades, relationships between the brigades, the zones of operation and the HVO central authority in Mostar, following the testimony of Dragan Jurić, that is by no later than 6 May 2009,⁵

CONSIDERING that the Stojić Defence explains the requested time to file the five above-mentioned motions by its concern to present to the Chamber only necessary and appropriate motions, adding that, unlike the Prosecution and the Prlić Defence, it did not benefit from any periods of adjournment to prepare them,⁶

CONSIDERING that the Stojić Defence also requests leave of the Chamber to file, at an unspecified date, a motion pursuant to Guideline 9 relating to the topic of the constitutionality of Herceg-Bosna and the functioning of its judiciary following the testimony of Mate Arlović, a joint expert witness with the Praljak Defence, whose date of testimony has yet to be finalized,⁷

CONSIDERING that the Stojić Defence also requests leave of the Chamber to file, at an unspecified date, a motion pursuant to Guideline 9 for evidence related to Witness Momčilo Mandić that it will not be able to present through him, in the event he testifies at a later date,⁸

CONSIDERING finally, that the Stojić Defence informs the Chamber of its intention to file a general motion requesting the admission of exhibits that might be denied by orders, which may still be pending before the Chamber, for the admission of evidence

⁴ Motion, para. 6.

⁵ Motion, para. 6.

⁶ Motion, para. 7.

⁷ Motion, para. 8.

⁸ Motion, para. 8.

through witnesses should these exhibits be denied for failure of the witness to comment on their content,⁹

CONSIDERING, *in limine*, that the Chamber deems, based on the deadlines proposed by the Stojić Defence to file its motions pursuant to Guideline 9, that it is appropriate to resolve this issue urgently without waiting for the possible responses from the other parties,

CONSIDERING that the Chamber recalls the provisions of Guideline 9 which require that any motion requesting the admission of documentary evidence be filed “promptly” after the end of the presentation of evidence in respect of a given municipality or subject,

CONSIDERING that the Chamber notes the proposal of the Stojić Defence regarding the filing of two motions on 4 May 2009 and three motions on 6 May 2009,

CONSIDERING that the Chamber deems that this deadline is reasonable and decides to allow the filing of these motions according to the proposed schedule,

CONSIDERING however that, since this decision is rendered at a date subsequent to 4 May 2009, the Chamber allows the Stojić Defence to file its five motions on 6 May 2009,

CONSIDERING furthermore that, the Stojić Defence requests that the Chamber grant it leave to file a motion pursuant to Guideline 9 relating to the constitutionality of Herceg-Bosna and the functioning of its judiciary following the testimony of Mate Arlović, a joint expert witness with the Praljak Defence, whose date of testimony has yet to be determined and who is not on the schedule filed by the Praljak Defence,

CONSIDERING that in this regard, the Chamber recalls the “Decision on Jadranko Prlić’s Motion to be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008”, rendered on 23 July 2008 (“Decision of 23 July 2008”) in which it held that allowing one party “to present evidence after the presentation of its case or until all the Accused have presented their cases would be detrimental not only

⁹ Motion, para. 9.

to the Prosecution but also to the other Accused, since such a practice could considerably delay the pronouncement of the judgment in this case”,¹⁰

CONSIDERING nevertheless that, supposing this witness appears in the context of the Praljak Defence case, Mate Arlović is a joint expert witness for the Stojić Defence and the Praljak Defence,

CONSIDERING consequently that allowing the Stojić Defence to file a motion pursuant to Guideline 9 for those exhibits it would not have been able to introduce through this witness, following his possible testimony in the context of the Praljak Defence case, would not therefore be detrimental to the other parties,

CONSIDERING that the Chamber consequently decides to grant the Stojić Defence motion in that respect, provided this motion pursuant to Guideline 9 is filed before the close of the Praljak Defence case and is limited to presenting evidence dealing with the same topics as those raised by the witness,

CONSIDERING furthermore, that the Stojić Defence requests the leave of the Chamber to file a motion pursuant to Guideline 9 for the exhibits on its list of exhibits filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”) that it would not have been able to introduce through Momčilo Mandić, in the event that he testifies before the Chamber,

CONSIDERING that the Chamber notes that to date, the testimony of Momčilo Mandić is in fact scheduled after the testimony of the Accused Praljak, that is at least three months after the end of the Stojić Defence case on 28 April 2009,¹¹

CONSIDERING that in its Oral Decision of 20 April 2009, the Chamber already indicated that “the possible coming of Momčilo Mandić as a witness after the presentation of his case will not, in any case, allow him to file a new request under Guideline 9 after this witness will have appeared”,¹²

¹⁰ Decision of 23 July 2008, p. 5.

¹¹ Hearing of 28 April 2009, T(F) pp. 39444 and 39445.

¹² Oral Decision on the filing of a motion pursuant to Guideline 9 by the Stojić Defence, 20 April 2009, T(F), pp. 38866 and 38867.

CONSIDERING, furthermore, that the Chamber recalls the reasons already given in the Decision of 23 July 2008 cited above,

CONSIDERING that in view of the above, the Chamber, in order to guarantee a fair trial for all the parties involved and ensure the proper administration of justice, decides to deny the motion in this respect,

CONSIDERING, however, that the Chamber allows the Stojić Defence to request the admission of the exhibits relating to the topics it intends to raise during the testimony of Momčilo Mandić, through the motions that it will submit on 6 May 2009,

CONSIDERING finally, that the Stojić Defence informs the Chamber of its wish to present a general motion for the admission of any exhibit that may be denied by the orders, currently pending before the Chamber, on the admission of evidence presented through a witness, in the event that these exhibits are denied for failure of the witness to comment on their content,

CONSIDERING that, as regards this issue, the Chamber exceptionally allows the Stojić Defence to file a motion pursuant to Guideline 9 for the exhibits that may not have been admitted by the orders on the admission of evidence through Stojić Defence witnesses for the reason that the exhibit was not put to the witness, or that the witness did not comment on the exhibit's relevance, probative value or reliability, distinct from any other reason for denial, which shall apply to the decisions on admission rendered after 6 May 2009 and pending at the time of the filing of the motions pursuant to Guideline 9 scheduled for 6 May 2009,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 89 and 90 (F) of the Rules,

PARTIALLY GRANTS the Motion **and**

ALLOWS the Stojić Defence to file, in application of Guideline 9, five motions on 6 May 2009,

ALLOWS the Stojić Defence to file a general motion pursuant to Guideline 9 regarding only the exhibits whose admission will have been denied by the orders on admission of evidence through a Stojić Defence witness, rendered after 6 May 2009, when such motions were still pending before that date and only when the Chamber's decision to deny is based on the fact that the exhibit was not put to a witness or that the witness failed to comment on the relevance, probative value or reliability of the exhibit, distinct from any other reason for denial,

ALLOWS the Stojić Defence to file a motion pursuant to Guideline 9 following the possible testimony of joint Expert Witness Mate Arlović, provided that the motion is filed before the end of the Praljak Defence case and that the exhibits requested for admission in this motion are limited to raising the same topics as those raised by the said witness,

INVITES the Stojić Defence to request the admission of the exhibits regarding the topics it intends to conclude with the testimony of Momčilo Mandić through the motions it intends to submit on 6 May 2009

AND

DENIES the Motion in all other respects 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 fifth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]