



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: 7 May 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Acting Registrar: Mr John Hocking

Decision of: 7 May 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PETKOVIĆ DEFENCE MOTION FOR RECONSIDERATION
OF CERTIFICATION TO APPEAL ORDER OF 22 APRIL 2009**

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 Tomašević-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 “Petković Defence Motion for Reconsideration of the Trial Chamber’s Order of 22 April 2009 Concerning Praljak’s Expert Witness Jurčević or in the alternative Request for Leave to Appeal” (“Motion”), filed by Counsel of the Petković Defence (“Petković Defence”) on 23 April 2009, in which the Petković Defence requests that the Chamber reconsiders the Order on the Qualifications as Expert and Mode of Questioning of Witness Josip Jurčević”, rendered publicly on 22 April 2009 (“Order of 22 April 2009”), or in the alternative, requests that the Chamber certifies the appeal that it intends to file against the said Order pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),¹

NOTING “Slobodan Praljak’s Submission of the Expert Report of Dr Josip Jurčević”, filed on 16 March 2009 by Counsel for the Accused Praljak (“Praljak Defence”), to which are attached three annexes (“Disclosure”), by means of which the Praljak Defence discloses to the Chamber and to the other parties, pursuant to Rule 94*bis* of the Rules, the historical expert report by Witness Josip Jurčević (“Witness”) titled “Bosnia and Herzegovina 1990-1995” (“Expert Report”),

NOTING “Slobodan Praljak’s Supplement to the Submission of the Expert Report of Dr Josip Jurčević”, filed by the Praljak Defence on 19 March 2009 (“Supplement”), to which is attached an annex by means of which, due to a technical error, the Praljak Defence resubmitted to the Registry one of the annexes attached to the Disclosure,

NOTING the Order of 22 April 2009, in which the Chamber declared the Petković Defence Notice² inadmissible and did not authorise the Petković Defence to cross-examine the Witness on the grounds that it had failed to file its notice within the 30-day deadline imposed under Rule 94*bis* of the Rules,³

¹ Motion, paras. 6, 16 and 19.

² “Petković Defence Notice Pursuant to Rule 94*bis* (B) Concerning Praljak Defence Expert Witnesses Dr Josip Jurčević and Dr Vlado Šakić”, 16 April 2009 (“Petković Defence Notice”).

³ Order of 22 April 2009.

NOTING “Slobodan Praljak’s Notice Regarding the Petković Defence Motion for Reconsideration of the Trial Chamber’s Order of 22 April 2009 concerning Praljak’s Expert Witness Jurčević or in the alternative Request for Leave to Appeal” (“Praljak Defence Notice”), filed by the Praljak Defence on 24 April 2009 in which the Praljak Defence does not object to the Petković Defence Motion,

CONSIDERING that the Office of the Prosecutor and the other Defence teams did not file a response to the Motion,

CONSIDERING that in support of the Motion, the Petković Defence recalls that due to a technical error committed by the Praljak Defence while filing the Disclosure with the Registry, the Disclosure, as filed on 16 May 2009, was incomplete as it did not contain the documentary material referenced in the Expert Report of the Witness, namely the CD-ROM in Annex C of the Disclosure, which had not been transmitted to the parties,⁴

CONSIDERING that the Petković Defence adds that the CD-ROM in question was transmitted to the parties in the Supplement filed by the Praljak Defence on 19 March 2009,⁵

CONSIDERING that the Petković Defence submits further that the CD-ROM, and notably the documentary material referenced in the Expert Report of the Witness, is an essential component of the Disclosure and was therefore indispensable for the parties to assess the Expert Report and reach an informed decision as to whether to cross-examine the Witness,⁶

CONSIDERING that the Petković Defence argues that the 30-day deadline imposed on the parties pursuant to Rule 94*bis* of the Rules to file their respective notices started to run from 19 March 2009, the date on which the parties received the complete contents of the Disclosure,⁷ and alleges consequently that it filed the

⁴ Motion, paras. 10 and 11.

⁵ Motion, para. 11.

⁶ Motion, paras. 10 and 13.

⁷ Motion, para. 12.

Petković Defence Notice respecting the deadline prescribed pursuant to Rule 94*bis* of the Rules,⁸

CONSIDERING that the Petković Defence therefore requests that the Chamber reconsider the Order of 22 April 2009 for the above-mentioned reasons,

CONSIDERING that in the alternative, the Petković Defence requests that the Chamber certify the appeal that it intends to file against the order pursuant to Rule 73 (B) of the Rules on the grounds that the issue of cross-examination of witnesses directly affects the fundamental rights of an Accused enshrined in Article 21 of the Statute of the Tribunal,⁹

CONSIDERING that in this respect, the Petković Defence first argues, notably, that the Chamber's refusal to allow the Petković Defence to cross-examine the Witness could have adverse effects on the fairness and expeditiousness of the trial,¹⁰ and secondly, that the immediate resolution of the problem by the Appeals Chamber will materially advance the proceedings,¹¹

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may allow a request for reconsideration if the requesting party demonstrates to the Chamber that the impugned decision contains a clear error of reasoning or that particular circumstances, which can be new facts or arguments,¹² justify its reconsideration in order to avoid injustice,¹³

CONSIDERING, *in limine*, that the Chamber recalls that Rule 94*bis* (B) of the Rules stipulates that the opposing parties shall file their notice within 30 days of disclosure of the statement and/or report of the expert witness,

⁸ Motion, para. 12; Petković Defence Notice.

⁹ Motion, para. 17.

¹⁰ Motion, para. 18.

¹¹ Motion, para. 18.

¹² *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 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.

¹³ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing, in particular, *The Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21*Abis*, Appeals Judgement on Sentence, 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.

CONSIDERING that after an examination of the Motion, the Chamber deems that even if the Petković Defence could have formulated its arguments in the Petković Defence Notice, it nevertheless demonstrated that the consultation of the material contained on the CD-ROM, transmitted to the parties in the Praljak Defence Supplement of 19 March 2009, was essential to its assessment of the Expert Report of the Witness and to its decision to cross-examine the said witness,

CONSIDERING that the Chamber therefore deems that the Petković Defence could have made an honest mistake in considering that the 30-day deadline began to run from the date when the Supplement of the Praljak Defence was filed, namely 19 March 2009 and not 16 March 2009,

CONSIDERING that the Chamber further notes that the Praljak Defence did not file an objection to the Motion and finds therefore that there is an exceptional reason to grant the motion to reconsider the Order of 22 April 2009 and to allow the Petković Defence, in the interest of justice and to ensure the respect of the Accused's fundamental rights, to cross-examine the Witness,

CONSIDERING that the Chamber notes that in its Order of 22 April 2009 it granted the Prlić and Stojić Defence teams a total time of one hour and thirty minutes to cross-examine the Witness,

CONSIDERING that to ensure fairness and taking into account the present decision, the Chamber decides henceforth to grant a total time of two hours to the Prlić, Stojić and Petković Defence teams to cross-examine the witness,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules,

GRANTS the Motion to reconsider the Order of 22 April 2009,

DECIDES to allow the Petković Defence to cross-examine the Witness,

DECIDES that the Stojić, Prlić and Petković Defence teams shall have a total of two hours to cross-examine the witness,

AND

DECLARES MOOT the Motion to certify an appeal to the Order of 22 April 2009,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventh day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]