



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: 28 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

Registrar: Mr John Hocking

Decision of: 28 May 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JADRANKO PRLIĆ'S REQUEST FOR CERTIFICATION TO
APPEAL AND RECONSIDERATION OF THE DECISION OF 9 APRIL
2009(Proposed evidence mentioned in the expert witness report of Milan Cviki)**

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 Stojic
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 “Jadranko Prlić’s Request for Certification to Appeal under Rule 73 (B) Against the *Décision portant sur la « Deuxième Demande D’Admission D’Éléments de Preuve Documentaire » Présentée par la Défense Prlić, 9 April 2009*” filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 16 April 2009 (“Request”), in which the Prlić Defence requests that the Chamber certify the appeal it intends to pursue, in part, against the Decision of 9 April 2009,¹ on account of the Chamber’s rejection of 58 proposed exhibits related to the expert witness report of Milan Cvikl (“Proposed Exhibits”) as their request for admission was filed out of time,

NOTING “Jadranko Prlić’s Second Motion for the Admission of Documentary Evidence”, filed confidentially by the Prlić Defence on 27 February 2009 (“Initial Motion”), ruled upon in the Impugned Decision,

NOTING the “Prosecution Response to Jadranko Prlić’s Request for Certification to Appeal Under Rule 73 (B) Against the *Décision portant sur la « Deuxième Demande D’Admission D’Éléments de Preuve Documentaire » Présentée par la Défense Prlić, 9 April 2009*” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 24 April 2009 (“Response”), in which the Prosecution requests that the Chamber deny Jadranko Prlić’s Request on the grounds that the requirements under Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”) were not met,

NOTING “Jadranko Prlić’s Request for Leave to Reply and Reply to the Prosecution Response to Jadranko Prlić’s Motion for Reconsideration of the *Décision portant sur la « Deuxième Demande D’Admission D’Éléments de Preuve Documentaire » Présentée par la Défense Prlić, 9 April 2009*”, filed confidentially by the Prlić Defence on 1 May 2009 (“Leave to Reply and Reply”), in which, *inter alia*, the Prlić

¹ “Decision on ‘Second Motion for the Admission of Documentary Evidence’ filed by the Prlić Defence”, rendered by the Chamber on 9 April 2009, (“Impugned Decision”).

Defence notes that it requests, primarily, certification to appeal the Impugned Decision relating, henceforth, to 52 Proposed Exhibits, and not to 58, as mentioned in the Request, related to the expert witness report of Milan Cvikl, or, alternatively, the Prlić Defence requests that the Chamber reconsider *proprio motu* the Impugned Decision with regard to the Proposed Exhibits, or decide to hold a hearing in order to obtain further clarification,

CONSIDERING that the other Defence teams have not filed any response to this Request,

CONSIDERING that, in its Request, the Prlić Defence submits, in particular, that the Chamber's refusal to admit the Proposed Exhibits violates the rights of the Accused Prlić to a fair trial; that this causes the Accused Prlić prejudice by not allowing him to adequately challenge the evidence against him, which may be relevant and lead to his acquittal; that this also deprives him of the possibility of presenting defence evidence, and that the immediate resolution of this issue by the Appeals Chamber would ensure that proceedings are conducted in a fair and expeditious manner,²

CONSIDERING that, in its Request, the Prlić Defence contends, more specifically, that the Chamber erroneously applied its own guidelines by accepting to examine the request for admission of certain documents relating to expert witness Milan Cvikl while refusing to do so with regard to the Proposed Exhibits,³

CONSIDERING that the Prlić Defence also submits, in its Reply, that there may have been a confusion in the presentation of the arguments set forth in its Initial Motion, which would have given rise to the rejection of the Proposed Exhibits mentioned in the Impugned Decision,⁴

CONSIDERING that the Prlić Defence notes that it incorrectly stated in its Request that the Proposed Exhibits had initially been tendered for admission through five witnesses, of whom expert witness Milan Cvikl, by means of the IC lists;⁵ that this error may have resulted in the rejection by the Chamber of the Proposed Exhibits,

² Request, p. 1, para. 18 (a), (b), (c) and (d); para. 19 (a), (b) and (c).

³ Request, para. 18 (a).

⁴ Reply, pp. 1 and 2.

⁵ Reply, para. 1.

whereas mention was indeed made, in Annex 1 to the Request, that the Proposed Exhibits were listed in the footnotes of the expert witness report of Milan Cvikič,⁶

CONSIDERING that the Prlić Defence maintains that, to the extent that the Proposed Exhibits are mentioned in the expert witness report of Milan Cvikič,⁷ who appeared from 12 to 15 January 2009, it was therefore not possible to request their admission within the prescribed time-limit of 5 December 2008,⁸ that it was in good faith that Prlić Defence requested the admission of the Proposed Exhibits by means of the Initial Motion, in compliance with Guideline 9 on the admission of documentary evidence by means of a written motion, as set forth by the Chamber in the “Decision Adopting Guidelines for the Presentation of Defence Evidence” rendered on 24 April 2008 (“Guideline 9”),⁹

CONSIDERING further, that the Prlić Defence submits that the majority of the 52 Proposed Exhibits were added to the Prlić Defence 65 *ter* List on 17 or 18 November 2008;¹⁰ that the Prlić Defence could not determine – before the proofing session with expert witness Milan Cvikič – which documents would be tendered during his testimony and which would be presented by written motion,¹¹

CONSIDERING that the Prlić Defence also alleges that by refusing to admit the Proposed Exhibits the Chamber has placed form over substance and has deviated from the established practice regarding the admission of evidence at this Tribunal at the expense of the rights of the Accused;¹² that, according to the Prlić Defence, “the law must be based not on the application of form, but on the pursuit of justice”,¹³

CONSIDERING that the Prlić Defence contends that the Impugned Decision is not fair to the extent that the Chamber took a more liberal approach towards the Prosecution and did not subject it to such stringent temporal requirements during the presentation of its case,¹⁴

⁶ Reply, para. 2.

⁷ Request, para. 18 (a).

⁸ Reply, para. 4.

⁹ Reply, para. 7.

¹⁰ Request, para. 18 (a); Reply, para. 5.

¹¹ Request, para. 18 (a).

¹² Request, para. 18 (c).

¹³ Request, para. 18 (d).

¹⁴ Request, para. 18 (e).

CONSIDERING that in its Response, the Prosecution requests that the Chamber deny the Motion on the grounds that the fair and expeditious nature of the proceedings have not been jeopardised by the Chamber's refusal to admit the Proposed Exhibits into evidence, and that the immediate resolution of this issue by the Appeals Chamber would not materially advance the proceedings,¹⁵

CONSIDERING that in its Response, the Prosecution recalls, in particular, that according to the Initial Motion, the Proposed Exhibits had been moved for admission through the testimony of five witnesses who appear before the Chamber; that the Prlić Defence, in this regard, referred to the IC lists it had filed and to the orders on admission of evidence rendered by the Chamber; that since these claims were incorrect, as the Proposed Exhibits had never been moved for admission through these five witnesses, the Chamber had rightly concluded that the Proposed Elements should have been tendered for admission through the Initial Motion filed by the Prlić Defence on 5 December 2008; that the Proposed Exhibits had therefore not been tendered for admission as soon as possible, as required by Guideline 9 set forth by the Chamber,¹⁶

CONSIDERING that the Prosecution further recalls that interlocutory appeals are the exception, not the rule;¹⁷ that subscribing to the argument of the Prlić Defence that every ruling declining the admission of evidence deprives the judges of evidence, would be paramount to considering that every decision denying the admission of evidence would give rise to an interlocutory appeal, with the effect of making interlocutory appeals the rule and not the exception,¹⁸

CONSIDERING that the Prosecution also alleges that the Prlić Defence appears to suggest in the Request that the exclusion of the Proposed Exhibits may result in the unjust conviction of the Accused Prlić, without nevertheless demonstrating how the Proposed Exhibits are essential to the Prlić Defence,¹⁹

CONSIDERING, in limine, that the Chamber decides to grant Jadranko Prlić's Request for Leave to Reply on the grounds that the circumstances raised by the Prlić

¹⁵ Response, paras. 1 to 3 and 10.

¹⁶ Response, para. 5.

¹⁷ Response, para. 2 (a).

¹⁸ Response, para. 8.

Defence relate to the confusing nature of the arguments in the Initial Motion, which may have given rise to a misinterpretation on the part of the Chamber, are, in the view of the Chamber, sufficiently urgent for it to grant its request,

CONSIDERING that the Chamber notes, firstly, in the Reply, that the Prlić Defence requested principally certification to appeal the decision, or, alternatively, that the Chamber reconsider the Impugned Decision or, that it order a hearing to be held to shed new light on the matter,

CONSIDERING that, in the opinion of the Chamber, the arguments of the parties set forth in the Request, the Response and the Reply are sufficient and do not require a hearing to be held in order to bring new evidence,

CONSIDERING that the Chamber further notes that, through its Reply, the Prlić Defence modifies the Request which relates, henceforth, to 52 Proposed Exhibits relating to expert witness Milan Cvikl, instead of the 58 mentioned in the Request,²⁰

CONSIDERING that in the interests of clarity and judicial economy, the Chamber will firstly address the issue of whether it is appropriate to partially reconsider the Impugned Decision before examining, if necessary, the need to certify the appeal,

CONSIDERING that the Chamber recalls that a Trial Chamber has the inherent power to reconsider its own decisions and that it may grant a motion for reconsideration if the requesting party demonstrates to the Chamber the existence of a clear error of reasoning in the impugned decision or particular circumstances, being either new facts or arguments,²¹ which justify its reconsideration in order to avoid injustice,²²

¹⁹ Response, para. 9.

²⁰ Reply, p. 2, footnote on p. 11 (1D00241, 1D00334, 1D00832, 1D01039, 1D01078, 1D01074, 1D01093, 1D02963, 1D02965, 1D03009, 1D02978, 1D02979, 1D02981, 1D02982, 1D02983, 1D02985, 1D02986, 1D02988, 1D02987, 1D02989, 1D02992, 1D02993, 1D02998, 1D02999, 1D03005, 1D03006, 1D03007, 1D03008, 1D03010, 1D03011, 1D03012, 1D03013, 1D03014, 1D03015, 1D03016, 1D03017, 1D03020, 1D03022, 1D03023, 1D03024, 1D03025, 1D03026, 1D03027, 1D03028, 1D03029, 1D03030, 1D03031, 1D03033, 1D03034, 1D03035, 1D03037, P07001).

²¹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, “Decision on Defence Motion for Reconsideration”, 16 July 2004, pp. 3 and 4 and quoting *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, “Decision on Defence Motion to Reconsider Denying Leave to Call Rejoinder Witnesses”, 9 May 2002, para. 8.

²² *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, “Decision on Defence Motion for Reconsideration”, 16 July 2004, pp. 3 and 4 and quoting *Prosecutor v. Zdravko Mucić et al.*, Case No.

CONSIDERING that the Chamber recalls the “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, filed publicly on 26 March 2009 (“Decision of 26 March 2009”), in which, in order to guarantee the proper conduct of the trial, the Chamber establishes the context governing requests for reconsideration,²³ and in particular, that “Requests for Reconsideration dealing with the admission of evidence are no longer admissible to the extent that they deal with errors attributable to the parties”,²⁴

CONSIDERING that the Chamber recalls that, in the Impugned Decision, it held that it was not possible for the Prlić Defence to request the admission of evidence relating to expert witness Milan Cvikić within the prescribed time-limit of 5 December 2008,²⁵ since he only testified from 12 January 2009,

CONSIDERING that the Chamber now notes, in the Reply, that the Prlić Defence corrects the Initial Motion by alleging today, contrary to its submission in the Initial Motion, that the Proposed Exhibits were never tendered for admission through a witness during a hearing,

CONSIDERING that the Chamber now notes, as the Prlić Defence rightly maintains in both its Request and Reply, that the Proposed Exhibits are mentioned in the expert report of witness Milan Cvikić, and that this information was included in Annex 1 to the Initial Request,

CONSIDERING that the Chamber finds that the only reasonable conclusion to be drawn is that the Proposed Exhibits mentioned in the expert report of witness Milan Cvikić could not, in theory, have been tendered for admission before the testimony of this witness, in compliance with the Chamber’s practice, according to which a written request for the admission of evidence which has not been presented to a witness

IT-96-21A *bis*, “Judgement on Sentence Appeal”, 8 April 2003, para. 49; *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.

²³ “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, 26 March 2009, pp. 3 and 4, (“Decision on Requests for Reconsideration”).

²⁴ (“Decision on Requests for Reconsideration”), p. 3.

²⁵ Impugned Decision, p. 6.

during a hearing must be filed “as soon as possible” after all the evidence concerning a municipality or a given subject has been presented,²⁶

CONSIDERING that the Chamber holds that providing incorrect information through the Initial Motion resulted in the Chamber denying the admission of the Proposed Exhibits, being an error attributable to the Prlić Defence, which, according to the Decision of 26 March 2009 on requests for reconsideration, should not give rise to the reconsideration of the Impugned Decision,

CONSIDERING, however, that the Chamber holds that, in order to remain consistent with the Impugned Decision, which authorises the Initial Motion as admissible, notably with regard to the evidence relating to expert witness Milan Cvikl, the Chamber decides, in the interests of justice, to reconsider the Impugned Decision and now declares the Initial Motion admissible in relation to the 52 Proposed Exhibits,

CONSIDERING that the Chamber therefore decides, in this decision, to consider the merits of the request for admission of the Proposed Exhibits under Rule 89 (C) of the Rules and in accordance with the requirements of Guideline 9,

CONSIDERING that the Chamber holds that the fact that the Proposed Exhibits are mentioned in a footnote of the report of expert witness Milan Cvikl, which was admitted into evidence by the Chamber on 18 February 2009, or that some of these exhibits were presented to the witness during the hearing, does not *ipso facto* require them to be admitted into evidence; that this circumstance does not in itself constitute an additional fact to justify the importance of having them admitted into evidence; that it behoves the Prlić Defence to present valid grounds in order to request the admission of the Proposed Exhibits mentioned in the report of expert witness Milan Cvikl, so as not to encumber the Chamber unnecessarily with an overabundance of evidence,

CONSIDERING that it therefore behoves the Prlić Defence to illustrate the importance of the Proposed Exhibits for the determination of the case, as required under point (a) (vi) of Guideline 9, which is of particular importance with regard to

²⁶ “Decision Amending the Decision on the Admission of Evidence dated 13 July 2006”, 29 November 2006 (“Decision of 29 November 2006”), p. 7; Decision of 24 April 2008, para. 35, Decision of 23 July 2008, pp. 4 and 5; Decision of 23 September 2009, pp. 2-4.

the Proposed Exhibits in respect of municipalities which are beyond the scope of the Amended Indictment of 11 June 2008 (“Indictment”), or, in more general terms, with respect to contextual evidence,

CONSIDERING that the Chamber has therefore examined each of the Proposed Exhibits in the light of the information provided by the Prlić Defence in its Initial Motion and the objections raised by the Prosecution, and notes that a number of the Proposed Exhibits do not bear any indication, in the form of stamps or headings from official gazettes, to enable their identification, as indicated in the Annex to this decision,

CONSIDERING that, in respect of the Proposed Exhibits, the Chamber finds that to the extent that the Chamber has already admitted into evidence the report of expert witness Milan Cvikić providing broad coverage of the subject of the economic climate in Bosnia-Herzegovina between 1991 and 1994, and that the Chamber has also heard several witnesses brought by the Prlić Defence, and admitted into evidence several documents on the subject through these witnesses, the Proposed Exhibits on the economic ties between the municipalities of Bosnia-Herzegovina and the central government of Bosnia-Herzegovina, and the HZ H-B Croatian Community of Herceg-Bosna, are sufficiently relevant to be admitted into evidence; that, in respect of the other Proposed Exhibits, which merely provide sporadic examples of local economic measures, the Chamber holds that the Prlić Defence has not adequately demonstrated their importance, so that the Chamber deems that they do not provide any additional information required for a fuller understanding of the case,

CONSIDERING, therefore, that the Chamber decides to admit into evidence the Proposed Exhibits listed as “Admitted” in the Annex to this decision, as they present sufficient indicia of reliability, probative value and relevance in respect of the Indictment,

CONSIDERING, lastly, that the Chamber denies the admission into evidence of the Proposed Exhibits listed as “Not Admitted” in the Annex to this decision, while indicating the grounds for the denial of each,

CONSIDERING that the Chamber therefore considers moot the Request for Certification to Appeal the Impugned Decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

AUTHORISES the Prlić Defence to file the Reply,

PARTIALLY GRANTS the Request,

DECIDES to partially reconsider the Impugned Decision and to admit into evidence the Proposed Exhibits listed as “Admitted” in the Annex to this decision,

DENIES in all other respects the admission into evidence of the Proposed Exhibits listed as “Not Admitted” for the reasons given in the attached Annex, **AND**

DISMISSES AS MOOT the Request with respect to the certification to appeal the Impugned Decision,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-eighth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

MARKED FOR IDENTIFICATION AS	ADMITTED/NOT ADMITTED
1D00241	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D00334	Not admitted (contrary to what is alleged by the Prlić Defence, the document does not deal with the use of the German Mark, rather it deals with accommodation granted to the families of Muslim soldiers of the HVO in Jablanica in October 1992. The Prlić Defence has therefore not demonstrated the importance of the document for the purposes of this trial.
1D00832	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D01039	Admitted.
1D01078	Admitted.
1D01074	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D01093	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D02963	Admitted.
1D02965	Admitted.
1D03009	Admitted.
1D02978	Admitted.
1D02979	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D02981	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).

1D02982	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D02983	Admitted.
1D02985	Admitted.
1D02986	Admitted.
1D02988	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D02987	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D02989	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D02992	Admitted.
1D02993	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D02998	Admitted.
1D02999	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D03005	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03006	Admitted.
1D03007	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03008	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D03010	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03011	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).

1D03012	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03013	Admitted.
1D03014	Admitted.
1D03015	Admitted.
1D03016	Admitted.
1D03017	Admitted.
1D03020	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03022	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D03023	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D03024	Not admitted (absence of evidence of the authenticity of the original document in BCS).
1D03025	Admitted.
1D03026	Admitted.
1D03027	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03028	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03029	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03030	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
1D03031	Not admitted (absence of evidence of the authenticity of the original document in BCS).

1D03033	Admitted.
1D03034	Admitted.
1D03035 (pages 1, 331-337)	Not admitted (the e-court pages of the English version were not provided in the request for admission).
1D03037	Not admitted (the Prlić Defence has not adequately demonstrated the relevance of the document in respect of the Indictment).
P07001	Not admitted. The English translation of the document is incomplete.