



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: 15 July 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

Order of: 15 July 2009

THE PROSECUTOR

v.

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

PUBLIC

ORDER AMENDING THE APPOINTMENT OF AN AMICUS CURIAE

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”);

PROPRIO MOTU

NOTING the “Order Appointing an Amicus Curiae” issued confidentially by the Chamber on 3 July 2009 (“Order of 3 July 2009”),

NOTING the oral decision rendered at the hearing of 9 July 2009 in which the Chamber decided to lift the confidentiality of the Order of 3 July 2009,¹

NOTING the letter from the President of the Association of Defence Counsel (“ADC”) to the Presiding Judge dated 13 July 2009 (“Letter”),

CONSIDERING that the Chamber, by way of the Order of 3 July 2009, referred the matter to the ADC Amicus Committee and requested that it respond to the following questions:

- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules of Procedure and Evidence (“Rules”), be constituted by the fact that a Defence Counsel repeatedly refuses to disclose to the Chamber and the parties the sources of documents requested for admission by way of written motion, on the ground that the safety of the sources would, in general, be jeopardized by such disclosure?
- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that this Counsel ultimately discloses the identity of some of these sources, after several reminders from the Chamber, without giving any satisfactory explanation justifying this late disclosure, and without seeking any request for protective measures for these sources?

¹ Hearing of 9 July 2009, Transcript in French, pp. 42799-42800.

- To what extent may a violation, misconduct or contempt on the part of the Defence Counsel, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that some of these sources ultimately turn out to be witnesses for the Prlić Defence who testified in open session in the absence of any protective measures, several months before the request, by way of written motion, for the admission of the documents at issue?

CONSIDERING that in the Letter, the President of the ADC informed the Presiding Judge that the ADC transmitted the request for an advisory opinion submitted by the Chamber in the Order of 3 July 2009 to the ADC Disciplinary Council,

CONSIDERING that the President of the ADC submits that for matters of ethical duties and obligations of Defence Counsel, the Disciplinary Council, whose powers are defined by Article 16 of the ADC Constitution,² would be best placed to respond to the questions asked by the Chamber,

CONSIDERING that the Chamber notes that Article 16 of the ADC Constitution provides that the Disciplinary Council is an independent organ of the ADC with the power to provide opinions on matters relating to the Code of Professional Conduct for Counsel Appearing Before the International Tribunal (“Code of Conduct”),³

CONSIDERING that the Chamber holds that the advisory opinion sought by the Chamber in the Order of 3 July 2009 may be referred to the Disciplinary Council, provided that it has the authority to address the issues from the various angles specified by the Chamber in the said Order, that is, from the angle of a violation, misconduct or contempt within the meaning of the Code of Conduct and/or the Rules,

² “Constitution of the Association of Defence Counsel Practising Before 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”, amended 23 October 2004 (“ADC Constitution”).

³ Article 16 of the ADC Constitution:

“1. The Disciplinary Council is an independent organ of the ADC-ICTY, responsible to the General Assembly for the following tasks:

- a. To monitor the conduct of members of the ADC-ICTY in the representation of a suspect or accused;
- b. To adjudicate on complaints received against members of the ADC-ICTY for alleged misconduct;
- c. To provide advisory opinions on matters relating to the Code of Professional Conduct for Counsel Appearing Before the International Tribunal, the Directive on the Assignment of Counsel and the interpretation of the present Constitution.”

CONSIDERING that the Chamber further requests that if one of the members of the Disciplinary Council turns out to be a Counsel or Co-Counsel in the present case, such Counsel shall not take part in the said council's work in connection with the questions put forward in the Order of 3 July 2009 and recalled in the present Order,

FOR THE FOREGOING REASONS,

PURSUANT to Rule 74 of the Rules,

TAKES NOTE of the Letter from the President of the ADC to the Presiding Judge,

AUTHORIZES the transfer of the Chamber's request for an opinion contained in the Order of 3 July 2009 to the Disciplinary Council, provided that this council has the authority to address the questions asked by the Chamber from the various angles specified by the Chamber,

RECALLS the questions asked by the Chamber:

- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that a Defence Counsel repeatedly refuses to disclose to the Chamber and the parties the sources of documents requested for admission by way of written motion, on the ground that the safety of the sources would, in general, be jeopardized by such disclosure?
- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that this Counsel ultimately discloses the identity of some of these sources, after several reminders from the Chamber, without giving any satisfactory explanation justifying this late disclosure, and without seeking any request for protective measures for these sources?
- To what extent may a violation, misconduct or contempt on the part of the Defence Counsel, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that some of these sources ultimately turn out to be witnesses for the Prlić Defence who testified in open session in the absence of any

protective measures, several months before the request, by way of written motion, for the admission of the documents at issue?

REQUESTS that any member of the Disciplinary Council who turns out to be Counsel or Co-Counsel in the present case not take part in the said council's work in connection with the questions put forward by the Chamber,

AUTHORIZES the Disciplinary Council to have access to all of the submissions and decisions cited in the Order of 3 July 2009, be they confidential or public,

REQUESTS that the Disciplinary Council file a report with the Chamber by 3 August 2009.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of July 2009

At The Hague

The Netherlands

[Seal of the Tribunal]