



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: 16 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

Decision of: 16 July 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON CERTIFICATION TO APPEAL DECISION ON PRLIĆ
DEFENCE MOTION FOR RECONSIDERATION OF THE DECISION ON
ADMISSION OF DOCUMENTARY EVIDENCE**

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 “Jadranko Prlić’s Request for Certification to Appeal Under Rule 73 (B) against the *Décision relative à la demande de la Défense Prlić en vue du réexamen de la Décision portant sur l’admission d’éléments de preuve documentaires*”, filed publicly by Counsel for the Accused Prlić (“Prlić Defence”) on 6 July 2009 (“Request”),

NOTING the “Prosecution Response to Jadranko Prlić’s Request for Certification to Appeal under Rule 73 (B) against the *Décision relative à la demande de la Défense Prlić en vue du réexamen de la Décision portant sur l’admission d’éléments de preuve documentaires*”, filed publicly by the Office of the Prosecutor (“Prosecutor”) on 13 July 2009 (“Response”),

NOTING the “Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence”, rendered publicly by the Chamber on 29 June 2009 (“Impugned Decision”),

NOTING the “Decision on Prlić Defence Motion for Admission of Documentary Evidence”, filed publicly by the Chamber on 6 March 2009 (“Decision of 6 March 2009”),

CONSIDERING that, in support of its Request, the Prlić Defence contends that the Chamber’s refusal, in the Impugned Decision, to reconsider the Decision of 6 March 2009 rejecting exhibits for lack of relevance or reliability, constitutes an error on the part of the Chamber and has a direct impact on the fairness of the trial, and in particular, on the right of the Defence to present its case through documentary evidence,¹

¹ Request, paras 18 to 20.

CONSIDERING further that the Prlić Defence submits that the Chamber's refusal to reconsider the admission of documentary evidence in video form, which bear no indication of either the date or the source, has a direct impact on the fairness of the trial in that it undermines the principle of equality of arms, the Chamber having been less strict on this point with the Prosecution,²

CONSIDERING, lastly, that the Prlić Defence contends that the immediate resolution of these issues would advance proceedings, in that the Chamber, in refusing to reconsider the Decision of 6 March 2009 excluded many documents, thereby depriving itself of evidence which could lead to the acquittal of the Accused Prlić,³

CONSIDERING that, in its Response, the Prosecution contends that the Request does not satisfy the criteria of Rule 73 (B) of the Rules of Procedure and Evidence ("Rules"), in that the Impugned Decision does not undermine the fair and expeditious conduct of the trial,⁴

CONSIDERING that the Prosecution further submits that the Prlić Defence relinquished the right to appeal the decision rejecting the admission of evidence when it chose to request the reconsideration of the Decision of 6 March 2009,⁵

CONSIDERING that Rule 73 (B) of the Rules provides that: "Decisions on all motions are without interlocutory appeal, save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings",

CONSIDERING, therefore, that certification of an appeal is at the discretion of the Chamber, which must, in any event, firstly verify that the two cumulative requirements of Rule 73 (B) are satisfied in this case,⁶

² Request, para. 21.

³ Request, para. 22.

⁴ Response, paras 2 to 5.

⁵ Response, paras 6 to 9.

⁶ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, "Decision on Defence Motion for Certification", 17 June 2004, para.2.

CONSIDERING that the Chamber notes, firstly, that the Prlić Defence does not dispute the rejection of documentary evidence in itself, but rather the fact that the Chamber has purely and simply refused to reconsider in the Impugned Decision the Decision of 6 March 2009, in respect of several categories of evidence, without going into the details of each item of evidence,

CONSIDERING that the Chamber deems, secondly, that the Prlić Defence has adequately demonstrated that the refusal to reconsider the rejection of numerous items of documentary evidence could have an impact on the fair conduct of proceedings and the outcome of the trial, and, in particular, the Accused Prlić's conviction,

CONSIDERING that the Chamber further notes that the immediate resolution of this issue by the Appeals Chamber could materially advance the proceedings and would not be prejudicial to either the Prosecution or the Defence,

CONSIDERING that the Chamber further notes that it reserves the right to reconsider, in due course, the "Decision on Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO and Herceg-Bosna)", rendered on 11 December 2007, with regard to two videos marked P 01033 and P 02010, admitted into evidence by the Chamber despite insufficient indication as to the date,

CONSIDERING that the Chamber therefore finds that the reasons advanced by the Prlić Defence indicate the existence of particular circumstances justifying certification for appeal in order to avoid injustice,⁷ and, therefore decides to grant the Request,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 (B) of the Rules,

GRANTS the Request, **AND**

⁷ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4, citing, *inter alia*, *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A-Bis, "Sentencing Judgement", 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.

CERTIFIES appeal of the Impugned Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this 16 July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]