



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: 31 August 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: 31 August 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION FOR RECONSIDERATION OF DECISION ON
ADMISSION OF DOCUMENTARY EVIDENCE RELATED TO THE FUNCTIONING OF
THE HVO DEFENCE DEPARTMENT, HVO/HZ H-B AND RELATED STRUCTURES**

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 Motion for Reconsideration of Decision on Bruno Stojić’s Motion for the Admission of Documentary Evidence Related to the Functioning of the HVO Defence Department, HVO-HZ H-B and Related Structures” (“Motion”), filed publicly on 21 July 2009 by Counsel for the Accused Stojić (“Stojić Defence”), in which the Stojić Defence requests that the Chamber reconsider its decision not to admit Exhibits P 00295 and 2D 01017 (“Proposed Exhibits”) into evidence and orders the Office of the Prosecutor (“Prosecution”) to upload the full English translation of Proposed Exhibit P 00295 onto the electronic *ecourt* system (“*ecourt*”) or to grant leave to the Stojić Defence to upload it,¹

NOTING the “Decision on Bruno Stojić’s Motion for the Admission of Documentary Evidence Related to the Functioning of the HVO Defence Department, HVO-HZ H-B and Related Structures” filed publicly on 15 July 2009 (“Decision of 15 July 2009”), in which the Chamber, *inter alia*, on the one hand rejected the admission into evidence of Proposed Exhibit P 00295 on the ground that the English translation of this document did not correspond to the original uploaded onto *ecourt* and that the Stojić Defence did not specify to which excerpts of the BCS original the translation uploaded onto *ecourt* corresponded;² and on the other hand, also rejected the admission into evidence of Proposed Exhibit 2D 01017, on the ground that the reasons argued by the Stojić Defence in support of its request for admission, as indicated in Annex II of “Bruno Stojić’s Request for Leave to Reply to Prosecution Response to the Five Motions Filed by Bruno Stojić Pursuant to Rule 89 (C) With Public Annexes I and II and Bruno Stojić’s Reply to the Joint Response”, filed publicly on 11 June 2009 (“Reply to the Prosecution Response”), presented by the Stojić Defence as a corrected version of Annex I of “Bruno Stojić’s Motion for the Admission of Documentary Evidence Related to the Functioning of the HVO Defence

¹ Motion, paras 1 and 11.

² Decision of 15 July 2009, para. 32.

Department, HVO-HZ H-B and Related Structures”, filed publicly on 4 May 2009 (“Motion of 4 May 2009”), did not correspond to the contents of the said exhibit,³

CONSIDERING that the Prosecution and the other Defence teams did not file a response to the Motion,

CONSIDERING firstly, that, in regard to the section of the Motion for Reconsideration dealing with the rejection of Proposed Exhibit P 00295, the Stojić Defence acknowledges that the English translation of this exhibit as uploaded onto *ecourt* does not correspond to the original version in BCS;⁴ that the Stojić Defence argues that Proposed Exhibit P 00295 is a Prosecution document, and points out that it is therefore not possible for it to modify documents of this type uploaded onto *ecourt* without the assistance of the Prosecution or the Chamber's leave;⁵ that the Stojić Defence admits however that it did not consult the Prosecution before presenting the Motion of 4 May 2009 in order to rectify this mistake and upload the correct English translation of the said Exhibit;⁶ that it nevertheless requests that the Chamber reconsider its rejection of Proposed Exhibit P 00295 on an exceptional basis due to the importance of the subject matter of the Exhibit for the Stojić Defence case, namely the issue of assignments of rank within the HVO HZ H-B armed forces, without prejudice to uploading a correct translation of the said Exhibit onto *ecourt*,⁷

CONSIDERING secondly that the Stojić Defence submits that the Chamber committed an error in its Decision of 15 July 2009, specifically in its assessment of the admissibility of Proposed Exhibit 2D 01017;⁸ that the Stojić Defence recalls that in “Bruno Stojić’s Request for Leave to Reply to Joint Response of Slobodan Praljak and Milivoj Petković to Bruno Stojić’s 4 May 2009 Motion for the Admission of Documentary Evidence Related to the Functioning of the HVO Defence Department, HVO/ HZ H-B and Related Structure with Annexes I and II & Bruno Stojić’s Reply to the Joint Response”, filed publicly on 21 May 2009 (“Reply to the Joint Response”) it corrected the reasons in support of its request for admission of Proposed

³ Decision of 15 July 2009, para. 24.

⁴ Motion, para. 8.

⁵ Motion, para. 10.

⁶ Motion, para. 10.

⁷ Motion, paras 9 and 11.

⁸ Motion, para. 4-7.

Exhibit 2D 01017 that were erroneously set out in the Motion of 4 May 2009;⁹ and that the Stojić Defence points out in particular that the reasons argued by the Stojić Defence to justify admission of the said Exhibit and all other information on this Exhibit are not in Annex II of the Reply to the Prosecution Response,¹⁰

CONSIDERING that the Trial Chamber has the intrinsic power to reconsider its own decisions and that it may accept a request to reconsider if the requesting party demonstrates to the Chamber that the reasoning of the contested decision contains an obvious error or that special circumstances, whether they be new facts or arguments,¹¹ justify its reconsideration in order to avoid injustice,¹²

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 ensure the proper administration of the trial, it specifies the context within which requests for reconsideration must be filed, and stipulates that they are not admissible when they contain technical errors attributable to the parties,¹³

CONSIDERING that as far as the Motion for Reconsideration relates to the rejection of Proposed Exhibit P 00295, the Chamber notes that the Stojić Defence acknowledges that, according to the Prosecution, it did not take the necessary steps in time to ensure that a correct English translation of the said exhibit was uploaded onto eCourt; that the Chamber consequently deems that the Stojić Defence committed an error that can be attributed to it pursuant to the Decision of 26 March 2009 and moreover, it failed to show that the Chamber committed an obvious error in the Decision of 15 July 2009; that the Motion should therefore be denied as far as it relates to the reconsideration of Proposed Exhibit P 00295,

⁹ Motion, paras 6 and 7.

¹⁰ Motion, para. 5.

¹¹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, quoting *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.

¹² *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, quoting in particular *Prosecutor v. Zdravko Mucić et al.*, Case No. 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.

¹³ Decision of 26 March 2009.

CONSIDERING in view of the above-mentioned findings that the Chamber furthermore deems the section of the Motion regarding the uploading of a new English translation of Proposed Exhibit P 00295 onto *ecourt* to be moot,¹⁴

CONSIDERING that in as far as the Motion for Reconsideration relates to the rejection of Proposed Exhibit 2D 01017, the Chamber recalls its Decision of 15 July 2009, in which it pointed out the lack of clarity and cohesion in the written submissions filed by the Stojić Defence in regard to the Motion of 4 May 2009;¹⁵ that the Chamber also recalls that in the said decision, it deemed, based on the explanations provided by the Stojić Defence, that Annex II of the Reply to the Prosecution Response, filed by the Stojić Defence as the corrected version of Annex I of the Motion of 4 May 2009 that provides the grounds argued by the Stojić Defence in support of the requests for admission of the proposed documentary evidence, is authoritative and consequently, and for the purpose of its analysis, it decided to refer to the grounds set out by the Stojić Defence in Annex II of the Reply to the Prosecution Response;¹⁶ that the Chamber deems therefore that, in the said Motion, the Stojić Defence is merely challenging the Decision of 15 July 2009 and has failed to show that the Chamber committed an obvious error in the said Decision,¹⁷ and decides therefore to deny the Motion as far as it relates to the reconsideration of Proposed Exhibit 2D 01017,

¹⁴ Motion, para. 11.

¹⁵ Decision of 15 July 2009, para. 24.

¹⁶ Decision of 15 July, para. 24.

¹⁷ Decision of 15 July 2009.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DENIES the Motion,

AND

DISMISSES AS MOOT the section of the Motion relating to the uploading of a new English translation of Proposed Exhibit P 00295 onto *ecourt*.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]