



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: 24 November 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: 24 November 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE MOTION FOR RECONSIDERATION OF
THE DECISION TO REJECT EXHIBITS FOR WHICH THE IDENTITY OF
SOURCES WAS REVEALED LATE**

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 Čorić
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 Motion for Re-evaluation of the Admission of Evidence Rejected Because the Identity of the Sources was Revealed Subsequent to the Initial Application for Admission Wherein Pseudonyms were Provided as Requested by the Sources”, filed publicly by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 19 October 2009 (“Motion”), to which four confidential annexes are attached, in which the Prlić Defence requests that the Chamber reconsider in part 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 (“Decision of 29 June 2009”),

NOTING the “Prosecution Response to Prlić 19 October 2009 Motion for Reconsideration of Chamber Decision Denying Admission of Anonymous Defence Exhibits”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 30 October 2009 (“Response”),

NOTING the “Decision on Prlić Defence Motion for Admission of Documentary Evidence” rendered publicly by the Chamber on 6 March 2009 (“Decision of 6 March 2009”), in which it rejected the many exhibits for which the Prlić Defence had not disclosed the identity of the sources,¹

NOTING the Decision of 29 June 2009 in which the Chamber denied the Prlić Defence motion for reconsideration with respect to the exhibits whose sources were finally revealed by the Prlić Defence (“Exhibits”),²

NOTING the “Legal Opinion, *Amicus Curiae* Response to the Chamber’s Questions Following the Order Appointing an *Amicus Curiae* of 25 August 2009”, filed publicly by Mr Battista on 6 October 2009 (“Report”), in which the *Amicus Curiae* concluded

¹ Decision of 6 March 2009, para. 26.

² Decision of 29 June 2009, para. 32.

that there was no misconduct, violation or contempt with regard to maintaining the anonymity of the sources of documents on the part of Mr Karnavas,³

NOTING the “Decision Subsequent to the *Amicus Curiae* Report”, rendered publicly by the Chamber on 3 November 2009, in which the Chamber decided to close the investigation opened against Mr Karnavas,

CONSIDERING that in support of the Motion, the Prlić Defence reiterates that it was not in a position to reveal the identity of the sources unless authorised by them, and that authorisation was finally given, upon reconsideration, by some of the sources,⁴

CONSIDERING that the Prlić Defence further argues that in the Decision of 29 June 2009 the Chamber decided to deny the motion for reconsideration with respect to the Exhibits and that it announced that it would render a specific decision on this issue, which, according to the Prlić Defence, has never been rendered,⁵

CONSIDERING that in light of the Report and particularly paragraphs 102, 103 and 104 of the aforementioned Report, the Prlić Defence thus requests that the Chamber reconsider the Exhibits,⁶

CONSIDERING that, in the Response, the Prosecution contends that the Chamber has already clearly denied the admission of the Exhibits several times and that there is no reason to reconsider that question again,⁷

CONSIDERING that the Prosecution further submits that the Prlić Defence has misinterpreted paragraph 32 of the Decision of 29 June 2009, when arguing that the Chamber announced that it would render a subsequent decision concerning the Exhibits, and contends that the Chamber in fact announced a decision concerning the conduct of Counsel for the Accused Prlić,⁸

³ Report, para. 104.

⁴ Motion, paras 1 and 2.

⁵ Motion, para. 4.

⁶ Motion, paras 6 and 7.

⁷ Response, paras 1, 3 and 7.

⁸ Response, para. 3.

CONSIDERING that the Chamber refers the Prlić Defence to paragraph 32 of the Decision of 29 June 2009 in its entirety, in which it appears clear that the Chamber has resolved the question of admission of the Exhibits once and for all and that, as noted by the Prosecution, the mention of a subsequent decision refers only to the investigation procedure concerning the conduct of Mr Karnavas,

CONSIDERING that the Chamber emphasizes that the object of the Report was not to state whether or not it was possible for a chamber to admit documents whose sources were kept secret and subsequently revealed, but to give an opinion to the Chamber on the conduct of counsel and his manner of keeping the identity of his sources secret,⁹

CONSIDERING that the Chamber therefore holds that, in the Decision of 29 June 2009, it rejected the Exhibits clearly and once and for all; that on this issue the Decision of 29 June 2009 constitutes *res judicata*, since the Prlić Defence did not challenge the dismissal of the reconsideration of the Exhibits before the Appeals Chamber;¹⁰ that the Prlić Defence therefore has no basis upon which to seek reconsideration of admission of the Exhibits and that the Motion should be denied.

⁹ See the questions posed by the Chamber in the “Order Appointing an *Amicus Curiae*” rendered confidentially by the Chamber on 3 July 2009; “Order Amending the Appointment of an *Amicus Curiae*” rendered publicly by the Chamber on 15 July 2009; and the “Second Order Appointing an *Amicus Curiae*” rendered publicly by the Chamber on 25 August 2009.

¹⁰ “Decision on Jadranko Prlić’s Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence”, rendered publicly by the Appeals Chamber on 3 November 2009.

FOR THE FOREGOING REASONS,

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

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fourth day of November 2009
The Hague (The Netherlands)

[Seal of the Tribunal]