



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: 21 January 2010
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: 21 January 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE MOTION OF THE PETKOVIĆ DEFENCE FOR
RECONSIDERATION OR, ALTERNATIVELY, FOR CERTIFICATION TO
APPEAL AGAINST THE *ORDONNANCE PORTANT ADMISSION*
D'ÉLÉMENTS DE PREUVE RELATIFS AU TÉMOIN DRAGAN ČURČIĆ
(4D 01467)**

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 the “Motion of Milivoj Petković for Reconsideration of Trial Chamber 19 November *Ordonnance portant sur l’admission d’éléments de preuve relatifs au témoin Dragan Čurčić* so as to Admit into Evidence Exhibit 4D 01467 Tendered by the Petković Defence, Alternatively for Certification under Rule 73 (B) for Appeal Against the Non-Admission of that Exhibit”, filed confidentially by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 26 November 2009 (“Motion”), wherein the Petković Defence requests that the Chamber in the main reconsider the “*Ordonnance portant sur l’admission d’éléments de preuve relatifs au témoin Dragan Čurčić*” rendered publicly on 19 November 2009 (“Order of 19 November 2009”) and reconsider its decision to deny the admission into evidence of Exhibit 4D 01467 or, alternatively, if the Chamber were to deny this request, that it certify the appeal the Defence intends to file against the said order in application of Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),¹

CONSIDERING that neither the Prosecution nor the Defence teams have filed responses to the Motion,

NOTING the Order of 19 November 2009 wherein the Chamber denied the admission into evidence of Exhibit 4D 01467 sought for admission by the Petković Defence on the ground that the document concerned events in the municipality of Livno which were not raised by the amended Indictment of 11 June 2008 (“Indictment”) and that the Chamber was not satisfied that there was a relevant link to the Indictment as stated by the Petković Defence,²

CONSIDERING that in its Motion, the Petković Defence requests in the main a reconsideration of the Order of 19 November 2009 on the ground that Exhibit 4D

¹ Motion, paras 1 and 13.

² Annex to the Order of 19 November 2009, p. 4.

01467 is directly linked to paragraph 37 of the Indictment and that the Chamber erred in its assessment by denying this exhibit,³

CONSIDERING that the Petković Defence states that Exhibit 4D 1467 is a concrete example of the enforcement of applicable law in Herzeg-Bosna, in particular in the municipality of Livno, with respect to the status of the detained Muslim members of the HVO, and corroborated in Exhibit 4D 01466 admitted by the Order of 19 November 2009, and argues that these two exhibits are important in the determination of the legal status of the Muslim soldiers of the HVO who were kept in isolation or detained with respect to the allegations contained in paragraph 37 of the Indictment,⁴

CONSIDERING that the Petković Defence alleges in addition that the Chamber's refusal to reconsider this Order would result in an injustice as it would deprive the Defence of a relevant document which could substantiate its case,⁵

CONSIDERING that the Petković Defence seeks, if the Chamber refuses to reconsider the Order of 19 November 2009, the certification of an appeal under Rule 73 (B) of the Rules as the Chamber's error in reasoning would significantly affect the fairness of the trial and its outcome while an immediate resolution of this issue would significantly advance the proceedings,⁶

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may accept a request for reconsideration if the requesting party shows the Chamber that it has evidently erred in its reasoning in the contested decision or that particular circumstances, be they facts or new arguments,⁷ justify its reconsideration in order to avoid an injustice,⁸

³ Motion, paras 5 and 6.

⁴ Motion, para. 7.

⁵ Motion, para. 8.

⁶ Motion, paras 13 and 14.

⁷ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 2 and 3 citing *The Prosecution 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.

⁸ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 2 and 3 citing *The Prosecution v. Zdravko Mucić et al.*, Case No. IT-96-21A-Bis, "Judgment on Sentence Appeal", 8 April 2003, para. 49; *The 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.

CONSIDERING that the Chamber recalls its public “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber” rendered on 26 March 2009, wherein, in order to ensure the proper conduct of the trial, the Chamber sets forth the framework for filing requests for reconsideration,

CONSIDERING that the Chamber recalls that, in its Order of 19 November 2009, the Chamber granted the admission of Exhibit 4D 01466 on the status of HVO soldiers, including Muslims, detained in Herceg-Bosna, including those of the municipality of Livno, but that it did not find that Exhibit 4D 01467 presented at the hearing of Witness Dragan Čurčić regarding the specific case of a Muslim soldier detained in the municipality of Livno in 1993, located outside the geographic parameters of the Indictment, had any relevant link to the cases of detention of Muslim HVO soldiers at locations covered by the Indictment,

CONSIDERING, furthermore, that the Chamber notes that the Petković Defence, in its initial request for the admission of Exhibit 4D 01467 under its IC 01083 list, failed to show that this exhibit added value to Exhibit 4D 01466,

CONSIDERING that in its Motion, the Petković Defence merely supplements its initial request and challenges the rejection of Exhibit 4D 01067, but does not show that the Chamber committed a discernible error in its reasoning to necessitate a reconsideration of the Order of 19 November 2009,

CONSIDERING, consequently, that the Chamber holds that there are no grounds to reconsider the Order of 19 November 2009,

CONSIDERING that pursuant to Rule 73 (B) of the Rules “[d]ecisions 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 that certification of an appeal is in the discretion of the Chamber which has to, in any case, ascertain beforehand that both the conditions set out in Rule 73 (B) of the Rules have been satisfied in this case,⁹

CONSIDERING that the Chamber holds that the conditions set out in Rule 73 (B) of the Rules have not been satisfied, to the extent that the Chamber admitted Exhibit 4D 01466 on the status of HVO soldiers, including Muslims, detained in Herceg-Bosna, that Exhibit 4D 01067 does not reveal any new elements but mentions only the detention of a Muslim at a location outside the Indictment and that its denial by the Chamber does not affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and that an immediate resolution by the Appeals Chamber cannot materially advance the proceedings,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 73 (B) and 89 of the Rules,

DENIES the request for reconsideration of the Order of 19 November 2009 filed by the Petković Defence for the reasons set out in this Decision, **AND**

DENIES the request for certification to appeal the Order of 19 November 2009 filed by the Petković Defence for the reasons set out in this Decision.

⁹ *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, “Decision on Defence Motion for Certification”, 17 June 2004, para. 2.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]