



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: 3 February 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:** 3 February 2010

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON STOJIĆ DEFENCE MOTION FOR RECONSIDERATION  
OR, IN THE ALTERNATIVE, FOR CERTIFICATION TO APPEAL THE  
ORDER TO ADMIT EVIDENCE REGARDING WITNESS 4D-AB**

**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 or, in the Alternative, for Certification to Appeal the ‘Ordonnance portant sur l’admission d’éléments de preuve relatifs au Témoin 4D-AB’ dated 14 January 2010”, presented publicly by the Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 21 January 2010 (“Motion”),

**NOTING** the “Prosecution Response to Two Defence Requests for Reconsideration or Certification to Appeal the Trial Chamber’s Decision of 14 January 2010 Denying the Admission of Evidence Tendered Through Witness 4D-AB”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 28 January 2010 (“Response”), in which the Prosecution asks the Chamber to reject the Motion in its entirety,

**NOTING** the “Order to Admit Evidence Regarding Witness 4D-AB”, filed publicly on 14 January 2010 (“Order of 14 January 2010”),

**NOTING** 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 the Chamber dealt with the requests for reconsideration filed by the parties and recalled that such requests should remain the exception and not the rule,

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

**CONSIDERING**, firstly, that, in view of the section of the Motion concerning the request for reconsideration, the Chamber observes that the Stojić Defence has neither brought to the fore any exceptional circumstances nor shown that the Chamber made a discernible error in its reasoning when it denied the tendering into evidence of Exhibits 2D 00765 and 2D 00786, which would necessitate a re-examination of the Order of 14 January 2010; that it contents itself to question, through the Motion, the decision made by the Chamber in this Order; that the Chamber consequently decides to reject the Motion with regard to the first section,

**CONSIDERING**, secondly, that, in view of the section of the Motion concerning the request for certification to Appeal the Order of 14 January 2010, the Chamber believes the Order to be reasonable and believes that the Stojić Defence failed to show that the object of the Request involves an issue that should significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings,

**FOR THE FOREGOING REASONS,**

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

**REJECTS** the Motion for Reconsideration of the Order of 14 January 2010 filed by the Stojić Defence for the reasons set out in this decision, **AND,**

**REJECTS** the Motion for Certification to Appeal the Order of 14 January 2010, filed by the Stojić Defence for reasons set out in this Decision.

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

**The Presiding Judge appends a dissenting opinion to this decision:**

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this third of February 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

**DISSENTING OPINION OF THE PRESIDING JUDGE**

**JEAN-CLAUDE ANTONETTI**

The practice of requests for **reconsideration** on the part of both the Prosecution and the Defence poses a genuine problem with respect to the *res judicata*.

The sole option available to the Prosecution or the Defence who do not agree with a decision of the Chamber, is a request for **certification to appeal**.

The Rules of Procedure and Evidence do not provide for this type of procedure, and at no point did the permanent judges wish to propose any amendment to the Rules regarding this issue.

Decisions made by a trial chamber have been carefully thought out and each judge decides on the solution to be adopted.

There is, therefore, no reason to question the said decision several hours or days after it has been filed.

A decision might contain a **material** error; in that case the Trial Chamber renders a new decision in which the material error is corrected.

Consequently, I believe that any **request for reconsideration** constitutes, in the sense of Rule 73(D) of the Rules, an **frivolous motion** or, indeed, **abuse of procedure**.

Therefore, the only option available under Rule 73(B) is a request for certification to appeal 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 an **immediate** resolution by the Appeals Chamber may materially advance the **proceedings**.

I believe it to be my duty to offer a dissenting opinion because, in my opinion, the procedure set out in Rule 73(D) concerning the fees caused by this type of

proceedings should have been implemented in order to avoid two sets of rules from being applied among the attorneys in the sense of this procedure being implemented towards a defence.

I am inclined to uphold this principle even though, in the cases in question, I did not agree with the other judges; however, having been adopted by the majority, the decision must be applied.

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this third of February 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**