



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: 17 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: 17 February 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PETKOVIĆ DEFENCE MOTION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE, FOR CERTIFICATION TO APPEAL THE
ORDER TO ADMIT EVIDENCE REGARDING WITNESS BOŽO PAVLOVIĆ**

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 Tomašević-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 January 2010 ‘Ordonnance Portant sur l’Admission d’Éléments de Preuve Relatifs au Témoin Božo Pavlović’ so as to Admit into Evidence Exhibit P 05264 Tendered by the Petković Defence, Alternatively for Certification under Rule 73 (B) for Appeal against the Non-Admission of that Exhibit”, filed publicly by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 24 January 2010 (“Motion”),

NOTING the “Order to Admit Evidence Regarding Witness Božo Pavlović”, issued publicly on 19 January 2010 (“Order of 19 January 2010”), in which the Chamber denied the Petković Defence request for admission of Exhibit P 05264 as it did not appear on their *65 ter* List,¹

NOTING the “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, rendered publicly on 26 March 2009, in which the Chamber restricted the requests for reconsideration filed by the parties and recalled that such requests should be the exception, not the rule,

CONSIDERING that the Office of the Prosecutor (“Prosecution”) and the other Defence teams did not file a response to the Motion,

CONSIDERING that the Petković Defence argues in support of the Motion that it did not add Exhibit P 05264 to its *65 ter* List as it did not intend to use it, and it was only in light of the Prosecution's cross-examination that the need arose to put this exhibit to Witness Božo Pavlović,²

CONSIDERING firstly that, with regard to the section of the Motion relating to the request for consideration, the Chamber notes that the argument submitted by the

¹ List of exhibits filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“65 *ter* List”, “Rules”).

² Motion, para. 6.

Petković Defence was not included in the initial request for admission of exhibits regarding Witness Božo Pavlović,³

CONSIDERING that in the Chamber's opinion, it is up to the Petković Defence to specify in court, and in any case in its initial request for admission, the circumstances surrounding the presentation of Exhibit P 05264 which is not on its 65 *ter* List,

CONSIDERING, consequently, that the Chamber notes that the Petković Defence neither demonstrated exceptional circumstances nor demonstrated that the Chamber committed a discernible error in its reasoning when it denied admission into evidence of Exhibit P 05264, which would then require a reconsideration of the Order of 19 January 2010; that the Chamber decides consequently to deny the Motion with regard to this first section,

CONSIDERING, secondly, that with regard to the section of the Motion relating to a request for certification to appeal the Order of 19 January 2010, the Chamber is convinced of the reasonable nature of the said Order and deems that the Petković Defence has not shown that the subject of the Motion constitutes an issue that might noticeably compromise the fair and expeditious conduct of the trial or its outcome, and that an immediate resolution of the issue by the Chamber might materially advance the proceedings,

FOR THE FOREGOING REASONS

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

DENIES the Motion for reconsideration of the Order of 19 January 2010 filed by the Petković Defence, for the reasons set out in the present Decision, **AND**

DENIES the request for certification to appeal the Order of 19 January 2010 filed by the Petković Defence, for the reasons set out in the present Decision.

³ IC 01116.

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

The Presiding Judge attaches a separate opinion to this Decision.

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

Separate Opinion of Presiding Judge Jean-Claude Antonetti

I **fully** agree with the point of view expressed in the decision to **deny** the **Petković** Defence Motion.

As I have already explained, a decision is taken unanimously or by a majority following a **deliberation** by the Judges, who have read the pending motion and the observations of the other parties.

As such, the Judge has normally read the document(s) in question.

Therefore, there is no need for reconsideration.

With regard to the certification to appeal, it may only be granted pursuant to the Rules if it concerns an issue that might compromise the fair and expeditious conduct of the proceedings.

How could this document be so interesting that the trial would depend on it?

This document (enclosed in the annex for the reader's benefit) is a public dispatch from the **AFP** concerning the Dretelj camp.

This dispatch dated 21 September 1993 refers to a statement made by Jadranko Prlić to the **HINA agency** about the transfer of "detained" persons to Dretelj, Split, Mostar or elsewhere, and about the closing of the camp due to an agreement signed between Franjo Tuđman and Alija Izetbegović.

This news agency dispatch may again, if necessary, be put by the Petković Defence to upcoming witnesses simply by reading the text out loud to any witness without the document having to be admitted.

Because of this technicality, I find that there is no need to certify the appeal as this technicality resolves the potential problem of the Petković Defence.

Annex to the Separate Opinion of Presiding Judge Jean-Claude Antonetti