



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: 26 April 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: 26 April 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PETKOVIĆ DEFENCE MOTION REQUESTING
RECONSIDERATION OR, IN THE ALTERNATIVE, CERTIFICATION TO
APPEAL THE “ORDER TO ADMIT EVIDENCE REGARDING WITNESS
VINKO MARIĆ”**

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 “Milivoj Petković’s Motion for Reconsideration of ‘Order to Admit Evidence Regarding Witness Vinko Marić’ or, in the alternative, Certification under Rule 73 (B) for Appeal against the Non-Admission of Two Documents”, brought publicly by Counsel for the Accused Milivoj Petković (“Petković Defence”; “Accused Petković”) on 29 March 2010 (“Motion”), by which the Petković Defence asks the Chamber to reconsider the “Order to Admit Evidence Regarding Witness Vinko Marić”, issued publicly on 22 March 2010 (“Order of 22 March 2010”) in respect of the Chamber’s decision to deny admission to documents P 01928 and P 06491, or to otherwise certify the appeal,¹

NOTING the Order of 22 March 2010, by which the Chamber denied admission into evidence of documents P 01928 and P 06491 for the reason that: “the document is not on the Petković Defence’s 65 *ter* List and the latter did not explain during the hearing or in its request as to which new subject dealt with during the cross-examination this document relates, and, as such, did not justify why it was unable to put it previously on its 65 *ter* List”,²

NOTING the “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, rendered publicly on 26 March 2009 (“Decision of 26 March 2009”), in which the Chamber established criteria for requests for reconsideration filed by the parties and recalled that such requests ought to remain the exception and 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, in support of the Motion regarding document P 06491, the Petković Defence asserts that: (1) this document was used by the Petković Defence

¹ Motion, paras 1 and 23.

² Order of 22 March 2010, Annex, pp. 9 and 10.

during its re-examination in order to respond to a new subject, first raised by the Prosecution during cross-examination, that is, whether or not the Accused Petković was present at a meeting in Tomislavgrad on 7 November 1993;³ (2) the issue of whether the Accused Petković was present at the said meeting had not been raised during the direct examination of Witness Vinko Marić by the Petković Defence and that, as a consequence, re-examination was the proper stage for refuting the evidence tendered by the Prosecution concerning this new subject first raised during the Prosecution's cross-examination;⁴ (3) prior to showing document P 06491 to Witness Vinko Marić, the Petković Defence informed the Chamber that it was about to put a question that would clarify "any dilemma" regarding the presence of the Accused Petković at the said meeting; that the Petković Defence consequently gave a clear indication as to which new subject in the cross-examination it intended to refute;⁵ (4) finally, the Petković Defence could not reasonably anticipate, when filing its list tendered pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence ("65 *ter* List"; "Rules") in March 2008, that the presence of the Accused Petković at the said meeting would be brought up during the cross-examination of its witnesses,⁶

CONSIDERING that the Petković Defence consequently submits that the Chamber has committed a clear error in denying the request to admit document P 06491 and requests reconsideration of the Order of 22 March 2010 as it pertains to this document,⁷

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may grant a request for reconsideration if the requesting party satisfies the Chamber of the existence of a clear error in the reasoning of the impugned decision or of particular circumstances, which may be new facts or arguments,⁸ that justify its reconsideration in order to avoid an injustice,⁹

³ Motion, paras 13 and 15.

⁴ Motion, para. 18.

⁵ Motion, para. 16, referring to the English transcript of the hearing ("T(E)") of 14 January 2010, pp. 48412 and 48413.

⁶ Motion, para. 18.

⁷ Motion, para. 18.

⁸ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3 and 4, citing *The 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.

⁹ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3 and 4, citing particularly *The Prosecutor v. Zdravko Mucić et al.*,

CONSIDERING, firstly, that the Chamber recalls that, in its initial request for admission of P 06491, the Petković Defence did no more than indicate that the said document did not appear on its 65 *ter* List and that the document had been used during the re-examination of Witness Vinko Marić,¹⁰

CONSIDERING, thereafter, that the Chamber observes that, although during the hearing the Petković Defence did indeed argue that this subject had been raised during the Prosecution's cross-examination,¹¹ the Petković Defence nevertheless did not indicate to the Chamber, contrary to what is alleged in the Motion, that this was a new subject they had not raised during their direct examination, nor did the Petković Defence anticipate that the said topic would be raised by the Prosecution, rendering the use of document P 06491 necessary during its re-examination and thereby justifying its failure to note the document in advance on its 65 *ter* List,

CONSIDERING that the Chamber finds therefore that the Petković Defence has not demonstrated that the Chamber committed a discernible error in its reasoning denying the admission into evidence of Document P 06491, for the reason that the Petković Defence did not explain, whether at the hearing or in its initial request for admission, to which new subject raised during cross-examination the document was related, and thus the Petković Defence did not justify its failure to note the document in advance on its 65 *ter* List,

CONSIDERING, however, the Chamber's observation that, in keeping with the requirements set forth in the Order of 22 March 2010, the Petković Defence is now explaining in its Motion: (1) that the issue of whether or not the Accused Petković was present at a meeting held in Tomislavgrad on 7 November 1993 constituted a new subject first raised during the Prosecution's cross-examination; (2) that the said subject was not previously raised during direct examination of Witness Vinko Marić by the Petković Defence and that, as a result, re-examination was the proper stage for refuting the evidence presented by the Prosecution concerning this new subject first

Case No. IT-96-21A *bis*, "Judgement 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.

¹⁰ IC List 01157: "The List of Exhibits Proposed by the Defence for Milivoj Petković"; Order of 22 March 2010, p. 5.

¹¹ Transcript in French of the hearing of 14 January 2010, pp. 48413-48414.

raised during the Defence's cross-examination and (3) that this justifies its failure to note this document in advance on its 65 *ter* List,

CONSIDERING that the Chamber holds the view that the Petković Defence thereby produced new arguments justifying reconsideration of the Chamber's decision to deny admission for document P 06491,

CONSIDERING, consequently, that the Chamber thus finds it appropriate to reconsider the Order of 22 March 2010 insofar as it pertains to the Chamber's decision to deny admission to document P 06491,

CONSIDERING, further, that the Chamber has examined document P 06491 on the basis of the admissibility criteria defined in the "Decision on Admission of Evidence", rendered publicly by the Chamber on 13 July 2006, as well as in the "Decision Adopting Guidelines for the Presentation of Defence Evidence" rendered publicly by the Chamber on 24 April 2008,¹²

CONSIDERING that the Chamber finds document P 06491 to contain sufficient indicia of authenticity, reliability and probative value,

CONSIDERING, consequently, that the Chamber decides to admit document P 06491 into evidence,

CONSIDERING, finally, that the Chamber need not rule on the request for certification to appeal the Order of 22 March 2010 insofar as it concerns the refusal to admit document P 06491, which is now moot,

CONSIDERING, further, with regard to those aspects of the Motion pertaining to the request for reconsideration of document P 01928, the Chamber points out that the Petković Defence has not shown particular circumstances or that the Chamber committed a discernible error in its reasoning by denying the admission into evidence of document P 01928, thus rendering it necessary to reconsider the Order of 22 March 2010 on this matter; that, in fact, the Petković Defence is merely using the Motion to challenge the decision taken by the Chamber in respect of the said document, and still does not explain in the Motion to which new subject first raised upon cross-

¹² Guideline 8: The Admission of Documentary Evidence Tendered through a Witness.

examination this document was related, thereby failing to justify the fact that it did not include it in advance on its 65 *ter* List; that the Chamber therefore decides to deny the Motion regarding document P 01928 as it relates to these aspects,

CONSIDERING, finally, with regard to those aspects of the Motion pertaining to the request for certification to appeal the Order of 22 March 2010 insofar as it relates to the decision to deny admission to document P 01928, the Chamber is satisfied that the Order is reasonable and finds that the Petković Defence has not established that the sum and substance of the Motion 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 of the issue by the Appeals Chamber may materially advance the proceedings,

FOR THE FOREGOING REASONS,

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

PARTIALLY GRANTS the request for reconsideration of the Order of 22 March 2010 filed by the Petković Defence, but only insofar as it concerns document P 06491, for the reasons set forth in this Decision,

DECIDES that it is appropriate to admit into evidence document P 0641,

DECLARES MOOT the request for certification to appeal the Order of 22 March 2010 filed by the Petković Defence, insofar as it concerns document P 06491, **AND**

DENIES the request for reconsideration and certification to appeal the Order of 22 March 2010 filed by the Petković Defence in respect of Document P 01928 for the reasons set forth in this Decision,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of April, 2010
At The Hague
The Netherlands

[Seal of the Tribunal]