



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: 16 June 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: 16 June 2010

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON PROSECUTION MOTION TO RE-OPEN ITS CASE-IN-CHIEF

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 Stojic
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 “Prosecution Motion to Re-Open Its Case-in-Chief (Mladić Materials)”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 21 May 2010, along with seven confidential annexes (“Motion”), wherein the Prosecution asks the Chamber to grant it leave to re-open its case-in-chief so that it may tender into evidence five excerpts from the notebooks of Ratko Mladić, an order from Ratko Mladić dated 6 October 1992 and a statement by General Manojlo Milanović, taken pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Mladić Materials”; “Rules”), while reserving its right to prospectively seek the admission into evidence of other excerpts from Ratko Mladić’s notebook or of audio materials also seized at the Mladić family home by the Serbian authorities on 23 February 2010¹ and still under analysis (“Other Materials”),

NOTING “Slobodan Praljak’s Request for Tolling of Time for Response to the Prosecution Motion to Reopen and Notice for Potential Reopening”, filed publicly by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 2 June 2010 (“Praljak Defence Request”), wherein the Praljak Defence asks the Chamber to allow it additional time to file a response to the Motion,²

NOTING the “Response of Milivoj Petković to 21 May 2010 Prosecution Motion to Re-Open its Case-in-Chief (Mladić Materials)”, filed publicly by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 3 June 2010 (“Petković Defence Response”), wherein the Petković Defence asks the Chamber to stay any decisions in respect of the Motion until the Defence teams have had the opportunity to inspect Ratko Mladić’s diary as transcribed and translated in its entirety,³

NOTING “Slobodan Praljak’s Preliminary Response to the Prosecution Motion to Reopen”, filed publicly by the Praljak Defence on 3 June 2010 (“Praljak Defence Response”), wherein the Praljak Defence specifically asks the Chamber to deny the

¹ Motion, paras 1-7 and 30.

² Praljak Defence Request, paras 1 and 25.

Motion and, pertinently, to order the Prosecution to file a new motion after it has translated and communicated to the Defence teams all of the materials that the Prosecution intends to tender for admission, as well as any other relevant materials,⁴

NOTING “Bruno Stojić’s Response to Prosecution’s Motion to Reopen Its Case-in-Chief (Mladić Materials)”, filed publicly by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 4 June 2010 (“Stojić Defence Response”), wherein the Stojić Defence asks the Chamber to deny the Motion,⁵

NOTING the “Joinder of Valentin Ćorić in Bruno Stojić’s Response to Prosecution Motion to Re-Open its Case-in-Chief (Mladić Materials)”, filed publicly by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 4 June 2010 (“Ćorić Defence Response”), whereby the Ćorić Defence informed the Chamber that it joined the Stojić Defence Response,

NOTING “Jadranko Prlić’s Response to Prosecution’s Motion to Reopen Its Case-in-Chief (Mladić Materials)”, filed publicly by Counsel for the Accused Jadranko Prlić on 4 June 2010 (“Prlić Defence Response”), along with a Public Annex, by which the Prlić Defence particularly indicated to the Chamber that it did not wish, at this stage of the proceedings, to take a position *vis à vis* the Motion,⁶

NOTING “Berislav Pušić’s Motion to Join Bruno Stojić’s Response to Prosecution Motion to Re-Open its Case-in-Chief (Mladić Materials)”, filed publicly by Counsel for the Accused Berislav Pušić (“Pušić Defence”) on 7 June 2010 (“Pušić Defence Response”), by which the Pušić Defence indicated to the Chamber that it joined the Stojić Defence Response,

NOTING the “Prosecution Combined Reply to the Defence Responses to the Prosecution Motion to Reopen its Case-in-Chief (Mladić Materials) and to Defence Requests to Suspend the Deadline for Response”, filed publicly by the Prosecution on 9 June 2010 (“Reply”),⁷ along with two confidential annexes, wherein the Prosecution asks the Chamber to (1) deny the requests for extensions of time brought by the

³ Petković Defence Response, para. 16.

⁴ Praljak Defence Response, paras 1 and 18.

⁵ Stojić Defence Response, para. 1, page 10.

⁶ Prlić Defence Response, p. 6.

Praljak Defence and the Petković Defence, (2) authorise the Prosecution to re-open its case-in-chief and (3) set a 9 July 2010 deadline for the Prosecution to identify the Other Materials and tender them for admission pursuant to Rules 89 (C) and 92 *bis* of the Rules,⁸

CONSIDERING that the Chamber observes that the Pušić Defence Response was filed on 7 June 2010, that is, three days after the time-limit of fourteen days approved pursuant to Rule 126 *bis* for filing a response to the Reply had lapsed,

CONSIDERING that the Chamber therefore decides that the Pušić Defence response is inadmissible,

CONSIDERING, furthermore, that the Chamber recalls that the re-opening of a party's case once it has presented its arguments is not envisaged by the Rules of Procedure and Evidence but has been recognised in the case-law of the Tribunal,

CONSIDERING that the Appeals Chamber has indeed considered that “the primary consideration in determining an application for reopening a case to allow for the admission of fresh evidence is the question of whether, with reasonable diligence, the evidence could have been identified and presented in the case-in-chief of the party making the application”,⁹

CONSIDERING that, under the case-law of the Tribunal, when the Trial Chamber is convinced of the diligence of the requesting party, it must then exercise its discretion regarding whether to grant leave to produce fresh evidence by weighing the probative value of this evidence and the injustice that may be done to the various Accused if this evidence is admitted at such an advanced stage of the proceedings,¹⁰

CONSIDERING that the Chamber observes, in the first place, that the Prosecution is asking the Chamber, as specified in its Motion and in its Reply, to grant the motion for leave to re-open its case-in-chief to enable it to tender into evidence the Mladić

⁷ The Prosecution asked the Chamber for leave to file a reply to the various Defence team responses on 7 June 2010. The same day, the Chamber granted leave via e-mail.

⁸ Reply, para. 48.

⁹ *The Prosecutor v. Zejnib Delalić et al.*, Case No. IT-96-21-A, 20 February 2001 (“Čelebići Judgement”), para. 283.

¹⁰ Čelebići Judgement, para. 283; *The Prosecutor v. Enver Hadžihasanović*, Case No. IT-01-47-T, “Decision on the Prosecution’s Application to Re-Open its Case”, 1 June 2005, para. 35.

Materials, as well as the Other Materials it pledges to identify between now and 9 July 2010,¹¹

CONSIDERING that the Chamber notes that the Prosecution is requesting that the Chamber grant its Motion when it has not yet identified all of the materials it intends to produce in support of its motion to re-open its case-in-chief; that under such conditions, the Chamber is unable to evaluate the specific aim of the Motion,

CONSIDERING that the Chamber, out of concern for judicial economy and particularly to avoid the proliferation of submissions, suggests that the Prosecution file, no later than 9 July 2010, a consolidated motion that includes not only the Mladić Materials but also the Other Materials it intends to produce in favour of re-opening its case-in-chief,

CONSIDERING that the Chamber likewise suggests that the Prosecution continue to forward all of the documents presently under analysis to the Defence teams between now and 9 July 2010, as soon as the transcriptions and their translations are completed in accordance with the provisions of Rule 68 of the Rules,

CONSIDERING that the Chamber recalls that the Defence teams will be given, pursuant to Rule 126 *bis*, a time-limit of fourteen days, to run from the date the Prosecution files its consolidated motion, to present their consolidated motions, if any,

CONSIDERING that the Chamber likewise insists on reminding the parties that they must comply with the “Practice Direction on the Length of Briefs and Motions [Rev. 2]” (“Practice Direction”) of 16 September 2005, particularly with regard to the authorised word limits and the contents of the annexes,¹²

¹¹ Motion, para. 30; Reply, para. 48.

¹² Practice Direction, points 5 and 6.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 126 *bis* of the Rules of Procedure and Evidence,

DEEMS the Pušić Defence Response inadmissible,

DEEMS premature the Prosecution's Motion for Leave to Re-Open its Case-in-Chief,

ORDERS the Prosecution to file no later than 9 July 2010 a new consolidated motion including not only the Mladić Materials but also all of the Other Materials it would like to tender for admission in connection with the re-opening of its case,

INVITES the Defence teams to file their consolidated responses, if any, within a time-limit of fourteen days, which shall run from the filing of the consolidated motion, in accordance with the provisions of Rule 126 *bis* of the Rules,

AND,

DEEMS the Defence teams' requests moot, as a consequence.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixteenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]