



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: 23 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: 23 June 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 ON STOJIĆ DEFENCE MOTION TO ADMIT EXHIBIT (2D 03088)**

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 Order on Stojić Defence Motion to Admit Exhibit (2D 03088)”, brought publicly by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 10 June 2010 (“Motion”), wherein the Stojić Defence respectfully seeks to have the Chamber reconsider, or in the alternative, certify the appeal the Stojić Defence intends to bring against the “Order on Stojić Defence Motion to Admit Exhibit (2D 03088)” issued publicly by the Chamber on 3 June 2010 (“Order of 3 June 2010”),

NOTING the Order of 3 June 2010 whereby the Chamber, pursuant to Rule 89 of the Rules of Procedure and Evidence (“Rules”), excluded Document 2D 03088, a letter from the Ministry of Justice of the Republic of Croatia dated 27 November 2009 relating to Exhibit 4D 00461 that was admitted into evidence on 13 December 2006,¹ and did so on grounds that the Stojić Defence had not acted with sufficient diligence to justify a request for admission at this late stage of the proceedings,²

NOTING the “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, rendered publicly on 26 March 2009, wherein the Chamber established a framework for requests for reconsideration filed by the parties and recalled that such requests ought to be the exception not the rule,³

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

CONSIDERING, in the Motion, that the Stojić Defence evokes 1) that the Order of 3 June 2010 imposes a new procedural obligation on the Stojić Defence with which it

¹ Order of 3 June 2010, p. 2; see also the “Oral Decision of 13 December 2006”, Transcript in French (“T(F)”), pp. 11614-11615.

² Order of 3 June 2010, p. 5.

³ “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, public document, 26 March 2009, p. 3.

was previously unacquainted, namely an obligation to notify the Chamber of its attempts to obtain a document that it might conceivably tender at some unknown point in the future;⁴ (2) that even if the Chamber considers the request to admit Document 2D 03088 untimely and to result from some negligence on the part of the Stojić Defence, the Chamber erred by excluding the said document, inasmuch as this prejudices the Accused Bruno Stojić⁵ and (3) that the admission of evidence at a late stage of the proceedings is allowed under the case-law of the Tribunal, on condition that the exhibit be relevant, credible and affect the outcome of the trial,⁶

CONSIDERING, in the alternative, that the Stojić Defence finds that its motion for certification to appeal ought to be granted insofar as: (1) the Order of 3 June 2010 bears directly upon the rights of the Defence and particularly upon the right to tender evidence helping to refute the allegations of the Office of the Prosecutor;⁷ (2) if the Appeals Chamber were to conclude that the Chamber acted erroneously by refusing the admission of Document 2D 03088, that would directly affect the outcome of the trial;⁸ and 3) determination of the opportune moment for bringing a request for admission constitutes an issue whose immediate resolution may materially advance the proceedings,⁹

CONSIDERING that the Chamber recalls that it excluded Document 2D 03088 on grounds that the original request was not timely, as the Stojić Defence had been finished with its case since 28 April 2009 and had in addition never reacted to this finding by notifying the Chamber that it had endeavoured to collect information regarding an exhibit that might constitute the subject of a future request for admission,¹⁰

CONSIDERING that the Chamber would like to emphasize that, had the Stojić Defence duly informed the Chamber of particular circumstances surrounding the discovery of Document 2D 03088 and that it might possibly be tendered for admission after the Prosecution had finished its case, the Chamber, most

⁴ Motion, paras 2, 3 and 7.

⁵ Motion, paras 3 and 9.

⁶ Motion, para. 12.

⁷ Motion, para. 15.

⁸ Motion, para. 16.

⁹ Motion, para. 17.

¹⁰ Order of 3 June 2010, p. 5.

exceptionally, might have examined the request and possibly authorised delayed production of the said document based on the criteria stated by the Appeals Chamber,¹¹

CONSIDERING that, far from being an obligation, notifying the Chamber of hardships encountered or possible delays in the production of evidence may help to explain certain situations and thereby contribute to the proper administration of justice;¹² that such a custom is not entirely foreign to the Stojić Defence, as on several occasions, the Stojić Defence informed the Chamber of its own initiative concerning the hardships it experienced in trying to get Witnesses Mandić¹³ and Arlović¹⁴ to appear; that these hardships were taken into account by the Chamber which now duly informed was able to timely (before the close of the presentation of the Stojić Defence case) authorise the said Defence to have these two witnesses appear after completing presentation of its case, if it so desired,¹⁵

CONSIDERING, moreover, that the Chamber reminds the Stojić Defence that in the “Decision on Jadranko Prlić’s Motion to Be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008”, rendered publicly on 23 July 2008, the Chamber had recalled that authorising a party to “present evidence after the presentation of its case or until all the Accused have presented their cases would be detrimental not only to the Prosecution but also to the other Accused, since such a practice could considerably delay the pronouncement of the judgement in this case”;

¹¹ Provided, that is, that the said document is reliable, relevant and it might have been capable of affecting the Judgement, see to this effect *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, “Decision on Applications for Admission of Additional Evidence on Appeal”, public document, 5 August 2003, p. 4; *The Prosecutor v. Hazim Delić*, Case No. IT-26-21-R-R119, “Decision on Motion for Review”, public document, 25 April 2002, paras 15-16; *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, “Decision on Evidence”, public document, 31 October 2003, pp. 3-4..

¹² “Decision on Praljak Defence Request for Certification to Appeal the Order of 20 May 2010 (Franjo Lozić)”, public document, 22 June 2010.

¹³ Letter sent by Counsel Nožica to the Chamber and to the parties by means of electronic mail regarding the deposition of Momčilo Mandić, 13 April 2009; Notice of Bruno Stojić Regarding the Deposition of Momčilo Mandić, 23 February 2010, confidential; Correspondence from Counsel Nožica to the Chamber (with copies to the parties) regarding the testimony of Momčilo Mandić, 26 April 2010.

¹⁴ Notice by the Stojić Defence at the Hearing of 6 April 2009, T(F), pp. 38805 and 38806; “Notice of Bruno Stojić Regarding the Testimony of Expert Witness Mato Arlović”, 24 February 2010.

¹⁵ See, e.g., the use made by the Chamber of the information disclosed by the Stojić Defence in the Oral Decision of 20 April 2009 regarding the filing of motions by the Stojić Defence pursuant to Guideline 9, public document, 20 April 2009, T(F) pp. 38866-38867; “Decision on Stojić Defence Motion Regarding the Filing of Motions Pursuant to Guideline 9”, public document, 5 May 2009.

that this becomes all the more evident when, as here, a party requests the admission of evidence after all of the parties have rested their case,¹⁶

CONSIDERING that, in the instant matter, the Stojić Defence had the opportunity to question the authenticity and reliability of Exhibit 4D 00461 subsequent to its admission in December 2006,¹⁷ through the cross-examination of Prosecution and Defence witnesses and during the presentation of its exculpatory evidence; that the opportunity to proffer exhibits relating to the authenticity and reliability of 4D 00461 for more than two years concretely guaranteed the right of the Accused Stojić to a fair trial in this matter;¹⁸ that the Chamber finds, furthermore, that Document 2D 03088 does not constitute evidence likely to affect the judgement,

CONSIDERING therefore that, having examined the request for reconsideration in the Order of 3 June 2010, the Chamber notes that the Stojić Defence has neither put forward particular circumstances nor established that the Chamber committed a clear error in its reasoning to exclude the admission into evidence of Exhibit 2D 03088; that the Chamber therefore decides to deny the Motion, in regard to its first part,

CONSIDERING, secondly, that having examined that part of the Motion pertaining to the motion for certification to appeal the Order of 3 June 2010, the Chamber is persuaded of the soundness of the said Order and finds that the Stojić Defence has not established that the sum and substance of the Motion involves an issue likely to significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which the immediate resolution of the matter by the Appeals Chamber would materially advance the proceedings,

¹⁶ Although the Chamber notes that while it was not until 13 May 2010 that it was informed by means of “Berislav Pušić’s Notice Regarding Motion for the Admission of Documentary Evidence” that the Pušić Defence did not intend to file a request for the admission of documentary evidence pursuant to Rule 89 (C) of the Rules of Procedure and Evidences, it is noteworthy that Counsel for the Accused Valentin Čorić concluded presentation of their case on 1 April 2010; and that by “Berislav Pušić’s Notice Regarding Presentation of Evidence in the Defence Case” of 7 April 2010, Counsel for the Accused Berislav Pušić did in fact signal its intention to refrain from calling *viva voce* witnesses and from requesting admission of the written testimony of witnesses pursuant to Rules 92 *bis*, 92 *ter* and 92 *quarter* of the Rules.

¹⁷ Oral Decision of 13 December 2006, T(F), pp. 11614-11615; Order of 3 June 2010, p. 4.

¹⁸ See to this effect *The Prosecutor v. Hazim Delić*, Case No. IT-96-21-R-R119, “Decision on Motion for Review”, public document, 25 April 2002, at para. 15, where the Appeals Chamber explains that defence counsel enjoy complete freedom to decide the manner in which they will represent their client

FOR THE FOREGOING REASONS,

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

DENIES the Motion for Reconsideration of the Order of 3 June 2010 filed by the Stojić Defence for the reasons set forth herein **AND,**

DENIES the Motion for Certification to Appeal of the Order of 3 June 2010 filed by the Stojić Defence for the reasons set forth herein.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

at trial, that the criteria of knowledge and diligence of counsel commit the accused, and that an accused is bound by the tactics of counsel acting on his or her behalf.