



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: 6 October 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: 6 October 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JADRANKO PRLIĆ'S REQUEST FOR THE TRIAL
CHAMBER TO ISSUE AN ORDER LIFTING THE CONFIDENTIALITY OF
THE MLADIĆ DIARY & GRANTING PERMISSION TO THE PARTIES TO
DISCLOSE AND DISCUSS WITH THE PRESS THE CONTENT OF THE
MLADIĆ DIARY**

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 “Jadranko Prlić’s Request for the Trial Chamber to Issue an Order Lifting the Confidentiality of the Mladić Diary & Granting Permission to the Parties to Disclose and Discuss with the Press the Content of the Mladić Diary” filed publicly by the Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 22 July 2010, to which are attached a public annex and a confidential annex, and in which the Prlić Defence asks the Chamber to issue an order lifting the confidentiality of the entire Mladić Diary and to authorise the parties to disclose and discuss the content with the press (“Motion”).

NOTING “Slobodan Praljak’s Joinder to Jadranko Prlić’s 22 July 2010 Request to Lift the Confidentiality of the Mladić Diary”, in which Counsel for the Accused Slobodan Praljak joins in the Motion,

NOTING the “Prosecution Response to Jadranko Prlić’s Request for the Trial Chamber to Issue an Order Lifting the Confidentiality of the Mladić Diary & Granting Permission to the Parties to Disclose and Discuss with the Press the Content of the Mladić Diary”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 28 July 2010, with three public annexes in which the Prosecution objects to the Motion (“Response”),

NOTING the “Prosecution Supplemental Submission on Jadranko Prlić’s Request for the Trial Chamber to Issue an Order Lifting the Confidentiality of the Mladić Diary & Granting Permission to the Parties to Disclose and Discuss with the Press the Content of the Mladić Diary”, filed publicly by the Prosecution on 30 August 2010, with one public annex in which the Prosecution informs the Chamber that it continues to object to the Motion,

NOTING the oral decision rendered by the Trial Chamber in *The Prosecutor v. Radovan Karadžić* (“Karadžić Chamber”) during the public hearing on 20 August 2010, which admitted into evidence, as a public document, 15 of the 18 notebooks of

the Mladić Diary, seized during the search of 23 February 2010 and 5 notebooks of The Mladić Diary seized during the search of 4 December 2008 (“Notebooks Admitted by the Karadžić Chamber”),¹

CONSIDERING that the Karadžić Chamber has therefore admitted into evidence, as a public document, almost the entire Mladić Diary, with the exception of three notebooks,²

CONSIDERING that the Notebooks Admitted by the Karadžić Chamber are currently available publicly and accessible to anyone who puts in a request with the Registry of the Tribunal,³

CONSIDERING that the Chamber finds consequently that the part of the Motion asking the Chamber to issue an order lifting the confidentiality of the Mladić Diary and authorising the parties to disclose the content and discuss it with the press is moot, with regard to the Notebooks Admitted by the Karadžić Chamber,

CONSIDERING, moreover, that it is not up to the Chamber to authorise or prohibit the Prlić Defence or other parties from discussing with the press public documents

¹ Hearing of 20 August 2010, *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, transcript in French (T (F)), p. 6113, public hearing. The volumes of the diary that were admitted into evidence are as follows: Mladić notebook from 30 December 1991 to 14 February 1992; Mladić notebook from 14 February 1992 to 25 May 1992; Mladić notebook from 27 May 1992 to 31 July 1992; Mladić notebook from 16 July 1992 to 9 September 1992; Mladić diary dated 14, 15 and 27 September 1992; Mladić notebook from 10 September 1992 to 30 September 1992; Mladić notebook from 30 September to 4 October 1992; Mladić notebook from 5 October 1992 to 27 December 1992; Mladić notebook from 2 January 1993 to 28 January 1993; Mladić notebook from 29 January 1993 to 31 March 1993; Mladić notebook from 2 April 1993 to 24 October 1993; Mladić notebook dated 1 September 1993; Mladić notebook from 28 October 1993 to 15 January 1994; Mladić notebook from 9 January 1994 to 21 March 1994; Mladić notebook from 31 March 1994 to 3 September 1994; Mladić notebook from 4 September 1994 to 28 January 1995; Mladić notebook from 27 January 1995 to 5 September 1995; Mladić notebook from 14 July 1995 to 18 September 1995; Mladić notebook from 28 August 1995 to 15 January 1996; Mladić notebook from 16 January 1996 to 28 November 1996.

² *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, “Decision on the Second Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List (Mladić Notebook)”, public, 22 July 2010, page 15, in which the Karadžić Chamber denies the Motion seeking to add to the list of exhibits filed by the Prosecution pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) the following three Mladić notebooks: Mladić notebook from 29 June to 25 August 1991; Mladić notebook from 27 August to 22 November 1991; Mladić notebook from 23 November to 29 December 1991.

³ On this matter, *see* notably the “Directive for the Court Management and Support Services Section, Judicial Services Section, Registry”, Section XII: Public Access to Judicial Records of the Tribunal, Articles 29 and 30.

that are available to everyone, as long as in doing so the said parties respect the rules of professional conduct imposed on them,⁴

CONSIDERING that, consequently, the Chamber also declares moot the part of the Motion seeking permission from the Chamber to discuss with the press the content of the Mladić Diary, with respect to the Notebooks Admitted by the Karadžić Chamber,

CONSIDERING that with regards to the three notebooks not admitted before the Karadžić Chamber, the Chamber recalls that like the other notebooks, they were disclosed by the Prosecution to the Defence teams in the present case; that in line with the Decision of 9 December 2004,⁵ the three notebooks that were not admitted publicly by the Karadžić Chamber are still confidential; that if the Prlić Defence wishes to disclose them to a “member of the public”,⁶ this disclosure must be directly and specifically necessary for the presentation of its case;⁷ that the Prlić Defence has not established that the disclosure of the three notebooks not admitted by the Karadžić Chamber to a “member of the public” is directly and specifically necessary to the presentation of its case; that this disclosure meets the strict conditions as defined in the Decision of 9 December 2004;⁸ that the Prlić Defence did not specify how its request for the three notebooks would fulfil the conditions,

CONSIDERING, moreover, that the Chamber denies the Motion of the Prlić Defence with regard to the three notebooks that were not admitted by the Karadžić Chamber, and to the lifting of confidentiality, their disclosure to the press and the possibility for the Prlić Defence to discuss them with it,

⁴ On this matter, *see* notably for the Prosecution, the “Standards of Professional Conduct Prosecution Counsel”, 14 September 1999, item 2 (i) and (k) and *see* notably for the Defence teams “The Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal”, of 29 June 2006, Articles 10 and 24.

⁵ *The Prosecutor v. Jadranko Prlić et al.*, IT-04-74-PT, “Decision on Prosecution’s Request for Modification of Order for Protective Measures”, 9 December 2004, public (“Decision of 9 December 2004”), pp. 3 and 4.

⁶ Decision of 9 December 2004, pp. 2 and 3.

⁷ Decision of 9 December 2004, p. 4.

⁸ Decision of 9 December 2004, p. 4: “If the Defence or the Accused find it directly and specifically necessary for the preparation and presentation of the case to disclose protected information to a member of the public, they shall inform each person among the public to whom material or information is shown or disclosed, that the member of the public shall not copy, reproduce or publicise such material or information, in whole or in part, or show or disclose it to any other person and they shall obtain nondisclosure agreements from third parties as a precondition for the release of the material to them. If provided with the original or any copy or duplicate of such material, such member of the public shall return it to the Defence when the material is no longer necessary for the preparation and presentation of the Accused’s cases.”

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

DECLARES MOOT the Motion with respect to the Notebooks Admitted by the
Karadžić Chamber,

DENIES the Motion in all other respects,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]