



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: 13 December 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: 13 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE REQUEST FOR CERTIFICATION TO
APPEAL DECISION OF 24 NOVEMBER 2010**

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 Zoran Ivanišević 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 “Jadranko Prlić’s Request for Certification to Appeal *Décision portant sur la Demande de Jadranko Prlić aux fins d’admission d’éléments de preuve réfutant ceux admis par la Décision du 6 octobre 2010*”, filed by Counsel for the Accused Jadranko Prlić (“Prlić Defence”; “Accused Prlić”) as a public document on 29 November 2010 (“Request”), in which the Prlić Defence asks the Chamber to certify the appeal that it intends to lodge against the “Decision on Jadranko Prlić’s Motion to Admit Evidence Rebutting Evidence Admitted by the Decision of 6 October 2010”, rendered as a public document by the Chamber on 24 November 2010 (“Decision of 24 November 2010”),¹

NOTING the Decision of 24 November 2010 in which the Chamber denied the admission into evidence of the exhibits requested by the Prlić Defence to refute excerpts of Ratko Mladić’s Diary (“Mladić Diary”) admitted on behalf of the Office of the Prosecutor (“Prosecution”) in the “Decision on the Prosecution’s Motion to Reopen its Case”, rendered as a public document by the Chamber on 6 October 2010 (“Decision of 6 October 2010”),

NOTING the Decision of 6 October 2010 in which the Chamber partially granted the Prosecution’s motion to reopen its case to admit eight exhibits, four of which originating from the Mladić Diary² and decided that any motions to reopen the case filed by the Defence teams cannot constitute general motions for reopening based on excerpts from the Mladić Diary and should instead, if they are based on the Mladić Diary, be limited to refuting the excerpts admitted by the Decision of 6 October 2010,³

NOTING the “Decision on Bruno Stojić Motion for Certification to Appeal the Decision on the Reopening of the Prosecution Case and Clarifying the Decision of 6 October 2010”, rendered as a public document by the Chamber on 27 October 2010

¹ Request, p. 1.

² Decision of 6 October 2010, paras 62 and 63 and p. 28.

(“Decision of 27 October 2010”), in which the Chamber, on the one hand, rejected the Stojić Defence Motion for certification to appeal and, on the other, invites the Defence teams to “supplement their motion, if need be, by refuting the evidence tendered by the Prosecution in the motions for reopening, in accordance with the case-law criteria for reopening”,⁴

NOTING the “Decision on Prlić Defence Request for Certification to Appeal the Decision on the Reopening of the Prosecution’s Case of 6 October 2010”, rendered as a public document by the Chamber on 1 November 2010, in which the Chamber denied the Prlić Defence Request for certification to appeal and recalled the strict criteria applied by the Chamber to a possible reopening of the Defence cases, as outlined in its decisions of 6 and 27 October 2010 (“Decision of 1 November 2010”),⁵

NOTING the “Prosecution Consolidated Response to Defence Motions to Reopen their Cases and Tender Evidence per the Trial Chamber Decision of 6 October 2010”, filed as a public document with a confidential annex on 8 November 2010 by the Prosecution, in which it respectfully asks the Chamber to deny a certain number of exhibits requested for admission, notably by the Prlić Defence and to which it objected in its Confidential Annex (“Response of 8 November 2010”),⁶

NOTING the “Prosecution Response to Jadranko Prlić’s Request for Certification to Appeal the Trial Chamber Decision of 6 October 2010”, filed as a public document by the Prosecution on 6 December 2010 (“Response”), in which the Prosecution respectfully asks the Chamber to deny the Request on the grounds that it does not fulfil the criteria under Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),⁷

CONSIDERING that in support of the Request, the Prlić Defence argues that the Chamber’s decision to refuse admission into evidence of all the exhibits requested by the Prlić Defence to refute the evidence admitted by the Decision of 6 October 2010 significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial, specifically the right of an Accused to have evidence admitted in

³ Decision of 6 October 2010, para 64 and p. 29.

⁴ Decision of 27 October 2010, p. 9 and footnote 42.

⁵ Decision of 1 November 2010, pp. 6, 7 and 8.

⁶ Response of 8 November, para. 19 and confidential Annex.

⁷ Response, paras 7 and 8.

his defence and thereby, deprives the Accused of the right to a fair trial;⁸ that the Prlić Defence argues that with its refusal, the Chamber is preventing the admission of evidence essential to the Accused Prlić's case, as it would have specifically provided a requisite context for an intelligible and unbiased interpretation of the excerpts from the Mladić Diary admitted on behalf of the Prosecution,⁹ specifically concerning the issue of the existence of a joint criminal enterprise ("JCE") alleged by the Prosecution,¹⁰

CONSIDERING that the Prlić Defence also argues that the Chamber's decision not to allow the admission into evidence of 40 exhibits requested by the Prlić Defence violates the principle of equality of arms;¹¹ that the Prlić Defence alleges in particular the "blatant iniquity" with which the Chamber admitted the evidence for the sole benefit of the Prosecution;¹² that it claims in that respect that the Chamber applied a double standard, as shown by its rejection of Exhibits 1D 03193 and 1D 03194 since, in that case, the Chamber found that the importance of these exhibits was not revealed by the discovery of the Mladić Diary, while using the same evaluation criteria and similar circumstances, it allowed the admission of a certain number of exhibits on behalf of the Prosecution,¹³

CONSIDERING, moreover, that the Prlić Defence submits that by determining that only those excerpts that are directly linked to the Accused shall be admitted, the Chamber significantly affected the right of the Accused Prlić to a fair trial;¹⁴ that furthermore, the Prlić Defence alleges that the application of this standard and the biased nature of the Chamber's consideration of the evidence sought for admission are a testament to the Chamber's obvious intention to come to a pre-judgement of the case, notably concerning the issue of determining the existence of a JCE,¹⁵

CONSIDERING, finally, that the Prlić Defence deems that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings;¹⁶ that

⁸ Request, paras 19, 20, 22 and 27.

⁹ Request, para. 22.

¹⁰ Request, paras 20, 23.

¹¹ Request, paras 26, 27.

¹² Request, paras 20, 21, 22.

¹³ Request, para. 25.

¹⁴ Request, paras 20 and 27.

¹⁵ Request, paras 21 and 23.

¹⁶ Request, para. 28.

it argues, more specifically, that this refusal to admit the proposed exhibits which the Prosecution itself acknowledges to be sufficiently relevant and probative to be admitted,¹⁷ deprives the Judges of the possibility to consider the evidence necessary for an objective assessment of the Mladić Diary;¹⁸ that it argues, furthermore, that if this issue is not immediately resolved by the Appeals Chamber, it will serve as a ground for appeal against the judgement ,¹⁹

CONSIDERING, in its Response, that the Prosecution argues that the Prlić Defence erred when it submitted that the Prosecution deemed that the Chamber's rejection of the excerpts of the Mladić Diary requested for admission by the Prlić Defence might constitute a ground for sending the case against the Accused Prlić back before the Chamber for a retrial pursuant to Rule 117 (C) of the Rules;²⁰ that it recalls having stated that, of course, each party should have the opportunity to tender excerpts from the Mladić Diary, but that in order to be admitted they must also be relevant pursuant to the reopening criteria set forth by the Chamber;²¹ that in this respect, the Prosecution argues that the Chamber did indeed give all the parties the opportunity to seek admission into the record of excerpts from the Mladić Diary, and that it examined the motions that were presented to it on the basis of reasonable criteria that were correctly and uniformly applied,²²

CONSIDERING the Prosecution notes that the Prlić Defence suggestion that the Prosecution acknowledged the relevance and probative value of the exhibits requested for admission by the Prlić Defence is also wrong;²³ that in this respect, it recalls having mentioned in the Response of 8 November 2010 that the fact that it did not object to the admission of certain exhibits presented by the Prlić Defence does not mean that it accepts or agrees with the arguments or interpretations provided by the Prlić Defence in support of its motion for a reopening of the case, and that, moreover, it considers that several exhibits are irrelevant and lack probative value,²⁴

¹⁷ Request, para. 24.

¹⁸ Request, para. 28.

¹⁹ Request, para. 28.

²⁰ Response, para. 2.

²¹ Response, para. 3.

²² Response, para. 4.

²³ Response, para. 6.

²⁴ Response, para. 6 referring to para. 16 of the Response of 8 November 2010.

CONSIDERING that the Prosecution alleges that the Request fails to satisfy the conditions for the application of Rule 73 (B) of the Rules and notes in particular that the Decision of 24 November 2010 neither compromises the fairness and expeditiousness of the proceedings, nor the outcome of the trial as the reopening criteria were applied correctly and uniformly by the Chamber with respect to all the parties,²⁵

CONSIDERING that the Prosecution argues finally that in the Request, the Prlić Defence failed to prove how an immediate resolution of this issue would materially advance the proceedings,²⁶

CONSIDERING that under Rule 73 (B) of the Rules, “[D]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”,

CONSIDERING, consequently, that the certification of an appeal comes under the discretionary power of the Chamber which must, in any case, verify first that the two cumulative conditions under Rule 73 (B) of the Rules have been satisfied in this case,

CONSIDERING that the Chamber notes that in the Request, the Prlić Defence primarily merely objects to the case-law criteria applicable to motions for reopening a case and the Chamber’s use of its discretionary power in the Decision of 24 November 2010; that it limits itself to accusing the Chamber of having applied these criteria unevenly to the different parties; that it speculates on the supposed intentions of the Chamber while the latter rendered its decision, and used unsuitable language in several instances,

CONSIDERING, however, that the Chamber is satisfied of the reasonable nature of the Decision of 24 November 2010, rendered in accordance with the criteria applicable to motions for reopening established by Tribunal case-law and recalled by the Chamber in the Decisions of 6 and 27 October 2010,

²⁵ Response, para. 7.

²⁶ *Ibidem*.

CONSIDERING, furthermore, that the Chamber is of the opinion that, contrary to what the Prlić Defence alleges, it correctly and uniformly applied the said case-law criteria to all the motions for reopening filed by the parties,

CONSIDERING that the Chamber deems, therefore, that the Prlić Defence failed to show that the subject matter of the Request involves an issue that would significantly affect the fairness and expeditiousness of the proceedings or the outcome of the trial, nor that the immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings,

CONSIDERING that the Chamber is satisfied, contrary to the arguments of the Prlić Defence, that the certification to appeal sought may delay the proceedings considerably,

CONSIDERING, consequently, that the Chamber deems that the Request fails to meet the criteria under Rule 73 (B) of the Rules and that, consequently, it is appropriate to reject it,

CONSIDERING that the Chamber notes, moreover, that the Prlić Defence made a certain number of assertions in its Request describing the Chamber as biased and arbitrary;²⁷ that the Chamber notes that the Prlić Defence also makes disconcerting insinuations about, as it puts it, the predetermined outcome of the trial;²⁸ that the Chamber deems that the allegations made by the Prlić Defence are not only baseless but also impertinent, and that the use of incriminating language towards the Chamber disregards the requirements of propriety and standards of legal argument,

²⁷ Request, paras 21 and 27.

²⁸ Request, paras 21 and 23.

FOR THE FOREGOING REASONS,

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

DENIES the Request for certification to appeal the Decision of 24 November 2010 for the grounds set out in this Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]