



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: 15 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: 15 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION FOR CERTIFICATION TO
APPEAL DECISION ON THE REOPENING OF ITS CASE (Decision of 25
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 Stojić
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 “Bruno Stojić’s Motion for Certification to Appeal the ‘*Décision portant sur la requête de la Défense Stojić en réouverture de sa cause, rendue le 25 novembre 2010*’”, filed as a public document by Counsel for the Accused Bruno Stojić (“Stojić Defence”; “Accused Stojić”) on 30 November 2010 (“Motion”),

NOTING the “Decision on the Prosecution’s Motion to Reopen its Case”, rendered as a public document on 6 October 2010 (“Decision of 6 October 2010”), in which the Chamber partially granted the Motion of the Office of the Prosecutor (“Prosecution”) to reopen its case and directed the Defence teams wishing to file possible requests to reopen their respective cases to do so in order to refute excerpts from the diary of Ratko Mladić (“Mladić Diary”) admitted into evidence by the said decision,¹

NOTING the “Decision on the Stojić Defence Request to Reopen its Case”, rendered as a public document on 25 November 2010 (“Decision of 25 November 2010”), in which the Chamber denied the admission into evidence of the 66 documents requested by the Stojić Defence in order to refute the exhibits admitted on behalf of the Prosecution by the Decision of 6 October 2010,²

CONSIDERING that the Prosecution informed the Chamber in an email dated 2 December 2010 that it did not intend to file a response to the Motion,

CONSIDERING that in the Motion, the Stojić Defence respectfully asks the Chamber for certification to appeal the Decision of 25 November 2010 pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),³

CONSIDERING that in support of its Motion, the Stojić Defence argues that the Decision of 25 November 2010 significantly affects the fairness and expeditiousness

¹ Decision of 6 October 2010, pp. 28 and 29.

² Decision of 25 November 2010, pp. 12 and 13.

³ Motion, para. 1 and p. 10.

of the proceedings or the outcome of the trial to the detriment of the Accused Stojić⁴ and that an immediate resolution by the Appeals Chamber of this issue may materially advance the proceedings.⁵

CONSIDERING that the Stojić Defence alleges more specifically that the Chamber erred when it rejected the admission into evidence of all the exhibits tendered in “Bruno Stojić’s Motion to Admit Evidence in Reopening”, filed as a public document by the Stojić Defence with two annexes on 21 October 2010 and supplemented by the “Supplement to Bruno Stojić’s Motion to Admit Evidence in Reopening dated 21 October 2010”, filed as public document on 3 November 2010 with an annex (all together “Initial Motion”),⁶

CONSIDERING that the Stojić Defence argues that the Chamber erred by imposing a stricter criterion for admission than the general requirements for the admission of rebuttal evidence by finding that the evidence requested for admission in the Initial Motion was not “fresh” according to the legal criteria for reopening and, therefore, was not admissible as it did not directly refute the statements made by Bruno Stojić contained in the evidence admitted by the Decision of 6 October 2010;⁷ that it deems, furthermore, that even though the Chamber applied a stricter criterion, the proposed exhibits were nevertheless admissible,⁸

CONSIDERING that, pursuant to 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 [...] an immediate resolution by the Appeals Chamber may materially advance the proceedings”,

CONSIDERING, consequently, that certification to appeal comes under the discretionary power of the Chamber, which must, in any case, first verify whether the

⁴ Motion, paras 6-18.

⁵ Motion, para. 19.

⁶ Motion, paras 6-8.

⁷ Motion, paras 6 and 7, 9-11.

⁸ Motion, paras 8, 12-16.

two cumulative conditions set out under Rule 73 (B) of the Rules have been met in the case,⁹

CONSIDERING that the Chamber recalls that by the Decision of 6 October 2010, it found notably that any request to reopen the case made by the Defence teams intending to seek admission of excerpts from the Mladić Diary should be limited to directly refuting the new evidence admitted by the Decision of 6 October 2010,¹⁰

CONSIDERING that the Chamber recalls that, in the Decision of 25 November 2010, it rejected the Initial Motion on the grounds that in the said motion, the Stojić Defence failed to meet the criteria required for the reopening of its case,¹¹

CONSIDERING that the Chamber notes that by way of the present Motion, the Stojić Defence merely objects in the main to the Chamber's use of its discretionary power in the Decision of 25 November 2010 that led it to decide not to grant the Motion; that the Stojić Defence merely objects to the criteria established by the Chamber in its previous decisions and recalled in the Decision of 25 November 2010, namely, that at this stage in the proceedings and within the reopening of the Defence cases, it could only admit evidence directly linked to the evidence already admitted by the Decision of 6 October 2010 and which, in the case of the Accused Stojić, would be likely to refute the statements made by the Accused Stojić contained in the excerpts of the Mladić Diary admitted in the said Decision of 6 October 2010.¹²

CONSIDERING more specifically that, contrary to the Stojić Defence allegations contained in the Motion,¹³ the Chamber did not admit the evidence, including Exhibit P 11376, by way of the Decision of 6 October 2010 on the ground that it deals with cooperation with the Bosnian Serbs, but rather because it relates the statements of the Accused, notably of the Accused Stojić, and the Chamber cannot help but note that

⁹ *The Prosecutor v. Pavle Strugar*, Case No. IT-0 1-42-T, "Decision on Defence Motion for Certification", public, 17 June 2004, para. 2.

¹⁰ Decision of 6 October 2010, paras 34, 64 and p. 29; *See also* "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 on 27 October 2010 ("Decision of 27 October 2010"), pp. 5 and 9 and Decision of 25 November 2010, para. 20.

¹¹ Decision of 25 November 2010, para. 30.

¹² *See*, in this sense, the Decision of 25 November 2010, paras 24-30.

¹³ Motion, para. 11 and footnote 11.

the Stojić Defence has erroneously read the Decision of 6 October 2010 and the Decision of 25 November 2010.¹⁴

CONSIDERING, furthermore, that according to the Stojić Defence, even by applying a strict admission criterion to the proposed exhibits contained in the Initial Motion, the Chamber should have admitted them as they go to refuting the existence of a common plan and its implementation;¹⁵ that the Chamber notes that on this point, the Stojić Defence reiterates and expounds on the same arguments as those contained in the Initial Motion and recalls that the evidence it requested for admission in no way concerns the alleged direct participation of the Accused Stojić in the alleged criminal enterprise,¹⁶

CONSIDERING that the Chamber is satisfied of the reasonable nature of the Decision of 25 November 2010; that it deems that it has justified the said decision sufficiently on the basis of criteria applicable to requests for reopening established by Tribunal case law and recalled numerous times by the Chamber;¹⁷ that it recalls notably in this respect that it had invited the Stojić Defence to supplement its motion to reopen the case so as to ensure that it had met the reopening criteria explicitly set out by the Chamber; that it deems that the Decision of 25 November 2010 is in accordance with the relevant Tribunal case law¹⁸ and that it correctly limited the possible admission of documents presented by the Stojić Defence to only those directly linked to the Decision of 6 October 2010 and in this case to those relating directly to the Accused Stojić,

CONSIDERING that the Chamber deems that the Stojić Defence has failed to show that the subject of the Motion constitutes an issue that is likely to significantly compromise the fairness and expeditiousness of the proceedings or the outcome of the

¹⁴ Decision of 25 November 2010, para. 22.

¹⁵ Motion, paras 11, 13 and 14.

¹⁶ Decision of 25 November 2010, paras 27-30.

¹⁷ See notably in this sense, the Decision of 6 October 2010, para. 64, the Decision of 27 October 2010, pp. 5 and 7-9 and the “Decision on Petković Defence Request for Certification to Appeal the Decision on Prosecution Motion to Reopen its Case”, rendered as a public document by the Chamber on 1 November 2010, p. 7.

¹⁸ *The Prosecutor v. Slobodan Milošević*, IT-02-54-T, “Decision on Application for a Limited Reopening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex”, public with confidential annex, 13 December 2005, para. 35; *The Prosecutor v. Gotovina et al.*, IT-06-90, 10 June 2010, French transcript, pp. 28894 and 28895.

trial and that its immediate resolution by the Appeals Chamber may materially advance the proceedings; that it is the Chamber's opinion that certifying the appeal will only serve to delay the trial, which is in its final stage and decides, consequently, to deny the Motion.

CONSIDERING, consequently, that the Chamber deems that the Motion does not meet the criteria under Rule 73 (B) of the Rules,

FOR THE FOREGOING REASONS,

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

DENIES the Motion,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]