



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: 31 January 2011
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: 31 January 2011

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON TWO REQUESTS FILED BY THE PRLIĆ DEFENCE
(ORGANISATION OF 65TH MEETING AND REQUEST TO ADMIT
DOCUMENT 1D 00526)**

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 a Rule 65 *ter* (D) Meeting Prior to the Closing Arguments”, filed as a public document by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 26 January 2011 (“Request for a 65 *ter* Meeting”), in which the Prlić Defence respectfully requests the Chamber to organise, pursuant to Rule 65 *ter* (D) of the Rules of Procedure and Evidence (“Rules”),¹ a meeting prior to the closing arguments that will commence as of 7 February 2011,²

SEIZED also of “Jadranko Prlić’s Request for Admission of Exhibit 1D 00526”, filed as a public document by the Prlić Defence on 26 January 2011 and accompanied by a confidential annex (“Request for Admission of Exhibit 1D 00526”), in which the Prlić Defence respectfully requests the Chamber to admit document 1D 00526 into evidence,³

NOTING the “Prosecution Response to Jadranko Prlić’s Request for Admission of Exhibit 1D 00526 & Motion for Additional Time for Closing Arguments”, filed as a public document by the Office of the Prosecutor (“Prosecution”) on 28 January 2011 (“Response”), in which the Prosecution respectfully requests the Chamber to deny the Request for Admission of Exhibit 1D 00526,⁴

CONSIDERING that in an email dated 26 January 2011, the Prosecution informed the Chamber that it did not intend to file a response to the Request for a 65 *ter* Meeting,

CONSIDERING that in support of the Request for a 65 *ter* Meeting, the Prlić Defence argues that it is necessary to organise a meeting prior to the closing

¹ Request for a 65 *ter* Meeting, p. 2.

² See in this sense “Third Amended Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)”, public, 4 January 2011, (“Order of 4 January 2011”), p. 4.

³ Request for Admission of Exhibit 1D 00526, p. 5.

⁴ Response, para. 1.

arguments, under the aegis of the Senior Legal Officer, in order to agree on the technical modalities of presenting the oral arguments,⁵

CONSIDERING that the Prlić Defence argues that leaving certain procedural questions unsolved risks having these questions raised in court, which will inevitably cause delays and interfere with the proper conduct of the proceedings,⁶

CONSIDERING that the Prlić Defence raises in particular that it would be appropriate to resolve certain issues such as the recording of the use of time in case of questions from the Bench, the procedure if possible objections are raised by the parties and the possibility to move into closed session when citing the names of protected witnesses,⁷

CONSIDERING that, in relation to the Request for Admission of Exhibit 1D 00526, the Prlić Defence submits that its request is justified insofar as (1) it had always believed that Exhibit 1D 00526, which concerns an excerpt from the Owen-Stoltenberg Plan, had been admitted⁸ and that this exhibit was discussed with numerous witnesses in court,⁹ (2) no reasoned decision was issued by the Chamber in relation to this document¹⁰ and (3) it is appropriate, for the sake of clarity and in the interests of justice, to admit Exhibit 1D 00526, which is practically identical to Exhibit 1D 01778 already admitted into evidence, since both were presented to different witnesses,¹¹

CONSIDERING that the Prlić Defence also submits that Exhibit 1D 00526 presents *prima facie* guarantees of relevance and probative value,¹²

CONSIDERING that in the Response, the Prosecution argues that irrespective of the reasons argued by the Prlić Defence in support of the Request for Admission of

⁵ Request for a 65 *ter* Meeting, paras 1 and 2.

⁶ Request for 65 *ter* Meeting, para. 3

⁷ Request for 65 *ter* Meeting, para. 2.

⁸ Request for Admission of Exhibit 1D 00526, para. 9.

⁹ Request for Admission of Exhibit 1D 00526, para. 9; *See* also confidential annex to the Request for Admission of Exhibit 1D 00526 for a list of witnesses presented with Exhibit 1D 00526.

¹⁰ Request for Admission of Exhibit 1D 00526, paras 7 and 8.

¹¹ Request for Admission of Exhibit 1D 00526, para. 11.

¹² Request for Admission of Exhibit 1D 00526, para. 11.

Exhibit 1D 00526, it is late as the final trial briefs have already been filed and the closing arguments are imminent,¹³

CONSIDERING firstly that, in respect to the Request for a 65 *ter* Meeting, the Chamber recalls that the rules on the closing arguments were established by the Chamber's orders on the organisation of the presentation of the closing arguments;¹⁴ that in this respect, the Chamber recalls that the Prlić Defence will have 5 hours to respond to the Prosecution's closing arguments, during which time it may raise any possible objections; for all intents and purposes, the Chamber recalls to the parties that it will not receive their objections during the closing arguments,

CONSIDERING that with reference to the issues regarding the recording of the use of time or the use of pseudonyms to refer to protected witnesses in public sessions, the Chamber recalls that the rules and practice established in the present case on these two issues will apply *mutatis mutandis* to the closing arguments,¹⁵

CONSIDERING that the Chamber notes furthermore that the Prlić Defence merely provides a few examples to show the need to organise a Rule 65 *ter* Meeting without further clarifying its request regarding problems that may arise during hearings and that were not dealt with in the orders on the organisation of closing arguments,¹⁶

CONSIDERING, consequently, that the Chamber deems that the Prlić Defence failed to provide any facts to justify the organisation of a meeting prior to the closing arguments,

¹³ Response, para. 2.

¹⁴ "Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)", rendered by the Chamber as a public document on 1 November 2010; "Amended Scheduling Order (Final Trial Briefs, Closing Arguments for the Prosecution and the Defence)", rendered as a public document by the Chamber on 22 November 2010, ("Order of 22 November 2010"); *see also* "Second Amended Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and Defence)", rendered as a public document by the Chamber on 6 December 2010 and the Order of 4 January 2011.

¹⁵ *See in regard to decisions concerning the recording of the use of time during hearings:* "Decision on the Principles for Recording the Use of Time During Hearings", rendered as a public document by the Chamber on 13 July 2006; Decision of 24 April 2008 and "Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings", rendered as a public document by the Chamber on 28 April 2006; in regard to the recording of the use of time by the Chamber to ask questions, *see* "Oral Decision for Clarification by the Chamber with Respect to Timekeeping at the Hearing", rendered in public session by the Chamber on 9 July 2008, French Transcript ("T(F)", pp. 30415 et 30416.

¹⁶ *See in this sense the Order of 22 November 2010, p. 11, in which the Chamber specified that it authorises the Accused to speak, if they so wish, for up to 30 minutes and that this time shall be included in the five hours extended to each Defence team. In this same order the Chamber specified that if the Accused did not wish to say anything, this time may be given back to their Counsel. Finally,*

CONSIDERING that the Chamber decides, therefore, to deny the Request for a 65 *ter* Meeting but nevertheless invites the Prlić Defence and the other parties, if needed, to send by email any questions concerning practical matters they wish answered to the Chamber's legal officers,

CONSIDERING, secondly, that in respect to the Request for the Admission of Exhibit 1D 00526, the Chamber recalls that this exhibit, presented for the first time to Witness Josip Manolić during the hearing of 5 July 2006,¹⁷ was not requested for admission in writing by any of the parties even though the Chamber had formally invited them to do so,¹⁸

CONSIDERING that by the "Order to Admit Evidence Relative to Witness Josip Manolić", rendered as a public document by the Chamber on 28 September 2006 ("Order of 28 September 2006"), the Chamber nevertheless proceeded with an assessment of all the exhibits put to Witness Josip Manolić, including Exhibit 1D 00526 which had not been requested for admission, and decided to admit only those exhibits mentioned in the annex to the said Order (on which Exhibit 1D 00526 did not appear) that were put to Witness Josip Manolić and presented sufficient indicia of relevance, probative value and reliability,¹⁹

CONSIDERING that Exhibit 1D 00526 was not therefore admitted into evidence by the Order of 28 September 2006 and that the said Order is unambiguous in its meaning, all the more so because the Prlić Defence had never filed a request for clarification or reconsideration of the said Order,

CONSIDERING, furthermore, that the Chamber notes, in the manner of the Prlić Defence, that Exhibit 1D 00526 had been put to other witnesses on several occasion and by several parties during the trial without ever having been requested for admission,²⁰

in this same order, the Chamber specified that the time afforded to one Defence team may not be given to another Defence team.

¹⁷ Hearing of 5 July 2006, T(F), p. 4612.

¹⁸ "Oral Decision on the Admission of Exhibits in the Testimony of Josip Manolić", rendered by the Chamber during the public hearing on 22 August 2006, T(F), pp. 5256 and 5257: "The Chamber invites the party to file in writing before the 30th of August the list of exhibits submitted to the witness Manolić that the parties would like to see admitted".

¹⁹ Order of 28 September 2006, pp. 3-5.

²⁰ See confidential annex to the Request for Admission of Exhibit 1D 00526.

CONSIDERING, consequently, that the Chamber deems that the Request for the Admission of Exhibit 1D 00526 is late at this stage in the proceedings as the Prlić Defence concluded the presentation of its case on 15 January 2009,²¹ that the parties filed their final trial briefs on 7 January 2011 and that the oral arguments are scheduled to begin on 7 February 2011,

CONSIDERING, consequently, that the Chamber decides to deny the Request for Admission of Exhibit 1D 00526,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 65 *ter* (D) and 89 (C) of the Rules,

DENIES the Request for a 65 *ter* Meeting and the Request for Admission of Exhibit 1D 00526.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²¹ Hearing of 15 January 2009, T(F), p. 35537; *see also* “Order Regarding the Closure of the Presentation of the Defence Cases”, rendered as a public document by the Chamber on 17 May 2010, p. 2.