



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-AR73.18
Date: 20 October 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. John Hocking

Date: 20 October 2010

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON JADRANKO PRLIĆ'S INTERLOCUTORY
APPEAL AGAINST THE DECISION ON MOTION FOR
RECONSIDERATION OF DECISION OF 21 JANUARY 2010
AND APPLICATION OF RULE 73(D) OF THE RULES TO
PRLIĆ'S DEFENCE**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael G. Karnavas and Ms Suzana Tomanović for Jadranko Prlić

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of “Jadranko Prlić’s Interlocutory Appeal Against the Decision on Motion for Reconsideration of Decision of 21 January 2010 and Application of Rule 73(D) of the Rules to Prlić’s Defence” filed by Jadranko Prlić (“Prlić”) on 16 July 2010 (“Appeal”).

2. On 7 June 2010, Prlić filed a motion for reconsideration or, alternatively, a request for certification to appeal the Trial Chamber’s 1 February 2010 Decision¹ imposing sanctions under Rule 73(D) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) for the filing of a motion constituting an abuse of process.² On 28 June 2010, the Trial Chamber denied the motion for reconsideration and also Prlić’s request for certification to appeal under Rule 73(B) of the Rules, finding that “the Prlić Defence has not established how being subjected to a sanction pursuant to Rule 73(D) of the Rules satisfies the criteria for certification to appeal”.³

3. Rule 73(D) of the Rules provides that:

Irrespective of any sanctions which may be imposed under Rule 46 (A), when a Chamber finds that a motion is frivolous or is an abuse of process, the Registrar shall withhold payment of fees associated with the production of that motion and/or costs thereof.

The Appeals Chamber observes that nothing in this provision suggests that an interlocutory appeal lies as a matter of right. Accordingly, Rule 73(B) of the Rules provides the only mechanism pursuant to which Prlić can file an interlocutory appeal of a decision imposing Rule 73(D) sanctions.

4. In filing this Appeal, Prlić nevertheless seeks to rely upon Rule 77(J) of the Rules. He contends that under Rule 77(J), the appeal of any decision in relation to contempt of the Tribunal is provided as a matter of right.⁴ He further submits that the appeal of Rule 73(D) sanctions is appropriate under Rule 77(J) of the Rules because, like charges for contempt under Rule 77 of the

¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Reconsideration of Decision of 21 January 2010 and Application of Rule 73(D) of the Rules to Prlić’s Defence, 5 February 2010, p. 5. The decision was filed originally in French on 1 February 2010 (“Impugned Decision”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Jadranko Prlić’s Motion for Reconsideration, or in the Alternative, Request for Certification to Appeal the *Décision concernant la demande de réexamen de la décision portant application de l’article 73(D) du règlement à la Défense Plić* [sic], 7 June 2010.

³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Request for Reconsideration, or in the Alternative, for Certification to Appeal the 1 February 2010 Decision Applying Rule 73 (D) of the Rules to the Prlić Defence, 16 July 2010, p. 5. The decision was filed originally in French on 28 June 2010.

⁴ Appeal, p. 1 and para. 20.

Rules, the Impugned Decision effectively accuses Counsel of interference with the administration of justice.⁵

5. The Appeals Chamber notes that Rule 77(J) states, *inter alia*, that “[a]ny decision rendered by a Trial Chamber *under this Rule* shall be subject to appeal”.⁶ Accordingly, if a party appeals under Rule 77(J) as a matter of right, it must show, *inter alia*, that the decision appealed was made in the context of a contempt proceeding.⁷

6. Prlić is not appealing against a contempt decision – rather, he is appealing a decision imposing Rule 73(D) sanctions. Accordingly, he cannot avail himself of the procedural protections provided for under Rule 77 of the Rules. In light of the foregoing, the Appeals Chamber finds that it lacks jurisdiction to consider the Appeal.

7. The Appeals Chamber accordingly **DISMISSES** the Appeal.

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



Judge Patrick Robinson
Presiding

Dated this 20th day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ *Ibid.*

⁶ Emphasis added.

⁷ While not relevant to the case at hand, this Rule has been interpreted by the Appeals Chamber to limit appeals as of right against decisions which dispose of a contempt case only. *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR77.1, Decision on Vojislav Šešelj’s Appeal Against the Trial Chamber’s Decision of 19 July 2007, 14 December 2007, pp. 2-3.