



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: 28 October 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 28 October 2010

PROSECUTOR

v.

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

PUBLIC

DECISION OF THE PRESIDENT ON PROSECUTION MOTIONS TO STRIKE

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
Ms. Senka Nožica and Mr. Karim 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 Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

I, **Patrick Robinson**, President 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”), am seized of (1) the confidential “Prosecution Motion to Strike or Dismiss”, filed 8 October 2010 (“First Motion”), and (2) the confidential “Prosecution Motion to Strike or Dismiss”, filed 12 October 2010 (“Second Motion”);

NOTING the confidential “Decision on Motion for Disclosure of *Ex Parte* Correspondence and on Requests for Leave to Reply”, issued on 29 September 2010 (“Decision of 29 September”), in which Judge Kwon denied as moot a motion by the Prlić Defence for the disclosure of certain material filed in an *ex parte* manner by the Presiding Judge of the case, Judge Jean-Claude Antonetti;

NOTING the confidential “Decision on Motion for Clarification of the Decision of 29 September 2010”, issued on 1 October 2010, in which Judge Kwon denied the Prosecution’s request for clarification of the Decision of 29 September;

NOTING the confidential “Jadranko Prlić’s Request for Disclosure of the *Ex Parte* Correspondence Between Judge Prandler and Judge Antonetti as Referenced in the Report by Judge Antonetti to President Robinson”, filed on 1 October 2010 (“Disclosure Motion”), in which the Prlić Defence requested Judge Antonetti to disclose the *ex parte* correspondence between himself and Judge Prandler regarding the Prlić Defence’s motion to disqualify Judge Prandler from the proceedings (“Disqualification Motion”);¹

NOTING the “Decision of the President on Jadranko Prlić’s Motion to Disqualify Judge Árpád Prandler”, issued 4 October 2010 (“Disqualification Decision”), in which I (1) denied the Disqualification Motion and (2) stated that Judge Kwon’s rulings in the Decision of 29 September in respect of the disclosure of the *ex parte* material were fully within his competence as the Presiding Judge of Trial Chamber III and that I agreed with his disposition of the matter;

NOTING the confidential “Order by the Chamber’s Presiding Judge Concerning the Prlić Defence Request Seeking Disclosure of Correspondence”, issued on 5 October 2010 (“Order of 5 October”), in which a ruling upon the Disclosure Motion was deferred “until 18 October 2010 and otherwise until 26 October 2010 should the parties and the Prosecution be granted leave to reply”;

¹ See also confidential Jadranko Prlić’s Supplement to Jadranko Prlić’s Request for Disclosure of the *Ex Parte* Correspondence Between Judge Prandler and Judge Antonetti as Referenced in the Report by Judge Antonetti to President Robinson, 4 October 2010.

NOTING that the Prosecution, in the First Motion, requests me (1) to strike or dismiss the Disclosure Motion and (2) to remove the Order of 5 October from the trial record;

NOTING confidential “Jadranko Prlić’s Notice of his Intention not to Appeal the Decision of the President on Jadranko Prlić’s Motion to Disqualify Judge Árpád Prandler”, filed on 11 October 2010 (“Prlić Notice”), in which the Prlić Defence notifies Judge Antonetti that it does not intend to appeal the Disqualification Decision and reiterates Prlić’s “fair trial rights to have access to the *ex parte* communications between [Judge Antonetti] and Judge Prandler in order to determine whether any further submissions are ... necessary in the interests of justice”;

NOTING confidential “Jadranko Prlić’s Response to Prosecution Motion to Strike or Dismiss”, filed 11 October 2010, in which the Prlić Defence opposes the First Motion;

NOTING that the Prosecution, in the Second Motion, requests me (1) to strike or dismiss the Prlić Notice and (2) to issue an order barring further attempts by the Prlić Defence to relitigate matters associated with the Disqualification Motion or to obtain additional disclosure of materials linked to the *ex parte* correspondence between Judge Prandler and Judge Antonetti regarding the Disqualification Motion;

NOTING the confidential “Order of Presiding Judge on Prlić Defence Request for Disclosure of Correspondence”, issued on 19 October 2010, in which the Disclosure Motion was denied;

CONSIDERING that the Disclosure Motion was not filed before me and that it is not appropriate, in the present circumstances, for me to strike it from the trial record of the proceedings or to dismiss it;

CONSIDERING that the Order of 5 October was filed in the case of *Prosecutor v. Prlić et al.* and that it is not appropriate, in the present circumstances, for me to remove it from the trial record of those proceedings;

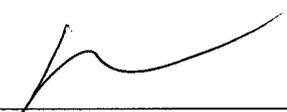
CONSIDERING that the Prlić Notice was not filed before me and that it is not appropriate, in the present circumstances, for me to strike it from the trial record of the proceedings or to dismiss it;

CONSIDERING that it is not necessary, in the present circumstances, for me to issue an order barring further attempts by the Prlić Defence to relitigate matters associated with the Disqualification Motion or to obtain additional disclosure of materials linked to the *ex parte* correspondence between Judge Prandler and Judge Antonetti regarding the Disqualification Motion;

PURSUANT TO Rule 15 of the Rules of Procedure and Evidence of the Tribunal,

HEREBY DENY the First Motion and the Second Motion.

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



Judge Patrick Robinson
President

Dated this twenty-eighth day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]