



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: 16 March 2009
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

Acting Registrar: Mr John Hocking

Decision of: 16 March 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PRALJAK DEFENCE MOTION FOR
RECONSIDERATION REGARDING THE ADMISSION OF
EXHIBIT 3D 02653**

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 Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašević-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 “Slobodan Praljak’s Motion for Reconsideration of the *Ordonnance Portant admission d’éléments de preuve relatifs au témoin expert Milan Cvikl* issued 18 February 2009 Regarding the Admission of Exhibit 3D 02653”, filed publicly on 20 February 2009 (“Motion”) by Counsel for the Accused Slobodan Praljak (“Praljak Defence”), in which the Praljak Defence withdraws its request for the admission of excerpts of Exhibit 3D 02653 (“Excerpts”) numbered 3D33-1848 and 3D33-1849, and requests that the Chamber reconsider only the refusal of the Excerpts numbered 3D33-1851 and 3D33-0550,

NOTING document IC 00899 by which the Praljak Defence requested the admission of several exhibits presented through Witness Milan Cvikl, who appeared from 12 to 15 January 2009 (“Original Motion”),

NOTING the “Order Admitting Evidence Regarding Expert Witness Milan Cvikl”, dated 18 February 2009 (“Order”), by which the Chamber denied the admission of the Excerpts¹ for the reason that it was unable to determine exactly which pages were requested for admission by the Praljak Defence, as the pages of the original document in BCS² did not correspond to the pages requested for admission in the English version,³

CONSIDERING that neither the other Defence teams nor the Office of the Prosecutor filed a response to the Motion,

CONSIDERING that in support of the Motion, the Praljak Defence argues that Exhibit 3D 02653 is an excerpt from a book; that the Excerpts numbered 3D33-1848 and 3D33-1849 were requested for admission in the Original Motion insofar as they correspond to the title page and the cover page of this book; that Excerpt number

¹ Order, p. 6.

² 3D33-1848, 3D33-1849 and 3D33-1851.

³ 3D37-0550.

3D33-1851 and its English translation under number 3D37-0550 originate from this book,⁴

CONSIDERING that the Praljak Defence argues that in the Original Motion, it requested the admission of the Excerpts numbered 3D33-1848 and 3D33-1849 to facilitate the work of the Chamber because the said Excerpts would allow it to authenticate the book from which Excerpt 3D33-1851 in BCS and Excerpt 3D37-0550 in English were taken,⁵

CONSIDERING that in order to avoid any confusion, the Praljak Defence presently seeks to withdraw its request for admission and reconsideration of the Order as it relates to the refusal of the Excerpts numbered 3D33-1848 and 3D33-1849; that the Praljak Defence requests that the Chamber reconsider only the admission of the Excerpt numbered 3D33-1851 in BCS and the Excerpt numbered 3D37-0550 in English,⁶

CONSIDERING, as a preliminary matter, that the Chamber takes note of the fact that the Praljak Defence no longer seeks the admission of the Excerpts numbered 3D33-1848 and 3D33-1849 and that the Motion is therefore not relevant to these Excerpts,

CONSIDERING however that the Chamber finds that the Praljak Defence had nonetheless rightly conformed to Guideline 8 of the Decision Adopting Guidelines for the Presentation of Defence Evidence of 28 April 2008 ("Guideline 8") by requesting the admission of the Excerpts numbered 3D33-1848 and 3D33-1849, but that its request was denied in the Order because it had failed to provide translations of the said Excerpts,

CONSIDERING that in the present case, the Praljak Defence, which should have also included in its Motion the Excerpts that it was withdrawing, seized the Chamber only of Excerpts numbered 3D33-1851 and 3D37-0550,

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may allow a request for reconsideration if the requesting party

⁴ Motion para. 3.

⁵ Motion, para. 3.

demonstrates to the Chamber that the impugned decision contains a clear error of reasoning or that particular circumstances, which can be new facts or arguments,⁷ justify its reconsideration in order to avoid injustice,⁸

CONSIDERING that the Chamber notes that the English translation under number 3D37-0550 only partly corresponds to the BCS original under number 3D33-1851 and that the Praljak Defence did not indicate which passages of the translation correspond to the original,

CONSIDERING that the Chamber notes furthermore that pursuant to Guideline 8, a party requesting the admission of an excerpt from a document must also request admission of the title page of the said document and its translation into one of the Tribunal's working languages,

CONSIDERING that, as noted above, the Praljak Defence does not seek the admission of the Excerpts corresponding to the title page of Exhibit 3D 02653⁹ and that they are not part of the Motion; that the Chamber notes that in any event, the translations of these pages are not in *ecourt*,

CONSIDERING that, in view of the above, the Chamber is not able to assess whether the Excerpts contain sufficient indicia of probative value and relevance and that, therefore, it is appropriate to deny the Motion,

⁶ Motion, p. 1.

⁷ *The Prosecutor v. Stanislav Galić*, Case no. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing *The Prosecutor v. Laurent Semanza*, Case no. ICTR-97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8.

⁸ *The Prosecutor v. Stanislav Galić*, Case no. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing, *inter alia*, *The Prosecutor v. Zdravko Mucić et al.*, Case no. IT-96-21A-Bis, Appeals Judgement on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case no. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 *bis*, 19 October 2006, p. 4.

⁹ Pages 3D33-1848 and 3D-1849 of Exhibit 3D 02653.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixteenth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]