



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: 11 November 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

**Registrar:** Mr John Hocking

**Decision of:** 11 November 2009

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON PRALJAK DEFENCE MOTION TO ADMIT EVIDENCE  
PURSUANT TO RULE 92 *QUATER***

**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 Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

## I. INTRODUCTION

1. 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") is seized of "Slobodan Praljak's Motion for Admission of Evidence Pursuant to Rule 92 *quater*", accompanied by 7 annexes, filed publicly by Counsel for the Accused Slobodan Praljak ("Praljak Defence") on 22 September 2009 ("Motion"), in which the Praljak Defence requests that the Chamber admit into evidence, pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence ("Rules"), written statements of four Witnesses ("Witnesses"), Mahmud Eid (3D 03679), Juraj Njavro (3D 03618), Ljubo Perić (3D 03735)<sup>1</sup> and Fatima Tanović (3D 03652).

## II. PROCEDURAL BACKGROUND

2. At the hearing of 22 September 2009, the Chamber issued an oral decision granting a motion from the Office of the Prosecutor ("Prosecution") for an extension of the deadline to respond to the Motion and allowed it to file its response by 28 October 2009.<sup>2</sup>

3. On 28 September 2009, the Praljak Defence publicly filed "Slobodan Praljak's Addendum to the Motion for Admission of Evidence Pursuant to Rule 92 *quater*" ("Addendum"), in which it filed the death certificate of Ljubo Perić.

4. On 28 October 2009, the Prosecution filed the "Prosecution Combined Response to Slobodan Praljak's Two Motions for Admission of Written Evidence in lieu of Viva Voce Testimony pursuant to Rule 92 *bis* and Motion for Admission of Evidence pursuant to Rule 92 *quater*" ("Response"), in which the Prosecution objects to the admission of the four written statements.

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<sup>1</sup> Contrary to what the Praljak Defence indicated in its Motion, the statement from Ljubo Perić bears the number 3D 03735 and not the number 3D 03628.

<sup>2</sup> French Transcript, 22 September 2009, pp. 45154-45155.

### III. ARGUMENTS OF THE PARTIES

5. In support of its Motion, the Praljak Defence argues that (1) the written statements were made by persons who are now deceased;<sup>3</sup> (2) these written statements were certified, which increases their reliability and probative value;<sup>4</sup> (3) if a Rule 92 *quater* statement goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor against its admission, but not a bar to it;<sup>5</sup> (4) the written statements do not go to either the acts or the conduct of the Accused as charged in the Amended Indictment of 11 June 2008 (“Indictment”);<sup>6</sup> (5) the Trial Chamber reserves a final assessment of the relevance and probative value of the evidence for the conclusion of the trial, and any doubts expressed by the Chamber in that respect should not prohibit the admission of the statements.<sup>7</sup>

6. In its Response, the Prosecution argues that (1) the statement of Mahmud Eid (3D 03679) may only be admitted if it goes to proof of any of the factors set out in Rule 92 *bis* (A) (i), (d) or (f); it is not admissible if it goes to proof that the Accused was not engaged in the joint criminal enterprise and that he did not have the character, pattern of behaviour or state of mind to incur the forms of liability specifically alleged in the Indictment;<sup>8</sup> (2) the written statement from Juraj Njavro (3D 03618) is not admissible to the extent that it relates to redundant facts, namely the issue of Croatian assistance to the Republic of BH, which has been dealt with via other witnesses and exhibits;<sup>9</sup> (3) the statements from witnesses Ljubo Perić (3D 03735) and Fatima Tanović (3D 03652) are not admissible to the extent as they directly relate to the acts and conduct of the Accused; consequently, they cannot be admitted under Rule 92 *quater* (B) of the Rules;<sup>10</sup> (4) with regard to all of the written statements, the Praljak Defence should provide paragraph numbers to make it evident which parts of the statements the Motion refers to.<sup>11</sup>

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<sup>3</sup> Motion, para. 4.

<sup>4</sup> Motion, para. 5.

<sup>5</sup> Motion, para. 6.

<sup>6</sup> Motion, para. 6.

<sup>7</sup> Motion, para. 7.

<sup>8</sup> Response, paras. 22-24 and Annex A, p. 79.

<sup>9</sup> Response, para. 26 and Annex A, p. 79.

<sup>10</sup> Response, paras. 22 to 24 and Annexe A, pp. 79 and 80.

<sup>11</sup> Response, paras. 29 to 32.

#### IV. DISCUSSION

7. The Chamber will recall as a preliminary matter the conditions for the application of Rule 92 *quater* of the Rules (A). Subsequently, it will decide with regard to these conditions whether it is suitable to admit the written statements of the four Witnesses (B).

##### A. Applicable Law

8. Rule 92 *quater* of the Rules provides that:

- A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:
- i) is satisfied of the person's unavailability as set out above; and
  - ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
- B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

9. The Chamber recalls that Rule 92 *quater* of the Rules provides for a system of admission of evidence that is autonomous and distinct from Rule 92 *bis* of the Rules. Therefore, admission of a written statement or a transcript of testimony of a person who is not available for reasons set out in Rule 92 *quater* is to be determined solely pursuant to the conditions set out in Rule 92 *quater* and not those set out in Rule 92 *bis* of the Rules.

10. Firstly, the Chamber must consider whether it is satisfied that the authors of the statements are unavailable for the reasons set out in Rule 92 *quater* (A) of the Rules.

11. Secondly, the Chamber must ask itself whether the evidence contained in the written statements is reliable, considering the circumstances under which they were taken.<sup>12</sup> In this respect, the Chamber will notably take into consideration the following indicia of reliability: the fact that the statements were given under oath, that they were subject to cross-examination, and that they were corroborated by other evidence.<sup>13</sup>

12. Thirdly, the Chamber will decide, by virtue of its discretionary power in the case, whether it will admit the written statements in question. Within its consideration, the Chamber will take into account several factors. Firstly, as provided for in Rule 89 (C) of the Rules: “A Chamber may admit any relevant evidence which it deems to have probative value.” Consequently, the Chamber will consider whether the written statements bear some relevance and probative value. The Chamber notes however that reliability will not be reconsidered at this stage since it has already been considered previously within the scope of Rule 92 *quater* (A) (ii) of the Rules.

13. Finally, the Chamber will inquire whether the written statements in question contain a reference to the acts and conduct of the Accused charged in the Indictment. Furthermore, the Chamber will inquire whether the written statements in question go to proof of a critical element in this case.<sup>14</sup> The Chamber is of the opinion that the latter factor, like the circumstance that a testimony goes to proof of the acts and conduct of an accused, may be factors against the admission of such evidence.

### **B. Consideration of the Merits**

14. As a preliminary matter, the Chamber notes that in its Motion, the Praljak Defence marked the written statement of Ljubo Perić as 3D 03628 but it could not be found on the e-court system under this number. The Chamber notes that the actual number given to this statement is 3D 03735.

<sup>12</sup> According to Tribunal jurisprudence, “reliability [...] depends upon whether the evidence, if accepted, proves the fact to which it is directed”: *The Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-Abis, 8 April 2003, para. 57 citing *The Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T & 96-23/1-T, “Decision on Acquittal”, 3 July 2000, para. 7.

<sup>13</sup> *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.5 “Decision on Appeal Regarding Statement of a Deceased Witness”, 21 July 2000, para. 27.

<sup>14</sup> *The Prosecutor v. Sikirica et al.* Case No. IT-95-8-T “Decision on Prosecution’s Application to Admit Transcripts under Rule 92 *bis*”, 23 May 2001, paras 4 and 35. See also *The Prosecutor v.*

15. The Chamber notes that as they are deceased,<sup>15</sup> the Witnesses are unavailable pursuant to Rule 92 *quater* of the Rules. The Chamber will therefore base its consideration of reliability indicia on the written statements and the other factors that may justify, or go against, their admission as set out above in light of the arguments of the Parties.

16. The Chamber notes that the written statements were obtained in different ways. The statement of Mahmud Eid (3D 03679) is not certified, but nevertheless bears a certificate signed by the witness in which he asserts that he is indeed the author of the statement. Furthermore, the statements of Witnesses Juraj Njavro (3D 03618) and Ljubo Perić (3D 03735) were respectively certified before a notary in Zagreb and in Mostar, while the statement of Fatima Tanović (3D 03652) was certified before a judge of Ljubuški municipality. The Chamber therefore considers that there are sufficient indicia of reliability to admit them.

17. After having analysed the testimony of Mahmud Eid (3D 03679), the Chamber notes that he describes the situation of the Croatian army in Sunja in the Republic of Croatia between September 1991 and February 1992, that is to say the period during which the Accused Praljak had arrived to this territory. The written statement provides information regarding the pattern of behaviour and state of mind of the Accused Praljak. It is therefore relevant to this case since it relates notably to paragraphs 15 to 17, 17.3, 218 and 228 of the Indictment. The Chamber further notes that the statement is corroborated by the testimony of Alojz Arbutina, who already testified before the Chamber. The written statement is therefore reliable and relevant.

18. After having analysed the testimony of Juraj Njavro (3D 03618), the Chamber notes that it concerns the relations between the Republic of Croatia and the Republic of BH in 1992 and 1993, in particular the assistance of the Croatian authorities to the population and authorities of BH, the assistance to refugees and the support of the Republic of Croatia to BH in the latter's dealings with international organisations. The written statement is therefore relevant to the present case since it relates to the role of the Republic of Croatia in the events alleged in the Indictment, for example, as set out in paragraph 232 of the Indictment. The Chamber further notes that this statement is

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*Slobodan Milošević*, Case No. IT-02-54-T, "Decision on Prosecution Motion to Have Written Statements Admitted under Rule 92 *bis*", 21 March 2002, para.7.

corroborated by witnesses Martin Raguž and Ante Kvesić, who already testified before the Chamber, and by the testimony of the Accused Slobodan Praljak. Moreover, the Chamber cannot accept the Prosecution's argument that the information derived from Njavro Juraj's statement regarding co-operation between the Republic of Croatia and the Republic of BH is redundant with regard to the testimonies and exhibits already admitted in the present case.<sup>16</sup> The Chamber notes in effect that the assistance of the Republic of Croatia to the Republic of BH, which is the subject of this statement, relates both to 1993 and 1992 and provides certain facts regarding the Republic of Croatia's cooperation with the Republic of BH on the political level, which are facts that have a certain relevance, notably to paragraph 23 of the Indictment. The Chamber therefore deems the written statement to be reliable and relevant.

19. Regarding the statements from Ljubo Perić and Fatima Tanović, the Chamber notes that in its Response, the Prosecution submits that the statements from Witnesses Ljubo Perić and Fatima Tanović are not admissible since they relate directly to the acts and conduct of the Accused and that therefore, they cannot be admitted under Rule 92 *quater* (B) of the Rules.<sup>17</sup> Nevertheless, the Chamber recalls that as opposed to Rule 92 *bis*, Rule 92 *quater* of the Rules does not exclude that a Trial Chamber may admit a written statement even when it goes to proof of acts and conduct of an accused. The Chamber further notes that witnesses Ljubo Perić and Fatima Tanović are more character witnesses than witnesses with real information on the acts and conduct of the Accused.

20. After having analysed the statement from Ljubo Perić (3D 03735), the Chamber notes that it relates to the issue of the protection of the Old Bridge in Mostar on 8 June 1992, and in particular to the attitude of Slobodan Praljak with regard to this bridge. The written statement is therefore relevant to the present case since it contributes facts that could be analysed pursuant to paragraph 116 of the Indictment and the Prosecution's allegations regarding Slobodan Praljak's role in the joint criminal enterprise with respect to this issue. The statement is furthermore corroborated by the testimony of the Accused Slobodan Praljak, who already testified before the Chamber.

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<sup>15</sup> Motion, Annexes 4, 5 and 7; Addendum, Annex A.

<sup>16</sup> Response, para. 26.

<sup>17</sup> Response, paras 22 and 23.

21. Finally, after having analysed the statement of Fatima Tanović (3D 03652), the Chamber notes that it contains facts that relate to the Accused Praljak's state of mind in January 1994 and that the statement relates to paragraphs 15 to 17 and 17.3 of the Indictment. Furthermore, it is corroborated by the testimony of the Accused Praljak, who testified before the Chamber. The written statement is therefore reliable and relevant.

22. In any case, the Chamber recalls that at this stage, it will not proceed with a final evaluation of the relevance, reliability and probative value of these written statements. This evaluation will be done during the final deliberations in light of all the exhibits tendered into evidence.

23. Likewise, the Chamber is of the opinion that these written statements do not go to proof of facts that are so fundamental to the case that allowing their admission would be prejudicial to the Prosecution as it would be unable to cross-examine the authors of these statements.

24. In conclusion, the Chamber deems that these statements are admissible pursuant to Rule 92 *quater* of the Rules and Rule 89 (C) of the Rules and admits the written statements of Witnesses Mahmud Eid (3D 03679), Juraj Njavro (3D 0618), Ljubo Perić (3D 03735) and Fatima Tanović (3D 03652).

25. Alternatively, the Chamber notes that none of the written statements tendered for admission have numbered paragraphs and that this omission, for practical purposes, results in a needless consumption of time when it can be easily circumvented. The Chamber therefore asks the Praljak Defence to number the paragraphs in the present statements and invites the Parties in the future to submit to the Chamber duly numbered written statements.

**V. DISPOSITION**

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rules 89 (C) and 92 *quater* of the Rules,

**GRANTS** the Motion and admits into evidence the written statements of witnesses Mahmud Eid, Juraj Njavro, Ljubo Perić and Fatima Tanović, bearing the numbers 3D 03679, 3D 03618, 3D 03735 and 3D 03652, respectively.

**ASKS** the Praljak Defence to ensure, in cooperation with the Registrar, that the written statements of the Witnesses uploaded onto *ecourt* contain numbered paragraphs.

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

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this eleventh day of November 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**