



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: 9 December 2010
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: 9 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PRALJAK DEFENCE REQUEST FOR
CERTIFICATION TO APPEAL THE DECISION OF 23 NOVEMBER 2010
(reopening of the case)**

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 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 “Slobodan Praljak’s Request for Certification to Appeal the 23 November 2010 *Décision Portant sur la Requête de la Défense Praljak en Réouverture de sa Cause*”, filed publicly by the Counsel of the Accused Slobodan Praljak (“Praljak Defence”; “Accused Praljak”) on 29 November 2010 (“Request”), in which the Praljak Defence asks the Chamber to certify the appeal it plans to lodge against the “Decision on Praljak Defence Motion to Reopen its Case”, rendered publicly on 23 November 2010 (“Decision of 23 November 2010”) and, consequently, to modify the deadline for the filing of final briefs to four weeks after the conclusion of the appellate proceedings concerning the decision in question,¹

NOTING the Decision of 23 November 2010, in which the Chamber rejected the admission of 24 exhibits requested for admission by the Praljak Defence, and refused to authorise the *viva voce* testimony of the Accused Praljak within the context of his request for reopening aimed at refuting the exhibits admitted in favour of the Prosecution by the “Decision on the Prosecution’s Motion to Re-Open Its Case”, rendered publicly on 6 October 2010 (“Decision of 6 October 2010”),²

CONSIDERING that the Office of the Prosecutor (“Prosecution”) informed the parties in the e-mail of 29 November 2010 that it was not planning to file a response to the Request,

CONSIDERING, firstly, that the Praljak Defence submits that the Chamber committed “egregious and inexplicable” errors in its Decision of 23 November 2010, which could affect the fair and expeditious conduct of the proceedings,³ that, in support of its Request, it brings forth six grounds of appeal and, more specifically, argues that (1) the Chamber did not justify its refusal to authorise the Accused Praljak’s *viva voce* testimony about the statements attributed to him, which appeared

¹ Request, paras 1, 2 and 39.

² Decision of 23 November 2010, p. 14.

³ Request, paras 3, 6 and 7.

in the exhibits admitted by the Decision of 6 October 2010 and which could be qualified as hearsay,⁴ and that this refusal by the Chamber constitutes proof of a “peculiar lack of curiosity by the majority into the truth of the matter”;⁵ (2) that the Decision in question erroneously gives the same weight to the sworn testimony of an Accused as it does to the written and oral exhibits, such as the closing arguments;⁶ (3) that the Chamber failed to justify its rejection of the Accused Praljak's oral testimony within the context of his request for reopening and that such refusal serves as an example of the “naked expression of power” of the Chamber;⁷ (4) that, in the Decision of 23 November 2010, the Chamber applied “an unequal, unfair and nonsensical” standard to the Praljak Defence in the matter of the refuting of the exhibits admitted by the Decision of 6 October 2010;⁸ (5) that the Decision of 23 November 2010 seems to “reward” the Prosecution because, had the Prosecution been able to present the Mladić Diary during the presentation of its case, the Accused Praljak would have had the opportunity to request the admission of rebuttal exhibits, which would have been subject to a different admissibility criterion and that this Decision suggests that the Chamber “punished” the Praljak Defence for the behaviour of the Serbian police and their failure to provide an explanation for the delayed search of Ratko Mladić's domicile⁹ and (6) that the Chamber failed to justify the rejection of the exhibits requested for admission by the Praljak Defence,¹⁰

CONSIDERING, secondly, that the Praljak Defence posits that the immediate resolution of these issues by the Appeals Chamber, in particular that of “restrictive and unjustified” standards applied by the Trial Chamber to the admission of evidence in the case in point, could materially advance the proceedings,¹¹

CONSIDERING that the Chamber notes, in the Request, that the Praljak Defence, in the main, merely questions the use by the Chamber of its discretionary powers in the Decision of 23 November 2010; that it simply argues that the Chamber omitted to justify the rejection of the exhibits requested for admission by the Praljak Defence within the context of the reopening of its case; that it speculates on the intentions the

⁴ Request, paras 8-15.

⁵ Request, para. 14.

⁶ Request, paras 16-21.

⁷ Request, paras 22-26.

⁸ Request, paras 27-32.

⁹ Request, paras 33 and 34.

¹⁰ Request, para. 35.

Chamber might have had while reaching its decision and that, on many occasions, it uses accusatory language towards the Chamber which is highly inappropriate to judicial propriety and argument,

CONSIDERING that the Chamber is convinced of the reasonable character of the Decision of 23 November 2010; that it believes to have sufficiently justified the Decision based on the criteria for the reopening of a case established by the Tribunal's case-law and recalled on several occasions by the Chamber;¹² that, with regard to that, it specifically recalls that it invited the Praljak Defence to complete its request for reopening in order to make sure that the latter respected the criteria for reopening explicitly set out by the Chamber; that it believes that the Praljak Defence failed to show that the subject of the Request constitutes an issue which might noticeably compromise the fair and expeditious conduct of the proceedings, or the outcome of the trial and that the immediate resolution of this issue by the Appeals Chamber could materially advance the proceedings and has, consequently, decided to reject the Request.

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 54 and 73 (B) of the Rules of Procedure and Evidence,

REJECTS the request for certification to appeal the Decision of 23 November 2010 filed by the Praljak Defence for the reasons set out in this Decision,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

¹¹ Request, paras 36-38.

¹² In this sense see, in particular, the Decision of 6 October 2010, para. 64, the "Decision on Bruno Stojić's Motion For Certification to Appeal the Decision on the Re-Opening of the Prosecution Case and Clarifying the Decision of 6 October 2010", rendered publicly by the Chamber on 27 October 2010, pp. 5 and 7-9, and the "Decision on Petković Defence Request for Certification To Appeal the Decision on Prosecution Motion To Reopen Its Case", rendered publicly by the Chamber on 1 November 2010, p. 7.

Done this ninth day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]