



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: 3 July 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

**Order of:** 3 July 2009

**THE PROSECUTOR**

v.

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

***CONFIDENTIAL***

**ORDER APPOINTING AN AMICUS CURIAE**

**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

**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”);

***PROPRIO MOTU***

**NOTING** “Jadranko Prlić’s Motion for the Admission of Documentary Evidence”, to which three annexes are attached (“Motion of 5 December 2008”), filed publicly on 5 December 2008 by Counsel for the Accused Prlić (“Prlić Defence”),<sup>1</sup> in which the Prlić Defence requested the admission into evidence of 1135 documents, more than 300 of whose sources were not identified by the Prlić Defence, contrary to what is required by Guideline 9,<sup>2</sup>

**NOTING** the “Decision on Prlić Defence Motion for the Admission of Documentary Evidence”, rendered publicly by the Chamber on 19 December 2008, in which the Chamber found that the Prlić Defence had failed to identify the source for a certain number of documents requested for admission, without however requesting protective measures for them, and directed the Prlić Defence to submit a formal request for protective measures for these documents,

**NOTING** “Jadranko Prlić’s Motion for Protective Measures of Certain Documents & Additional Classification of Certain Subjects Included in the Motion for Admission of Documentary Evidence”, filed publicly by the Prlić Defence on 4 January 2009, in which the Prlić Defence still does not reveal the identity of the sources of the documents, but requests that the Chamber grant it leave to use a pseudonym to designate the sources who had given documents to the Prlić Defence from their private archives, provided that their identity remains confidential (“Request for Protective Measures”),

---

<sup>1</sup> It is appropriate to note that by the “Order on the Confidentiality of a Motion Filed Publicly by the Prlić Defence”, issued confidentially on 27 January 2009, the Chamber ordered that the Motion and its Annexes be made confidential and requested that the Prlić Defence file, no later than 3 February 2009, a new public motion for admission in which any reference to a witness enjoying protective measures was to be redacted. On 28 January 2009, the Prlić Defence filed “Jadranko Prlić’s Public Revised Version of the Motion for the Admission of Documentary Evidence”, to which three annexes were attached.

<sup>2</sup> “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered publicly on 24 April 2008, Guideline 9 relating to the admission of documentary evidence by way of written motion, a. ii., (“Guideline 9”).

**NOTING** the “Decision on Prlić Defence Motion for Admission of Documentary Evidence” (“Decision of 6 March 2009”), rendered publicly by the Chamber on 6 March 2009, in which the Chamber considered in particular that the admission of documents with an anonymous source was not possible, given the dearth of information provided by the Prlić Defence in support of the Motion for Protective Measures, and rejected the documents which were requested for admission and whose source had therefore not been disclosed to the Chamber, or to the other parties,<sup>3</sup>

**NOTING** “Jadranko Prlić’s Motion for Reconsideration of the Decision on Prlić Defence Motion for Admission of Documentary Evidence”, filed confidentially by the Prlić Defence on 8 May 2009 (“Motion of 8 May 2009”), to which 11 Confidential Annexes are attached, in which the Prlić Defence maintained its position that the identity of the sources who had provided some of the documents requested for admission had to be kept secret, including from the Chamber and the other parties, and, in addition, announced that it was able to persuade several sources to allow it to disclose their identity and persuade several persons to verify the source of the documents based on their official knowledge of their origin,<sup>4</sup> and provides statements from these persons in Annex IX attached to the Motion of 8 May 2009,

**NOTING** the oral decision rendered by the Chamber during the hearing of 8 June 2009 (“Oral Decision of 8 June 2009”), in which the Chamber, after discovering that certain sources whose identity had been disclosed in the Motion of 8 May 2009 were witnesses for the Prlić Defence, requested that the Prlić Defence explain why the witnesses who testified in open session without any protective measures had, according to the Prlić Defence, refused to have it revealed that they provided certain documents to the Prlić Defence which were the subject of the Decision of 6 March 2009, and now accepted that their connection with the documents in question, and thus their identities, be disclosed,<sup>5</sup>

**NOTING** “Jadranko Prlić’s Supplemental Submission to His 8 May 2009 Motion for Reconsideration Pursuant to the Trial Chamber’s Oral Instructions of 8 June 2009”, filed confidentially by the Prlić Defence on 10 June 2009, in which it explains in general the reasons why the identity of its sources could not be and could not have

---

<sup>3</sup> Decision of 6 March 2009, paras 20 to 26 and Annex.

<sup>4</sup> Motion, para. 14.

<sup>5</sup> Hearing of 8 June 2009, Transcript in French (“T(F)”) pp. 41289-41290 (private session).

been revealed without the consent of the said sources, without however responding to the question specifically asked by the Chamber,

**CONSIDERING** that the Chamber finds that the Prlić Defence persisted in its wish to request the admission of documents by way of written motion, without however revealing the source and, thus, origin of these documents, despite the repeated requests from the Chamber and reminders as to the procedure to follow,

**CONSIDERING** that the Chamber notes that when the Prlić Defence finally disclosed the identity of some of its sources that had been kept secret, some of them turned out to be witnesses for the Prlić Defence who had testified before the Chamber in open session, in the absence of any protective measures,

**CONSIDERING** that the Chamber notes that when the Prlić Defence was asked for explanations about this situation by way of the Chamber's Oral Decision of 8 June 2009, the Prlić Defence merely reiterated the vague and general arguments that it had previously put forward in its various submissions, without really answering the question specifically asked by the Chamber,

**CONSIDERING** that the Chamber questions whether such conduct on the part of the Prlić Defence is compatible with the Rules of Procedure and Evidence ("Rules") and the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal ("Code of Conduct"),

**CONSIDERING** that the Chamber deems it necessary to have the opinion of an amicus curiae on the implications that such conduct could have, and wishes to ask the amicus curiae the following questions:

- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that a Defence Counsel repeatedly refuses to disclose to the Chamber and the parties the sources of documents requested for admission by way of written motion, on the ground that the safety of the sources would, in general, be jeopardized by such disclosure?
- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that this Counsel ultimately discloses the identity of some of these sources, after several

reminders from the Chamber, without giving any satisfactory explanation justifying this late disclosure, and without seeking any request for protective measures for these sources?

- To what extent may a violation, misconduct or contempt on the part of the Defence Counsel, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that some of these sources ultimately turn out to be witnesses for the Prlić Defence who testified in open session in the absence of any protective measures, several months before the request, by way of written motion, for the admission of the documents at issue?

**FOR THE FOREGOING REASONS,**

**PURSUANT** to Rule 74 of the Rules,

**ORDERS** the appointment of the Amicus Committee of the Association of Defence Counsel Practicing before the Tribunal as amicus curiae,

**REQUESTS** that the amicus curiae respond to the following questions:

- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that a Defence Counsel repeatedly refuses to disclose to the Chamber and the parties the sources of documents requested for admission by way of written motion, on the ground that the safety of the sources would, in general, be jeopardized by such disclosure?

- To what extent may a violation, misconduct or contempt, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that this Counsel ultimately discloses the identity of some of these sources, after several reminders from the Chamber, without giving any satisfactory explanation justifying this late disclosure, and without seeking any request for protective measures for these sources?

- To what extent may a violation, misconduct or contempt on the part of the Defence Counsel, within the meaning of the Code of Conduct and/or the Rules, be constituted by the fact that some of these sources ultimately turn out to be

witnesses for the Prlić Defence who testified in open session in the absence of any protective measures, several months before the request, by way of written motion, for the admission of the documents at issue?

**AUTHORIZES** the amicus curiae to have access to all of the submissions and decisions cited in the present decision, be they confidential or public, **AND**,

**REQUESTS** that the amicus curiae file a report with the Chamber within one month of the date of issue of the present decision.

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

*/signed/*

---

Judge Jean-Claude Antonetti  
Presiding Judge

Done this third day of July 2009

At The Hague

The Netherlands

**[Seal of the Tribunal]**