

**UNITED
NATIONS**



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: 8 July 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: 8 July 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER CLARIFYING 92 *BIS* DECISION AND ORDER OF 17 MARCH 2010

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”),

SEIZED of “Slobodan Praljak’s Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*”, filed publicly with four confidential annexes by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 14 September 2009, in which the Praljak Defence asks the Chamber to allow it to tender into evidence the written statements and transcripts¹ of 155 witnesses pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Motion of 14 September 2009”, “Rules”),

NOTING the “Decision on Slobodan Praljak’s Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules”, rendered confidentially by the Chamber as a majority on 16 February 2010 (“92 *bis* Decision”), in which the Chamber ordered the Praljak Defence to file, within three weeks, a maximum of 20 written statements and transcripts that meet the admissibility criteria of Rule 92 *bis*, and that, with regard to the written transcripts, do not exceed a maximum of 30 pages,²

NOTING the “Order on Request of Praljak Defence Seeking a Stay on the Time Limit Ordered by the Chamber for Filing 20 Written Statements or Transcripts of Evidence Pursuant to Rule 92 *bis* of the Rules”, rendered publicly by the Chamber as a majority on 17 March 2010 (“Order of 17 March 2010”), in which the Chamber decided to extend the original time limit of three weeks to file the 20 written statements or transcripts ordered in the 92 *bis* Decision,³

NOTING the “Decision on Praljak Defence Requests for Certification to Appeal the Decisions of 16 February and 17 March 2010”, rendered publicly on 1 April 2010, in which the Chamber certified the appeals to the 92 *bis* Decision and the Order of 17 March 2010,

¹ The Chamber specifies that the terms “transcripts” and “transcript of evidence” are used interchangeably.

² 92 *bis* Decision, para. 38 and p. 20.

³ Order of 17 March 2010, p. 4.

NOTING the “Decision on Slobodan Praljak’s Appeal of the Trial Chamber’s Refusal to Decide Upon Evidence Tendered Pursuant to Rule 92 *bis*”, rendered publicly by the Appeals Chamber on 1 July 2010 (“Appeals Chamber Decision”), in which the Chamber partially granted the appeal lodged by the Praljak Defence and decided to send back the 92 *bis* Decision and the Order of 17 March 2010 to the Chamber for clarification with regard to the 30-page limit imposed by the Chamber,

CONSIDERING that the Appeals Chamber notably concluded that the Trial Chamber erred in the 92 *bis* Decision and the Order of 17 March 2010 when it imposed a limit on the number of pages of the exhibits that the Praljak Defence wished to seek for admission pursuant to Rule 92 *bis* and that it did so without providing sufficient justification; that it deems, furthermore, that the 92 *bis* Decision is not sufficiently clear as it does not specify if the page limit applies to the statements and/or transcripts and if it refers to the BCS and/or the English version of the exhibits,⁴

CONSIDERING that the Chamber, in accordance with the Decision of the Appeals Chamber, presently clarifies the formal elements incumbent upon the Praljak Defence when seeking exhibits for admission pursuant to Rule 92 *bis*,

CONSIDERING that for the purposes of clarification, the Chamber specifies that the maximum 30-page limit will apply only to the written statements requested for admission by the Praljak Defence pursuant to Rule 92 *bis* and not to the transcripts;⁵ that in this respect, the Chamber specifies that this limit applies to the maximum number of pages from the English versions of the written statements that will be sought for admission by the Praljak Defence and not to the length of the written statements as such; that the Praljak Defence may, therefore, seek the admission of 30 pages of the English version of a written statement that itself contains more pages; that it is appropriate only in those cases where the English version of a written statement contains more than 30 pages that the Praljak Defence choose which paragraphs in that written statement it seeks to have admitted into evidence,

CONSIDERING that the Chamber was forced to impose such a limitation considering the excessive length of some of the written statements sought for

⁴ Appeals Chamber Decision, para. 38.

⁵ 92 *bis* Decision, para. 37.

admission by the Praljak Defence in the Motion of 14 September 2009 and covered by the 92 *bis* Decision;⁶ that this limitation was also justified by the repetitive or in some cases redundant nature of certain paragraphs in the written statements sought for admission; that, moreover, this was also raised in the 92 *bis* Decision of 25 April 2008;⁷ that with this limitation, the Chamber also wishes to encourage the Praljak Defence to make a rigorous selection that would meet the formal elements laid down by Rule 92 *bis* and recalled in the 92 *bis* Decision; that, furthermore, the Chamber notes that this limitation does not treat the Praljak Defence differently from the Prosecution as the Chamber has not admitted any 92 *bis* statements exceeding 25 pages filed by the Prosecution and that in any case, this limitation allows for both the parties and the Chamber to save funds and time,

CONSIDERING that the Chamber notes, furthermore, that the majority of the written statements sought for admission by the Praljak Defence pursuant to Rule 92 *bis* and contained in the Motion of 14 September 2009 are less than 30 pages, and that this obligation to seek the admission of statements not exceeding a 30-page maximum will only affect a small number of written statements that are unreasonably long,

CONSIDERING, nevertheless, that the Chamber could show a certain flexibility towards the Praljak Defence and the number of pages imposed; that, nevertheless, this flexibility is only feasible if the Praljak Defence offers a specific justification for exceeding the number of pages allowed by the Chamber and that such a motion remains the exception,

CONSIDERING that the Chamber also deems it necessary to recall more specifically that all of the written statements and transcripts sought for admission pursuant to Rule 92 *bis* of the Rules must have those paragraphs relating to the acts and conduct of the accused as alleged in the Amended Indictment of 11 June 2008 (“Indictment”)

⁶ 92 *bis* Decision, footnotes 67 and 68. As an additional example, the Chamber notes that the written statement marked as 3D 03726 mentioned in the Motion of 14 September 2009 contains 103 pages. Furthermore, the Chamber draws the attention of the Praljak Defence to the fact that in its previous decisions it had refused to admit documents that were unreasonably long, *see* notably the “Decision on Praljak Defence Motion for Admission of Documentary Evidence”, public, 1 April 2010, para. 44 and the “Decision on Praljak Defence Request for Reconsideration, or in the Alternative, for Certification to Appeal the Decision on Slobodan Praljak’s Motion for Admission of Documentary Evidence”, public, 11 June 2010, paras 30 and 31.

⁷ 92 *bis* Decision, para. 35; “Decision Allocating Time to the Defence to Present its Case”, filed publicly on 25 April 2008 (“Decision of 25 April 2008”), para. 31.

redacted, and directs the Praljak Defence on this point to paragraphs 40 to 46 of the 92 *bis* Decision,⁸

CONSIDERING that the Chamber also deems it appropriate to recall that it is incumbent upon the Praljak Defence to exercise particular vigilance when selecting written statements or transcripts that it seeks for admission pursuant to Rule 92 *bis*, notably in order to exclude excerpts of the said written statements or transcripts that are repetitive in nature or deal with issues identified as being irrelevant; that the Chamber directs the Praljak Defence on this point to paragraphs 35 and 48 of the 92 *bis* Decision and to paragraph 31 of the Decision of 25 April 2008,⁹

CONSIDERING that the Chamber takes advantage of this clarification to communicate a new schedule regarding the filing of 20 exhibits sought for admission by the Praljak Defence pursuant to Rule 92 *bis* and grants it a period of fifteen days, from the date of filing of the present order, to file a maximum of 20 written statements or transcripts that meet the admissibility criteria of Rule 92 *bis* of the Rules,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 92 *bis* of the Rules.

CLARIFIES the 92 *bis* Decision and the Order of 17 March 2010 in that the obligation imposed on the Praljak Defence to respect the 30-page limit for the exhibits that it seeks to file pursuant to Rule 92 *bis* of the Rules relates only to the written statements sought for admission pursuant to Rule 92 *bis* of the Rules,

DIRECTS the Praljak Defence to bear in mind the formal and substantive requirements laid down by Rule 92 *bis* of the Rules and recalled in the 92 *bis* Decision and the Order of 17 March 2010, and clarified in this Order, when selecting a maximum of 20 written statements, whose full version in English or excerpts of its version in English do not exceed the 30-page maximum, and transcripts,

⁸ 92 *bis* Decision, paras 40-46.

⁹ 92 *bis* Decision, para. 35; Decision of 25 April 2008, para. 31.

DIRECTS the Praljak Defence to identify the numbers of the relevant paragraphs in both the BCS and English versions of the written statements and the relevant page numbers of either the English or French versions of the transcripts, **AND**

GRANTS the Praljak Defence a 15-day period, from the date that this Order is filed, to file a maximum of 20 written statements or transcripts that meet the admissibility criteria of Rule 92 *bis* of the Rules,

Presiding Judge Jean-Claude Antonetti attaches a separate and concurring opinion to this Order.

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this eighth day of July 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

**SEPARATE AND CONCURRING OPINION OF PRESIDING JUDGE JEAN-
CLAUDE ANTONETTI**

The Trial Chamber decided by a majority, **with me dissenting**, to put a limit on the number of pages of the exhibits presented by the Praljak Defence.

The Appeals Chamber quashed that technical decision, deeming that there was no argument supporting this limitation.

I am in full agreement with the reasoning of the present Chamber set out in the disposition, but I deem that it would be appropriate to indicate the following in the disposition:

“Pursuant to Rules 54 and 92 *bis* of the Rules and the “**Decision on Slobodan Praljak’s Appeal of the Trial Chamber’s Refusal to Decide Upon Evidence Tendered Pursuant to Rule 92 *bis* (...)**”.

It seems to me that in dealing with a **very technical** subject (a limitation on the number of pages), the Trial Chamber must have, in my opinion, full discretionary power in the matter as this is a stage in the proceedings that relates to judicial authority. It is interesting to note that the Rules provide for a possibility for the President to issue practice directions on specific aspects of the conduct of proceedings. These practice directions are not subject to any checks by the Appeals Chamber when they concern, for example, limits on the number of words in motions.

In paragraph 38 of its Decision, the Appeals Chamber deems that it has the power to intervene. It is appropriate therefore, for the sake of clarity and coherence, to indicate that the present order is issued to ensure full and complete implementation of the Appeals Chamber decision seeking clarity by pointing out that “the Trial Chamber’s order in this regard is not sufficiently clear for Praljak to be able to properly prepare his Rule 92 *bis* submissions”.

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this eighth day of July 2010

At The Hague

The Netherlands

[Seal of the Tribunal]