

UNITED  
NATIONS

IT-08-91-T  
D16179-D16176  
10 MAY 2012

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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-08-91-T  
Date: 10 May 2012  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Burton Hall, Presiding  
Judge Guy Delvoie  
Judge Frederik Harhoff

**Registrar:** Mr. John Hocking

**Decision of:** 10 May 2012

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN**

***PUBLIC***

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**DECISION DENYING JOINT DEFENCE MOTION FOR RECONSIDERATION OR  
CERTIFICATION OF THE DECISION OF 18 APRIL 2012 AND ALLOWING THE  
DEFENCE TO REPLY TO THE PROSECUTION'S RESPONSE TO THE JOINT  
DEFENCE FINAL SUBMISSIONS ON THE CHS**

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**The Office of the Prosecutor**

Ms. Joanna Korner  
Mr. Thomas Hannis

**Counsel for the Accused**

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić  
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

**TRIAL CHAMBER II** (“Trial 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”);

**BEING SEISED OF** the “Motion for reconsideration or certification of ‘Decision denying joint Defence Motion to reconsider the Decision granting Prosecution’s Motion on proof of death database’”, filed on 23 April 2012 (“Motion”) in which the Stanišić and Župljanin Defences (“Defence”) jointly request the Trial Chamber to reconsider its “Decision denying joint Defence Motion to reconsider the Decision granting Prosecution’s Motion on proof of death database” issued on 18 April 2012 (“Decision”), or in the alternative, to certify the Decision for appeal;

**NOTING** the joint Defence final submissions on the Consolidated Hyperlinked Spreadsheet (“CHS”) filed confidentially on 12 April 2012;<sup>1</sup>

**NOTING** the Prosecution’s Response to the Motion filed confidentially on 26 April 2012, (“Response”)<sup>2</sup> in which it opposes the Motion and in addition responds to the joint Defence final submissions on the CHS;

**NOTING** the Defence’s application to reply and reply to the Response filed confidentially on 1 May 2012 (“Reply”),<sup>3</sup> in which it requests leave to reply to the Response in order to address: (i) the Prosecution’s submissions on the reconsideration issue;<sup>4</sup> and (ii) the Prosecution’s submissions regarding the Defence submissions on the CHS;<sup>5</sup>

**NOTING** that the Trial Chamber will grant leave to reply to the Defence;

**NOTING** that the Trial Chamber will take the submissions related to the CHS expressed in the Response and the Reply into account during its assessment of all the evidence in the case;

**RECALLING** that a Chamber has the discretionary power to reconsider its previous decision if a clear error of reasoning has been demonstrated or if particular circumstances justify reconsideration

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<sup>1</sup> Joint Defence final submissions on the CHS, 12 April 2012.

<sup>2</sup> Prosecution response to joint Defence final submissions on the CHS and response to Motion to reconsider the reconsideration Decision, 26 April 2012.

<sup>3</sup> Defence application to reply and reply to Prosecution response to joint Defence final submissions on the CHS and response to Motion to reconsider the reconsideration Decision, 1 May 2012.

<sup>4</sup> Reply paras 1, 9; Response, paras 22-23.

<sup>5</sup> Reply paras 1-8; Response, paras 1-21, 24.

in order to prevent an injustice; and that “particular circumstances” can include new facts or new arguments;<sup>6</sup>

**CONSIDERING** that the Trial Chamber has not been persuaded that in the present circumstances it is open to the Chamber to reconsider a reconsideration decision;

**CONSIDERING** that the Defence has not established a clear error of reasoning in the Trial Chamber’s Decision, or that there are particular circumstances that justify reconsideration in order to prevent an injustice;

**NOTING** that, in accordance with Rule 73(B) of the Rules of Procedure and Evidence of the Tribunal, a Trial Chamber may grant certification of an interlocutory appeal of a decision if it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**CONSIDERING** that the Defence has not satisfied the requirements of Rule 73(B) in relation to the Decision, and in particular that granting certification to appeal would result in delay to the conduct of the current proceedings;

**PURSUANT TO** Rules 54, 73 and 126 *bis* of the Rules,

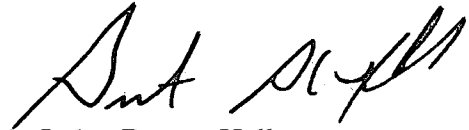
**GRANTS** the Defence leave to reply to the Prosecution’s submissions on the reconsideration issue, and the Prosecution’s submissions regarding the Defence submissions on the CHS;

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<sup>6</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić’s Interlocutory Appeal against the Decision on Prlić Defence Motion for reconsideration of the Decision on admission of documentary evidence, 3 November 2009, para. 18; *see also Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for review of Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, fn. 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras 203-204).

**HEREBY DENIES** the Motion.

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



Judge Burton Hall  
Presiding

Dated this 10th day of May 2012

At The Hague

The Netherlands

**[Seal of the Tribunal]**