



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 June 2008  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti  
Judge Árpád Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr Hans Holthuis

**Decision of:** 11 June 2008

**THE PROSECUTOR**

v.

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

***PUBLIC***

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**DECISION ON PRALJAK DEFENCE REQUEST FOR RECONSIDERATION  
OR FOR CERTIFICATION TO APPEAL THE ORDER OF 16 MAY 2008**

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**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 Čorić  
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 Reconsideration or in the Alternative for Certification to Appeal the Trial Chamber’s 16 May 2008 Decision on the Translation of Defence Evidence”, filed by the Defence for the Accused Praljak (“Praljak Defence”) on 22 May 2008 (“Request”), in which it requests the Chamber to reconsider the “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents”, rendered by the Chamber on 16 May 2008 (“Order of 16 May 2008”) or, in the alternative, to grant certification of the appeal it intends to bring against the Order,

**NOTING** the Order of 16 May 2008, in which the Chamber ordered the Praljak Defence to indicate to the Registry of the Tribunal (“Registry”) as soon as possible the documents that it wishes to have translated into one of the two working languages of the Tribunal or into the language of the Accused, while respecting the maximum of 1,810 standard United Nations pages and to notify the Registry of the order of priority of the documents that it wants to be translated; and ordered the Registry to translate the documents thus identified by the Praljak Defence within the prescribed limits,

**CONSIDERING** that in the Request, the Praljak Defence submits that the Order of 16 May 2008 violates the provisions of Article 21 (4) (b) of the Statute of the Tribunal (“Statute”) and Rules 3 (E) and 82 (A) of the Rules of Procedure and Evidence (“Rules”), thereby undermining the fair and expeditious conduct of the proceedings or outcome of the trial, and the resolution of this issue by the Appeals Chamber may materially advance the proceedings,<sup>1</sup>

**CONSIDERING** that in support of the Request, the Praljak Defence submits that the Order of 16 May 2008 set the maximum number of pages the Accused Praljak may request for translation based on the number of pages for translation obtained by the Prlić Defence;<sup>2</sup> the Praljak Defence argues that the Chamber’s calculations in this respect are erroneous because, as of the date of the Order, it failed to take into account

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<sup>1</sup> Request, pp. 4, 10 and 11, paras. 14 and 38.

the 937 physical pages of pending translations for the Prlić Defence; that this should have led the Chamber to grant the Praljak Defence the translation of at least 937 standard United Nations pages in addition to what it had been granted by the Chamber in the Order of 16 May 2008,<sup>3</sup>

**CONSIDERING** that the Praljak Defence submits that the underlying reasoning of the Order of 16 May 2008 is flawed since it is based on the requirement that the number of pages requested for translation by the Praljak Defence corresponds exactly to the number of pages requested for translation by the other Defence teams, thereby tying the rights of the Praljak Defence to those of his co-Accused,<sup>4</sup>

**CONSIDERING** also that the Praljak Defence believes that the Order of 16 May 2008 may result in a miscarriage of justice by forcing it to abandon 80 % of the written witness statements it had intended to offer under Rules 92 *bis* and *ter* of the Rules,<sup>5</sup>

**CONSIDERING** that in support of the Request, the Praljak Defence next submits that the number of pages it requested for translation has considerably increased following decisions by the Chamber and the Registry urging it to reduce the number of viva voce witnesses but that, following the order issued by the Chamber on 25 April 2008 cutting by half the time requested by the Praljak Defence to present its case,<sup>6</sup> the Praljak Defence is no longer in a position to replace untranslated documents by viva voce witnesses,<sup>7</sup>

**CONSIDERING** also that the Praljak Defence disputes the Chamber's finding that the Praljak Defence failed to comply with the instructions of the Chamber's Order of 19 March 2008, ordering it to provide a translated precise summary of the contents of each document on its exhibits list and to classify these documents by subject at the time of the filing of the list on 31 March 2008,<sup>8</sup> and submits that in any case the

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<sup>2</sup> Request, p. 4, para. 21.

<sup>3</sup> Request, p. 6, paras. 21 and 22.

<sup>4</sup> Request, p. 7, paras. 24 and 25.

<sup>5</sup> Request, pp. 7 and 8, paras. 26-29.

<sup>6</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Allocating Time to the Defence to Present Its Case, 25 April 2008.

<sup>7</sup> Request, pp. 8 and 9, paras. 30 and 31.

<sup>8</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Order on Slobodan Praljak's Motion Concerning the Translation of Documents, 19 March 2008.

Chamber cannot be in a position to determine which documents are necessary for the Accused Praljak's Defence before it has heard his opening statement,<sup>9</sup>

**CONSIDERING** finally that the Praljak Defence submits that the Order of 16 May 2008 satisfies the criteria for an interlocutory appeal under Rule 73 of the Rules since it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and its resolution by the Appeals Chamber may materially advance the proceedings,<sup>10</sup>

**CONSIDERING** that the other Parties did not inform the Chamber of their observations in connection with the Request,

**CONSIDERING** that a Chamber has the inherent power to reconsider its own decisions and that it may grant a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error or that particular circumstances, which may be new facts or new arguments,<sup>11</sup> justify its reconsideration in order to avoid injustice,<sup>12</sup>

**CONSIDERING** that the Chamber holds that the Praljak Defence has reiterated the arguments upon which the Chamber already ruled in the Order of 16 May 2008, without putting forth new facts or arguments or showing that the reasoning of this Order contains a clear error, and that the request for reconsideration must consequently be denied,

**CONSIDERING** that in accordance with Rule 73 (B) of the Rules, "decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome

<sup>9</sup> Request, pp. 9 and 10, paras. 32-36. The Chamber notes that Slobodan Praljak already made a lengthy opening statement at the beginning of the hearing on 27 April 2006, Transcript in French pp. 911-991.

<sup>10</sup> Request, p. 11, paras. 39-41.

<sup>11</sup> *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witness, 9 May 2002, para. 8.

<sup>12</sup> *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing in particular *The Prosecution v. Zdravko Mucić et al.*, Case No. IT-96-21A-Bis, Appeals Judgment on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 bis, 19 October 2006, p. 4.

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 consequently, certification to appeal is a matter within the discretionary power of the Chamber, which must first verify whether the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in this case,<sup>13</sup>

**CONSIDERING** that Article 21 (4) B of the Statute, which guarantees the Accused the facilities necessary for the preparation of his Defence and on which the Order of 16 May 2008 is founded, involves an essential aspect of the right to a fair trial,

**CONSIDERING** also that the Chamber founded the Order of 16 May 2008 in particular on Rule 90 (F) of the Rules according to which the Chamber exercises control over the mode of presenting evidence so as to make it effective for the ascertainment of the truth and to avoid needless consumption of time, and that this provision involves directly the expeditious conduct of the trial,

**CONSIDERING** as a result that while it is convinced of the reasonableness of the Order of 16 May 2008, the Chamber finds that the Praljak Defence has nonetheless demonstrated that it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and that an immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings,

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<sup>13</sup> *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

**FOR THESE REASONS,**

**IN ACCORDANCE** with Rules 54 and 73 (B) of the Rules,

**DENIES** the request for reconsideration of the Order of 16 May 2008,

**PARTIALLY GRANTS** the Request by certifying the appeal that the Praljak Defence intends to bring against the Order of 16 May 2008.

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 June 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**