



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: 13 May 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Decision of: 13 May 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE MOTION FOR RECONSIDERATION OF
DECISION ADMITTING PRESIDENTIAL TRANSCRIPTS**

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 “Jadranko Prlić’s Motion for Reconsideration of the Decision Admitting Presidential Transcripts”, to which four Annexes are attached, filed publicly by Counsel for the Accused Prlić (“Prlić Defence”) on 26 March 2009 (“Motion”), in which the Prlić Defence requests that the Chamber reconsider its Decision of 4 March 2009 in which it denied the admission into evidence of several excerpts from nine presidential transcripts (“Proposed Exhibit(s)”),¹

NOTING the “Decision Admitting Presidential Transcripts”, rendered by the Chamber on 4 March 2009 (“Impugned Decision”), in which the Chamber denied, *inter alia*, the admission of the Proposed Exhibits,

CONSIDERING that the Office of the Prosecutor (“Prosecution”) and the other Defence teams did not file a response to the Motion,

CONSIDERING that in support of the Motion, the Prlić Defence submits that the Proposed Exhibits are relevant to the Amended Indictment of 11 June 2008 (“Indictment”), have probative value and contain information that not only gives context to the case, but may also alter the outcome of the trial,²

CONSIDERING that the Prlić Defence submits that in the Motion it provides additional explanations on the Proposed Exhibits, thereby allowing the Chamber, according to the Prlić Defence, “to appreciate afresh – and with the benefit of hindsight” the reasons necessitating the admission of the Proposed Exhibits and allowing the Chamber to take an informed decision based on all the relevant facts,³

CONSIDERING that the Prlić Defence notably submits that the Chamber erred by not appreciating the relevance of Proposed Exhibit P 01297 to the Indictment; that this Proposed Exhibit not only provides invaluable insight about the situation and

¹ Motion, pp. 1 and 8, annex 1.

² Motion, p. 5, para. 10 and p. 7, para. 15.

context of the case as it deals with the role played by certain Islamic states in Croatia during the conflict, but also directly counters the overall theory of a Joint Criminal Enterprise put forward by the Prosecution,⁴

CONSIDERING that the Prlić Defence furthermore alleges that the Chamber should not have determined the admissibility of the Proposed Exhibits based solely on whether the explanations were or were not comprehensive; that limiting itself to this assessment places form over substance and deprives the Chamber of the opportunity to consider potentially relevant and probative evidence,⁵

CONSIDERING that the Prlić Defence specifies, furthermore, that it rectified the technical errors related to Proposed Exhibits P 01240 and 1D 02366; that the Chamber had denied Proposed Exhibit P 01240 for which two translations were proposed as the Prlić Defence did not specify which one was requested for admission; that the Prlić Defence now specifies the admission of the two translations which complement each other; that with respect to Proposed Exhibit 1D 02366, the Chamber denied it on the grounds that a part of this document had already been admitted under another number, P 00498; that now, the Prlić Defence presents its request for admission of certain pages under number P 00498,⁶

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may allow a request for reconsideration if the requesting party demonstrates to the Chamber that the impugned decision contains a clear error of reasoning or that particular circumstances, which can be new facts or arguments,⁷ justify its reconsideration in order to avoid injustice,⁸

³ Motion, pp. 5 and 6, para 11.

⁴ Motion, p. 5, para. 10.

⁵ Motion, p. 7, paras. 15 and 16.

⁶ Motion, p. 6, paras. 12-14.

⁷ *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 Witnesses, 9 May 2002, para. 8.

⁸ *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 Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21Abis, Appeals Judgement 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.

CONSIDERING that the Chamber recalls that in the Impugned Decision it denied, *inter alia*, Proposed Exhibits 1D 0366 (pp. 2-26, 31-62, 82-100)⁹ and P 01240 (pp. 1-38)¹⁰ due to technical errors; that it also denied the following Proposed Exhibits for lack of relevance and/or because they were unnecessary for the understanding of the case and/or because the Prlić Defence did not provide grounds for their request for admission: P 00890 (pp. 7-21); P 01297 (pp. 1-13 of the attached English translation 1D33-0399 and pp. 24, 37-38 of the attached English translation ET_0186-7609); P 01544 (pp. 1-10, 17-19 of the attached English translation 1D33-0367 and pp. 12-15, 30 and 31 of the attached English translation ET_0186-7478); P 02302 (pp. 31 and 32); P 03704 (pp. 4-17); P 07254 (pp. 2-6) and 1D 02911 (pp. 29-32; 34-39),¹¹

CONSIDERING firstly that the Chamber notes, despite the reminder in the Impugned Decision,¹² that the Prlić Defence has still not indicated in Annex 1 the *e-court* page numbers of the Proposed Exhibits that it is requesting for reconsideration, thereby making the Chamber's work more difficult,

CONSIDERING that the Chamber cannot accept the argument put forth by the Prlić Defence according to which in the Impugned Decision the Chamber placed form over substance thereby depriving itself of the opportunity to consider potentially relevant and probative evidence,

CONSIDERING that in the Chamber's opinion, the parties must demonstrate in support of their requests, the relevance to the Indictment of the exhibits requested for admission; that this is in no case a modality of pure form; that in this respect, the Chamber recalls, as an example, that it is necessary that the Prlić Defence explain how the excerpts of the presidential transcripts concerning relations between certain Islamic states and Croatia during the war could be relevant to the Indictment, as the Chamber considers it *a priori* strange,

⁹ Exhibit is identical to Exhibit P 00498. It should be noted that the page numbers of Exhibit 1D 02366: pp. 2-26, 31-62, 82-100 correspond to the page numbers of Exhibit P 00498: *e-court* pages 2-7; 21-26; 47-56 and 82 to 100 of the English translation ET_0150-8765 and to *e-court* pages 1-35 of the English translation 1D 57-0973.

¹⁰ It should be noted that the page numbers presented by the Prlić Defence, namely P 01240: pp. 1-38 actually corresponds to the following page numbers P 01240: *e-court* pages 1-3; 5-6; 9-14; 20; 24-37 of the English translation 1D 33-0330 and to the *e-court* pages 1; 5; 8-9; 16-20; 22-24 of the English translation ET_0132-2298.

¹¹ Impugned Decision, p.5 and the annex.

¹² Impugned Decision, p. 4.

CONSIDERING that, at any rate, the Chamber recalls to the Prlić Defence that the respect of due process is an intrinsic element of criminal procedure, from which the Parties cannot derogate,

CONSIDERING that despite this notice and the failure to comply with the disposition of the Impugned Decision recalled above, the Chamber decides to deal exceptionally with the Motion in the interest of justice, due to the small number of documents to reconsider and the detailed explanations provided by the Prlić Defence,

CONSIDERING that the Chamber will therefore reconsider the Impugned Decision; that in this respect it recalls Guideline 9 on the admission of documentary evidence by way of a written motion set out in the “Decision Adopting Guidelines on the Presentation of Defence Evidence”, of 24 April 2008,

CONSIDERING that the Chamber notes the additional explanations provided by the Prlić Defence in support of the Motion,

CONSIDERING that in relation to Proposed Exhibits P 00498¹³ and P 01240¹⁴ denied in the Impugned Decision on the grounds of a technical error, the Chamber agrees, exceptionally and in the interest of justice, to reconsider the Impugned Decision with respect to these two Proposed Exhibits insofar as the Prlić Defence has rectified the errors related to these two Proposed Exhibits,

CONSIDERING that the Chamber notes furthermore, as the Prlić Defence correctly argues, that the two Proposed Exhibits P 00498 and P 01240 are relevant and may be admitted,

CONSIDERING that for the rest, the Chamber recalls that *e-court* pages 7-21 of the English translation of Exhibit P 00890 relate to the presence of a Croatian delegation at a conference held in Istanbul on 10 December 1992 and at which none of the accused were present; that nevertheless, the Chamber finds, after reconsidering the pages requested for admission, that the passage relating to the statements made during this conference by the representatives of Turkey regarding Croatia’s lack of will to

¹³ P 00498 (*e-court* pages 2-7; 21-26; 47-56 and 82 to 100 of the English translation ET_0150-8765 and to *e-court* pages 1-35 of the English translation 1D 57-0973.

¹⁴ P 01240 (*e-court* pages 1-3; 5-6; 9-14; 20; 24-37 of the English translation 1D 33-0330 and to *e-court* pages 1; 5; 8-9; 16-20; 22-24 of the English translation ET_0132-2298.

divide Bosnia and Herzegovina in October 1992 could be of interest with regards to Croatia's territorial ambitions alleged in the Indictment; that in the opinion of the Chamber, this passage, mentioned in page 11 of *e-court*, is sufficiently relevant to be admitted, but that this is not the case for the other pages of this Exhibit,

CONSIDERING that with regard to *e-court* pages 10 and 11 of the attached translation 1D33-0399 of Proposed Exhibit P 01297, the Chamber is of the opinion, as the Prlić Defence correctly points out, that the excerpt relating to the assessment of Stjepan Mesić of January 1993 on the conflicts between Croats and Muslims, described by Stjepan Mesić as a few local incidents between Croats and Muslims, while the Croats and Muslims were co-operating 99%, may, despite the lack of precision, be relevant to be admitted now, but that this is not the case for the other pages of this Exhibit,

CONSIDERING that with regard to Proposed Exhibit 1D 02911 (*e-court* pages 29-32 and 34-38 of the English translation), the Chamber is of the opinion, as the Prlić Defence correctly points out, that the discussions of 13 February 1994 on the peace negotiations may be of interest regarding the events alleged in the Indictment and that consequently they should be admitted,

CONSIDERING that for the other Proposed Exhibits P 01544, P 02304, P03704 and P 07254 requested for admission, the Chamber decides not to reconsider the Impugned Decision as it finds that it did not err in its consideration,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

PARTIALLY GRANTS the Motion,

DECIDES to reconsider in part the Impugned Decision and to admit the following excerpts into evidence: P 00498 (*e-court* pages 2-7; 21-26; 47-56 and 82 to 100 of English translation ET_0150-8765 and *e-court* pages 1-35 of English translation 1D 57-0973); P 01240 (*e-court* pages 1-3; 5-6; 9-14; 20; 24-37 of English translation 1D 33-0330 and *e-court* pages 1; 5; 8-9; 16-20; 22-24 of English translation ET_0132-2298); P 01297 (*e-court* pages 10 and 11 of the attached translation 1D33-0399); P 00890 (*e-court* page 11 of the English translation) and 1D 02911 (*e-court* pages 29-32 and 34 to 38 of the English translation), **AND**

DENIES the Motion in all other respects.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]