



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: 26 August 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

Decision of: 26 August 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION FOR RECONSIDERATION OF
THE DECISION OF 6 MARCH 2009 (BOŽIĆ)**

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 "Bruno Stojić's Motion for Reconsideration of Order to Admit Evidence Related to Witness Slobodan Božić", filed publicly by Counsel for the Accused Bruno Stojić ("Stojić Defence") on 29 July 2009 ("Motion"), in which they request that the Chamber reconsider the "Order to Admit Evidence Related to Witness Slobodan Božić" of 6 March 2009 ("Decision of 6 March 2009") and admit into evidence 6 documents ("Proposed Exhibits") that were rejected due to technical errors,¹

CONSIDERING that the other parties did not file a response to the Motion,

CONSIDERING that in support of the Motion, the Stojić Defence argues in particular that the Proposed Exhibits were rejected by the Chamber on account of mere technical errors,²

CONSIDERING that in regard to Proposed Exhibits 2D 00689, 2D 00847, 2D 00976 and 2D 01460, the Stojić Defence requests that the Chamber reverse its Decision of 6 March 2009 as it has now corrected the technical errors due to which these exhibits were rejected,³

CONSIDERING that in regard to Proposed Exhibits 1D 00110 and 1D 02423, the Stojić Defence firstly recalls that these exhibits were rejected on the ground that they were absent from its exhibit list compiled pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence ("65 *ter* List"; "Rules") yet the Stojić Defence used them during the examination-in-chief of Witness Slobodan Božić,⁴

CONSIDERING that the Stojić Defence further argues that when it presented these Proposed Exhibits during the examination-in-chief of Slobodan Božić, they were included on the 65 *ter* List tendered by Counsel for the Accused Prlić ("Prlić Defence"); that the Stojić Defence was unaware that it could not tender documents

¹ Exhibits 1D 00110, 1D 02423, 2D 00689, 2D 00847, 2D 00976 and 2D 01460.

² Motion, para. 1.

³ Motion, paras 5 to 20.

obtained from the Rule 65 *ter* exhibit lists of other defence teams through the examination-in-chief of the witnesses it had called,⁵

CONSIDERING that the Stojić Defence submits furthermore that it based its reasoning on the fact that during the examination-in-chief of one of its witnesses, the Prlić Defence used a document that did not appear on its own 65 *ter* List but rather on the 65 *ter* List of another Defence team, and that this document was admitted by the Trial Chamber,⁶

CONSIDERING that the Stojić Defence argues lastly that the other parties were aware of the intention of the Stojić Defence to use Proposed Exhibits 1D 00110 and 1D 02423 during the examination-in-chief of Slobodan Božić as they were included on the lists distributed prior to the appearance of the witness and that, consequently, no party can argue that it was prejudiced by the admission of its Proposed Exhibits, which, moreover, are important for the Stojić Defence case,⁷

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,⁸ justify its reconsideration in order to avoid injustice,⁹

CONSIDERING that the Trial Chamber first recalls that the “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, rendered publicly on 26 March 2009, in which, in order to ensure the proper administration of the trial, it specifies the context within which requests for reconsideration must be filed, is not applicable for decisions rendered prior to its publication, as is the case for the impugned decision of the Motion,

⁴ Motion, para. 21.

⁵ Motion, para. 22.

⁶ Motion, para. 22.

⁷ Motion, para. 23.

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 *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.

⁹ *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-96-21/Abis, Appeals Judgement on Sentence, 8 April 2003, para. 49; *The Prosecutor*

CONSIDERING that the Chamber notes nevertheless that the Motion is very late since it was only filed on 29 July 2009, which is 4 months after the Proposed Exhibits in question were rejected and the Stojić Defence has not justified this lateness,

CONSIDERING, furthermore, that with regard to Proposed Exhibits 2D 00689, 2D 00847, 2D 00976 and 2D 01460, the Stojić Defence could have, once the technical errors were corrected, presented its Proposed Exhibits by way of one of the four requests for admission of documentary evidence that it filed on 4, 6 and 7 May 2009, in which it requested the admission of over 400 exhibits,¹⁰

CONSIDERING that the Chamber concludes that in this case, the Stojić Defence has demonstrated a lack of due diligence and failed to show that the Chamber committed an error or that there were exceptional circumstances that would justify reconsideration of the Decision of 6 March 2009 with regard to Proposed Exhibits 2D 00689, 2D 00847, 2D 00976 and 2D 01460 and decides, consequently, not to grant the request for admission as far as it relates to them,

CONSIDERING that with regard to Proposed Exhibits 1D 00110 and 1D 02423, the Chamber cannot accept the argument of the Stojić Defence according to which it was unaware that during the examination-in-chief of a witness, it could not request the admission of evidence that appears on 65 *ter* Lists of another Defence team and not on its own 65 *ter* List,

CONSIDERING that in this regard, the Chamber recalls that on 27 September 2007, the Chamber asked the Defence teams to file “(...) a list of exhibits they intend to present in support of their case, indicating through which witness, as appropriate, they intend to present them” and that “(...) As far as possible, each Accused should also

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.

¹⁰ “Bruno Stojić’s Motion for Admission of Documentary Evidence related to the Functioning of the HVO Defence Department, HVO/HZ-H-B and Related Structures with Annexes I and II”, 4 May 2009; “Bruno Stojić’s Motion for the Admission of Documentary Evidence Related to the Functioning of HVO Municipal Authorities/Brigades and the Relationship Between Bodies at the Municipal Authority/Level, the Operative Zone Level and the HVO Centralised Authority in Mostar with Annexes I, II and III”, 6 May 2009; “Bruno Stojić’s Motion for the Admission of Documentary Evidence related to Cooperation Between Herceg-Bosna/HVO Authorities and International Organisations and Compliance with International Humanitarian Law Norms with Annexes I, II and III”, 6 May 2009 and “Bruno Stojić’s Motion for the Admission of Documentary Evidence related to Cooperation Between Herceg-Bosna/HVO Authorities/Forces and ABiH Authorities/Forces with Annexes I, II and III”, 7 May 2009.

indicate on the lists filed pursuant to Rule 65 *ter* (G) of the Rules the witnesses and exhibits that will be presented by their co-Accused”,¹¹

CONSIDERING that the Chamber also recalls that on 31 March 2008, the Stojić Defence filed its 65 *ter* List pursuant to the Chamber’s orders and included on it several exhibits that were on the 65 *ter* Lists of other Defence teams that it intended to use in the presentation of its case,¹²

CONSIDERING that in any case, following the rejection of Proposed Exhibits 1D 00110 and 1D 02423 by the Decision of 6 March 2009, the Stojić Defence could have requested that they be added to its own 65 *ter* List in order to introduce them in one of the above-mentioned requests for admission of documentary evidence,

CONSIDERING that, this being said, the Chamber deems that the Stojić Defence did not demonstrate due diligence and did not show that the Chamber committed a clear error or exceptional circumstances that would justify reconsideration of the Decision of 6 March 2009 with regard to Proposed Exhibits 1D 00110 and 1D 02423 and consequently decides not to grant the motion in their respect,

CONSIDERING, furthermore, that the Chamber agrees with the Stojić Defence that on 16 June 2008 it admitted Exhibit 2D 00454, presented by the Prlić Defence during the examination-in-chief of Witness Adalbert Rebić, when this exhibit did not appear on the 65 *ter* List of the said Defence,¹³

CONSIDERING, however, that the Chamber finds at this late stage, after the Prlić Defence case has closed, that it is not in the interest of justice to reconsider the admission of the said exhibit,

¹¹ Scheduling Order, 27 September 2007, p. 5.

¹² “Bruno Stojić’s 65 *ter* Submission Annex C”, confidential, 31 March 2008.

¹³ “Order Admitting Evidence Relative to Witness Adalbert Rebić”, 16 June 2008, p. 7.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]