



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: 3 November 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: 3 November 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE MOTION FOR RECONSIDERATION OF
ORDER TO ADMIT EVIDENCE REGARDING WITNESS JOSIP JURČEVIĆ**

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 Trial Chamber’s *Ordonnance portant admission d’éléments de preuve relatifs au témoin expert Josip Jurčević*”, filed publicly on 14 October 2009 by Counsel for the Accused Jadranko Prlić (“Prlić Defence”), to which a confidential Annex is attached (“Motion”), in which the Prlić Defence requests that the Chamber reconsider its decision not to admit into evidence exhibit 1D 03148,¹

NOTING the “Order on Admission of Evidence Regarding Expert Witness Josip Jurčević” rendered publicly on 6 October 2009 (“Order of 6 October 2009”) in which the Chamber decided not to admit into evidence pages 1 and 2 of the BCS and English versions of exhibit 1D 03148, sought for admission by the Prlić Defence, on the ground that the English translation of the said exhibit did not correspond to the BCS version requested for admission and uploaded onto the *ecourt* system since only one part of page 2 of the BCS version had been translated into English,²

NOTING the “Prosecution Response to Various Defence Requests for Reconsideration of the Trial Chamber’s Decision of 6 October 2009 Denying the Admission of Evidence Tendered through Witness Josip Jurčević”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 22 October 2009 (“Response”) in which the Prosecution, while informing the Chamber that it takes no position on the Motion,³ notes nevertheless that the object of the said Motion, namely the request for reconsideration of the Chamber’s decision not to admit into evidence exhibit 1D 03148, does not appear to satisfy the criteria of admissibility regarding requests for reconsideration as defined by the Chamber in its “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, rendered publicly on 26 March 2009 (“Decision of 26 March 2009”),⁴

¹ Motion, paras 1-5.

² Order of 6 October 2009.

CONSIDERING that the other Defence teams have not filed a response to the Motion,

CONSIDERING that in support of the Motion, the Prlić Defence claims that in accordance with the Chamber's Guideline 8 for the presentation of defence evidence,⁵ it understood that it was sufficient, at the time of filing the request for admission of evidence, to provide the page numbers of exhibit 1D 03148 that it sought to admit,⁶ but specifies however in its Motion that the initial request for admission concerned only the parts of the said exhibit translated into English, namely section AD 1 and paragraph 1 of section AD 2,⁷

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 Chamber recalls the Decision of 26 March 2009, in which, in order to guarantee the proper administration of the trial, it clarifies the requirements with which requests for reconsideration filed by the parties must comply, and states in particular that requests for reconsideration are no longer admissible when they concern technical errors attributable to the parties,¹⁰

³ Response, para. 3.

⁴ Response, paras 2 and 3; Decision of 26 March 2009.

⁵ "Decision Adopting Guidelines for the Presentation of Defence Evidence", 24 April 2008 ("Decision of 24 April 2008"), para. 30.

⁶ IC 01043.

⁷ Motion, paras 3-5. The Chamber notes that on the IC 01043 list, the Prlić Defence sought admission for pages 1 and 2 of the BCS and English versions of exhibit 1D 03148. In its Motion, the Prlić Defence states that it seeks admission for section AD 1 and the first paragraph of section AD 2 of page 2 of the said exhibit. The Prlić Defence does not reiterate its request for admission of page 1 of exhibit 1D 03148. However, the Chamber considers that the Prlić Defence equally upholds its request for admission of page 1 of the said exhibit.

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 *The Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A bis, "Judgement on Sentence Appeal", 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.

¹⁰ Decision of 26 March 2009, p. 3.

CONSIDERING that the Chamber takes note of the explanations provided by the Prlić Defence in support of its Motion with regard to exhibit 1D 03148; that it notes however that Guideline 8 of the Decision of 24 April 2008 states explicitly that the parties requesting admission of one or more excerpts of an exhibit presented in court are under obligation to provide the Chamber with the page and/or paragraph numbers of the exhibit corresponding to the excerpt(s) it intends to request for admission; that to specify both the page and paragraphs numbers is not mutually exclusive considering the wording used and particularly when, as in this case, a party does not request the admission of an entire page;¹¹ that it finds therefore that the Prlić Defence made an error that is attributable to it pursuant to the Decision of 26 March 2009, when it omitted to specify in its initial¹² request for admission the exact excerpts of exhibit 1D 03148 that it sought for admission and moreover did not demonstrate that the Chamber, for its part, committed a discernible error in the Order of 6 October 2009; that therefore it is appropriate to deny the Motion whilst reminding the Prlić Defence that it may, if necessary, tender exhibit 1D 03148 through another witness,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DENIES the Motion.

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

¹¹ See also “Decision of 26 March 2009”, p. 3, footnote 7, in which the Chamber recalls that an error is attributable to the parties notably where that party “has failed to specify the excerpt of the document in the English version” sought for admission.

¹² IC 01043.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this third day of November 2009

The Hague

The Netherlands

[Seal of the Tribunal]