



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: 14 January 2010

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: 14 January 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF
CORRIGENDUM OF 17 NOVEMBER 2009 OR, ALTERNATIVELY, FOR
CERTIFICATION TO APPEAL**

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 the “Prosecution Motion for Reconsideration or, in the alternative, for Certification to Appeal the Corrigendum à la *Decision portant sur la demande d’admission d’éléments de preuve documentaire présentée par l’Accusation (deux requêtes HVO/Herceg-Bosna)*, dated 17 November 2009”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 24 November 2009 (“Motion”), to which one Annex is attached, in which the Prosecution requests that the Chamber first of all reconsider its decision not to admit into evidence videos bearing reference numbers P 01033 and P 02010 (“Videos”) and, alternatively, certify to appeal the said decision,

NOTING “Jadranko Prlić’s Response to Prosecution Motion for Reconsideration or, in the alternative, for Certification to Appeal of 24 November 2009”, filed publicly by Counsel for the Accused Prlić (“Prlić Defence”) on 4 December 2009,

NOTING the “Corrigendum to Decision on Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO/Herceg-Bosna)” (“Corrigendum”), rendered publicly by the Chamber on 17 November 2009, in which the Chamber corrected an error that had slipped into the “Decision on the Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO/Herceg-Bosna)” of 11 December 2007, the Chamber having, at that time, admitted into evidence the videos which did not bear dates or any information that would serve to determine the date of the videos,

CONSIDERING that, in support of its Motion, the Prosecution submits that at the end of the presentation of its case, it had understood that the Videos had been admitted by the Chamber and that, since the Videos were excluded long after the end of the presentation of its case, the Prosecution no longer has an opportunity to rectify

any possible deficiencies in its request for admission and to further submit these Videos,¹

CONSIDERING that the Prosecution submits therefore that the Corrigendum is, in itself, a particular circumstance that would justify reconsideration and in the Annex provides further information relating to the date and the source of the referenced Videos,

CONSIDERING that in support of its alternative request for certification to appeal, the Prosecution argues that it would be unfair not to offer the Prosecution the opportunity to rectify its deficiencies, to provide information on the Videos that the Chamber has indicated is necessary, and that the Defence was granted certification to appeal on the same issue and that it should therefore be allowed the same opportunity,²

CONSIDERING that in the Response, the Prlić Defence puts forward that the Prosecution did not provide sufficient information with regard to the source and date of the Videos and requests that the Chamber dismiss the Motion,³

CONSIDERING that with regard to the Prosecution's request for certification to appeal, the Prlić Defence submits that the Prosecution wrongly interpreted the appeal lodged by the Prlić Defence in that it did not request certification to appeal to rectify any deficiencies, but to ensure that the same standards were being applied to the Prosecution and the Defence,⁴

CONSIDERING that the Chamber recalls 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,⁵ justify its reconsideration in order to avoid injustice,⁶

¹ Motion, paras 8 and 9.

² Motion, para. 13.

³ Response, paras 1 to 8.

⁴ Response, paras 9 to 13.

⁵ *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.

CONSIDERING that the Chamber acknowledges that, given the Corrigendum was rendered late, the Prosecution was deprived of the opportunity of rectifying its deficiencies during the presentation of its case by re-tendering the Videos for admission; that this constitutes a particular circumstance and that the Chamber agrees therefore to reconsider the request for admission of the Videos in light of the information provided by the Prosecution,

CONSIDERING that subsequent to viewing the Videos, the Chamber finds that they consist of compilations of video clips and notes that their source is indicated but no mention is made of the date on which they were shot,

CONSIDERING that in the Annex to the Motion, the Prosecution merely gives the dates for certain clips of the Videos but, on the one hand, does not provide a date for all the clips and, on the other hand, does not provide any explanation as to how it arrived at establishing the dates it proposes,

CONSIDERING that in viewing the Videos, the Chamber was unable to determine precisely the date of the different clips compiled in the Videos; that it is therefore unable to establish their relevance and probative value with a view to their admission and that it decides to continue to exclude them,

CONSIDERING that pursuant to 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 of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings”,

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.

⁶ *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 notably *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.

CONSIDERING, consequently, that certification to appeal is a matter for the discretion of the Chamber which must, in any event, previously determine that the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in this case,⁷

CONSIDERING that the Chamber finds that the issue that the Prosecution wishes to put before the Appeals Chamber relates to a possible inequity in the proceedings should the Prosecution not be given the opportunity to rectify its deficiencies for the presentation of the Videos,

CONSIDERING that by agreeing, by way of this decision, to reconsider the Corrigendum and to take into consideration the additional arguments and information provided by the Prosecution in support of the Motion, the Chamber has given the Prosecution the opportunity to rectify its deficiencies, the Chamber considers therefore that the issue that the Prosecution would like to put before the Appeals Chamber no longer exists and finds therefore that the alternative request for certification to appeal is moot,

FOR THE FOREGOING REASONS

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

AGREES to reconsider the Corrigendum,

CONTINUES to exclude the Videos bearing reference numbers P 01033 and P 02010, **and**

DISMISSES AS MOOT the request for certification to appeal.

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

⁷ *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, “Decision on Defence Motion for Certification”, 17 June 2004, para. 2.

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this fourteenth day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]