



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: 21 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: 21 January 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON REQUEST FOR CERTIFICATION TO APPEAL AGAINST
THE DECISION ON PRLIĆ DEFENCE MOTION TO RECONSIDER THE
REJECTION OF A NUMBER OF VIDEOS**

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 Request for Certification to Appeal under Rule 73(B) against the *Décision Portant sur la demande de la Défense Prlić de reconsiderer le rejet de certaines vidéos*, 18 December 2009", filed publicly by the Counsel for the Accused Prlić ("Prlić Defence") on 23 December 2009 ("Request"),

NOTING the "Prosecution's Response to Jadranko Prlić's Request for Certification to Appeal under Rule 73(B) against the *Décision Portant sur la demande de la Défense Prlić de reconsiderer le rejet de certaines vidéos*, 18 December 2009", filed publicly by the Office of the Prosecutor ("Prosecution") on 30 December 2009 ("Response"),

NOTING the "Decision on Prlić Defence Motion for Admission of Documentary Evidence", rendered publicly by the Chamber on 6 March 2009 ("Decision of 6 March 2009"),

NOTING the "Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence", rendered publicly by the Chamber on 29 June 2009,

NOTING the "Decision on Jadranko Prlić's Interlocutory Appeal against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence", rendered publicly by the Chamber on 3 November 2009 ("Decision of the Appeals Chamber"),

NOTING the "*Décision relative au réexamen de la Décision portant sur la demande de la Defense Prlić d'admission d'éléments de preuve documentaires*", rendered publicly by the Chamber on 19 November 2009 ("Decision of 19 November 2009"),

NOTING the "Decision on Prlić Defence Motion to Reconsider the Rejection of a Number of Videos", rendered publicly by the Chamber on 18 December 2009 ("Decision of 18 December 2009"),

CONSIDERING that in its Request the Prlić Defence contests the Decision of 18 December 2009, in which the Chamber refused to reconsider its Decision of 19 November 2009 and to admit a number of video recordings and asks the Chamber to certify the appeal thereof,

CONSIDERING that the Prlić Defence maintains that the Decision of 18 December 2009 jeopardizes the fair and expeditious conduct of the trial, as it is prejudicial to the right of the Accused Prlić to defend himself by denying him the possibility of presenting evidence, and constitutes a violation of the principle of equality of arms, giving the Prosecution an advantage by excluding crucial exculpatory evidence for the Prlić Defence,¹

CONSIDERING that the Prlić Defence argues that the immediate resolution by the Appeals Chamber of the exclusion of certain essential evidence would materially advance the proceedings in the sense that if the Appeals Chamber finds that the refusal to admit the evidence at this stage of the proceedings was an error, it could be obliged to refer the case for a new trial,²

CONSIDERING that the Prlić Defence holds that the resolution of this question by the Appeals Chamber would allow the proceedings to be ended without prejudicing either the Prosecution or the other defence teams,³

CONSIDERING that the Prosecution maintains that it has not been established by the Prlić Defence that the non-admission of these videos would affect the proceedings to such an extent as to warrant interlocutory appeal,⁴

CONSIDERING that the Prosecution adds that the Prlić Defence still has an opportunity to seek admission of the video recordings through witnesses called by the Defence teams⁵ and notes that the Prlić Defence has already had several opportunities to provide additional information that would authenticate the video recordings,⁶

¹ Request, paras 17, 22 and 24.

² Request, para. 26.

³ Request, para. 26.

⁴ Response, para. 6.

⁵ Response, paras 7 and 8.

⁶ Response, para. 9.

CONSIDERING that pursuant to Rule 73 (B) of the Rules of Procedure and Evidence ("Rules"), "[d]ecisions 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, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings,"

CONSIDERING, therefore, that the certification of appeal stems from the discretionary power of the Chamber which must, in any case, first verify that the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in the relevant case,⁷

CONSIDERING that the Chamber recalls that the issue of admission criteria for video recordings has already been dealt with the Decision of the Appeals Chamber,

CONSIDERING that the Chamber wishes to emphasise that following the Decision of the Appeals Chamber, it had rendered, on the one hand, the Corrigendum of 17 November 2009⁸ and the Decision of 14 January 2010⁹ in order to harmonise the admission criteria for video material between the Prosecution and the Defence and, on the other hand, the Decision of 19 November 2009 in order to taken into account the additional information provided by the Prlić Defence regarding the date and source of the videos,¹⁰

CONSIDERING that the Chamber finds that the Prlić Defence merely confirms that the refusal by the Chamber to examine once more the evidence it regards as crucial and exculpatory for the Accused Prlić is prejudicial to him, without explaining why this evidence is crucial to the extent that its non-admission would jeopardizes the fair

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

⁸ "Corrigendum à la Décision portant sur la demande d'admission d'"éléments de preuve documentaires présentée par l'Accusation (deux requête HVO/Herceg Bosna)", public, 17 November 2009 ("Corrigendum of 17 November 2009").

⁹ "Décision concernant la demande de l'Accusation de réexamen du Corrigendum du 17 novembre ou, à défaut, certification d'appel", public 14 January 2010 ("Decision of 14 January 2010").

¹⁰ Videos rejected by the Chamber in the Decision of 6 March 2009 marked 1D 02070, 1D 02071, 1D 02071, 1D 02078, 1D 02228, 1D 02229, 1D 02230, 1D 02457, 1D 02488, 1D 02489, 1D 02490, 1D 02491, 1D 02492, 1D 02493, 1D 02494, 1D 02495, 1D 02497, 1D 02498, 1D 02499, 1D 02500, 1D 02501, 1D 02502, 1D 02504, 1D 02505, 1D 02506, 1D 02507, 1D 02508, 1D 02511, 1D 02512, 1D 02514, 1D 02515, 1D 02844 and 1D 02845.

and expeditious conduct of the trial, or its outcome, or how the immediate resolution of this issue by the Appeals Chamber could materially advance the procedure, and therefore decides to deny the Request,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 73 (B) of the Rules,

DENIES the Request.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]