



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: 19 May 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: 19 May 2010

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON CLARIFICATION OF THE DECISION OF 21 APRIL 2010

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 “Joint Motion of Slobodan Praljak and Milivoj Petković for Clarification of the Trial Chamber’s 21 April 2010 *Ordonnance portant calendrier pour le dépôt des demandes en Réplique en vertu de l’article 85 du Règlement*, Alternatively for Reconsideration and Correction of that Order”, filed publicly by Counsel for the Accused Slobodan Praljak and the Accused Milivoj Petković (“Joint Defence”), on 29 April 2010 (“Motion”),

NOTING the “Scheduling Order for Filing Requests to Reply Pursuant to Rule 85”, rendered publicly by the Chamber on 21 April 2010 (“Order of 21 April 2010”), in which the Chamber ordered the parties to file any prospective requests to reply no later than 25 May 2010,¹

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

CONSIDERING that in the Motion, the Joint Defence notes that Rule 85 (A) (iii) of the Rules of Procedure and Evidence (“Rules”) provides for “prosecution evidence in rebuttal” whilst Rule 85 (A) (iv) of the Rules provides for “defence evidence in rejoinder”;² that, according to the Joint Defence, a clear distinction should be made between the rebuttal of the Office of the Prosecutor (“Prosecution”) and the defence rejoinder;³ that it is only the Prosecution and not the defence teams that can adduce evidence by way of a rebuttal;⁴ that, as a consequence, the sole concern of the defence teams is the rejoinder and the Chamber cannot require that it be filed at the same time as the rebuttal of the Prosecution, that is 25 May 2010,⁵

CONSIDERING, consequently, that the Joint Defence requests that the Chamber confirm that the Order of 21 April 2010 relates exclusively to the rebuttal of the

¹ Order of 21 April 2010, p. 3. There is no underline in the said Order.

² Motion, para. 4.

³ Motion, para. 5.

⁴ Motion, para. 6.

⁵ Motion, paras 7 and 8.

Prosecution and, alternatively, that it reconsider the said Order and correct it by replacing the word “parties” with the word “Prosecution”,⁶

CONSIDERING that the Chamber recalls that Rule 85 (A) of the Rules does indeed provide for a Prosecution rebuttal followed by a Defence rejoinder, this provision does not however take into account the distinctive characteristics of a trial with multiple accused as in this case,

CONSIDERING that the Chamber recalls that within the framework of a trial with multiple accused, several defence teams are called upon to present their cases in succession and that one defence that has closed its case may wish to file a request to reply within the meaning of Rule 85 (A) (iii) of the Rules against evidence tendered by another defence that has presented its case following theirs,⁷

CONSIDERING that the Chamber deems that that the legal standard in terms of a reply also applies *mutatis mutandis* to a defence wishing to file a reply under the conditions recalled in the previous paragraph; that in order to be admissible, a reply must therefore deal with a significant issue that was raised during the presentation of the defence case and on an issue that the Prosecution or one of the defence teams that has closed its case could not have reasonably anticipated,⁸

CONSIDERING, as a consequence, that the Chamber deems that its Order of 21 April 2010 inviting any prospective requests for reply to be filed by 25 May 2010 at the latest was addressed to the parties and not exclusively to the Prosecution,

⁶ Motion, para. 13.

⁷ In this respect, the Chamber notes that the *Milutinović* Chamber also addressed an Order requesting whether the parties and not exclusively the Prosecution wished to file a reply, *see* in this regard, *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, “Order on Filing of Rebuttal Application Pursuant to Rule 85”, 18 April 2008.

⁸ *See* in this regard, *mutatis mutandis*, *The Prosecutor v. Zejnil Delalić, Zdravko Mucić, alias Pavò, Hazim Delić and Esad Landžo, alias Zenga*, Case No. IT-96-21-A, Judgement, 20 February 2001, paras 273, 275 and 276. This standard was applied in *The Prosecutor v. Stanislav Galić*, Case No. IT-96-23-T, “Decision on Rejoinder Evidence”, 2 April 2003, p. 2; *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, “Decision III on the Admissibility of Certain Documents”, 10 September 2004, para. 5; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, “Decision on Rebuttal Evidence”, 2 April 2003, para. 5; *The Prosecutor v. Mladen Naletilić & Vinko Martinović*, Case No. IT-98-34-T, “Decision on the Admission of Exhibits Tendered during the Rejoinder Case”, 23 October 2002, p. 2; *The Prosecutor v. Radislav Kršić*, Case No. IT-98-33-T, “Decision on the Defence Motions to Exclude Exhibits in Rebuttal and Motion for Continuance”, 2 May 2001, para. 11.

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 85 of the Rules,

CLARIFIES the Order of 21 April 2010 and confirms that the instructions of the said Order are addressed to the parties and not exclusively to the Prosecution,

DENIES the request for the reconsideration and modification of the instructions of the Order of 21 April 2010,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]