



Case No.: IT-04-74-T
Date: 28 June 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: 28 June 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON REQUEST FOR RECONSIDERATION, OR IN THE
ALTERNATIVE, FOR CERTIFICATION TO APPEAL THE 1 FEBRUARY
2010 DECISION APPLYING RULE 73 (D) OF THE RULES TO THE PRLIĆ
DEFENCE**

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 Ibršimović 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, or in the Alternative, Request for Certification to Appeal the ‘*Décision concernant la demande de réexamen de la Décision portant application de l’Article 73 (D) du Règlement à la Défense Prlić*’”, filed publicly on 4 June 2010 by Counsel for the Accused Jadranko Prlić (“Prlić Defence”), to which are annexed: in Annex 1, a 3 March 2010 letter from Mr Karnevas to the attention of the Registrar concerning the Chamber’s order to apply Rule 73 (D) of the Rules of Procedure and Evidence (“Rules”) to the Prlić Defence and, in Annex 2, the Registrar’s response, dated 27 May 2010 (“Motion”),

NOTING the “Decision on Motion for Reconsideration of Decision of 21 January 2010 and Application of Rule 73 (D) of the Rules to the Prlić Defence”, rendered publicly by the Chamber on 1 February 2010 (“Decision of 1 February 2010”), wherein the Chamber, having observed that the matter of the admission of videos presented by the Prlić Defence had occupied the Chamber for more than a year and that the Chamber had rendered eight decisions on this topic alone,¹ decided to adopt the view that the Motion² of the Prlić Defence leading up to the Decision of 1 February 2010 constituted a frivolous proceeding and for this reason ordered the Registry to withhold payment of legal fees and costs incurred in connection with the production of the said Motion,³

CONSIDERING that the Chamber points out that, in the Motion, the Prlić Defence sets forth, first of all, the grounds pointing in favour of the lawfulness of the said Motion; that the Prlić Defence puts forward that, as the Decision of 1 February 2010 was directed to the Registry, the Prlić Defence initially turned to the Registry to dispute the non-payment of fees; that the Registrar finally informed the Prlić Defence

¹ 8 decisions including the Decision of 1 February 2010.

² “Jadranko Prlić’s Motion for Reconsideration of the *Décision concernant la Demande de certification d’appel de la Décision portant sur la Demande de la Défense Prlić de reconsiderer le rejet de certaines vidéos*”, public document, 26 January 2010.

³ Decision of 1 February 2010, pp. 3-5.

on 27 May 2010 that it was unable to act contrary to the Decision of 1 February 2010; that the Chamber rendered, publicly on 1 June 2010, the “Order Admitting Evidence Regarding the Testimony of Milivoj Petković” (“Order of 1 June 2010”), in which it admitted two of the videos just tendered for admission by the Prlić Defence and that this constituted good cause, within the meaning of Rule 127 (A), for allowing this Motion,⁴

CONSIDERING that, in support of the Motion for Reconsideration of the Decision of 1 February 2010, the Prlić Defence puts forward that two videos assigned reference numbers 1D 02078 and 1D 02230 were shown to Milivoj Petković on 25 February 2010, that the Presiding Judge underscored their significance and that these two videos were subsequently admitted by the Order of 1 June 2010,⁵

CONSIDERING that the Prlić Defence submits that this clearly shows that the exclusion of these two videos, which were tendered for admission by the Prlić Defence by means of a written request, amounted to an error on the part of the Chamber and that their significance has now been recognised by the Chamber,⁶

CONSIDERING that given such conditions, the Prlić Defence asks the Chamber to reconsider the sanctions imposed pursuant to Rule 73 (D) of the Rules in order to prevent injustice,⁷

CONSIDERING that, in support of the Motion for Certification to Appeal, the Prlić Defence argues that the sanctions of the Decision of 1 February 2010 has had a “chilling effect” upon the Prlić Defence and inexorably led it to adopt a passive attitude, avoiding confrontation; that if the Prlić Defence has no opportunity to request the nullification of this sanction, this fear may turn into a “sword of Damocles” and that this would constitute a matter likely to significantly affect the fair and expeditious conduct of the trial or its outcome,⁸

CONSIDERING that the Prlić Defence adds that placing it under financial sanctions will as a consequence instil fear of further sanctions, in the event that the Prlić

⁴ Motion, para. 21.

⁵ Motion, para. 25.

⁶ Motion, para. 26.

⁷ Motion, paras 26 and 27.

⁸ Motion, paras 29-30.

Defence were again to move to admit the videos, controversial exhibits that they are, and that this could perhaps affect the fairness of the proceedings,⁹ and thus immediate resolution of the issue by the Appeals Chamber would materially advance the proceedings,

CONSIDERING first of all, that the Chamber notes that the Prlić Defence has seized the Chamber of this Motion at the recommendation of the Registrar himself; that the Chamber is surprised that the Registrar would advise the Prlić Defence to pursue such measures when, if challenges to his enforcement of the Decision of 1 February 2010 had surfaced, the Registrar could have informed the Chamber of this under Rule 33 (B) of the Rules,¹⁰

CONSIDERING further that the Chamber can in like manner only be surprised by the Registrar's decision to suspend the enforcement of Rule 73 (D) while waiting for the Chamber to be seized once more by the Prlić Defence¹¹ whereas, as the Registrar himself recalls in his correspondence, he has no discretion to avoid enforcing the Decision of 1 February 2010,¹²

CONSIDERING that, in view of this situation, the Chamber finds it must demonstrate flexibility with the Prlić Defence in enforcing time-limits for filing this Motion and agrees to examine it despite its lateness,

CONSIDERING that as concerns the Motion for Reconsideration, the Chamber is compelled to remind the Prlić Defence that the Chamber has always clearly distinguished rules for the admission of evidence through a witness from those for admission by means of a written request;¹³ that the admission of two videos shown to

⁹ Motion, para. 30.

¹⁰ Annex 2: "Any objection to the Trial Chamber's decision and related Order to the Registrar is properly made to the Trial Chamber or to the Appeal Chamber *vis-à-vis* an interlocutory appeal. The Registrar will consider postponing action on the Trial Chamber's Order until you confirm whether you will make a formal objection to the Trial Chamber's decision."

¹¹ *Id.*

¹² Annex 2, penultimate paragraph.

¹³ See the "Decision Adopting Guidelines for the Presentation of Defence Evidence", 24 April 2008, particularly Guidelines 8 and 9; regarding the more specific problem of admitting videos into evidence, see the "*Décision portant sur la Demande de la Défense Prlić d'admission d'éléments de preuve documentaires*", 6 March 2009; "Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence", 29 June 2009; "Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence", 3 November 2009; "Decision on Prlić Defence Motion to Reconsider the Rejection of a Number of Videos", 18 December 2009.

a witness does not in any way call into question the fact that these same videos, which the Prlić Defence had sought to admit by means of a written request and whose admission had been barred, did not meet the conditions for admission by means of a written request,

CONSIDERING that the Chamber finds therefore that the admission of the two videos by means of the testimony of the Accused Petković, previously excluded by the decisions regarding written requests, does not in any event constitute a new circumstance or a clear error on the part of the Chamber and therefore denies the Motion insofar as it concerns reconsideration of the Decision of 1 February 2010,

CONSIDERING that the Chamber notes that, in the alternative and in support of the Motion for Certification to Appeal, the Prlić Defence submits that the financial sanctions imposed upon it had “a chilling effect” and a fear that could turn into a “sword of Damocles”; the Prlić Defence does not raise any legal arguments in support of its motion and merely mentions its state of mind; that the Chamber therefore finds that the Prlić Defence has not established how being subjected to a sanction pursuant to Rule 73 (D) of the Rules satisfies the criteria for certification to appeal, and decides to deny the Motion on this point,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 33 (A) and (B), 54, 73 (D), 89 and 127 (A) of the Rules of Procedure and Evidence,

DENIES the Motion,

REMINDS the Registrar of his obligation to enforce the decisions of the Chamber or of the possibility of seizing the Chamber thereof should difficulties arise in the course of their execution,

ORDERS the Registrar, for the second time, to withhold payment of the legal fees and costs related to “Jadranko Prlić’s Motion for Reconsideration of the *Décision concernant la Demande de certification d’appel de la Décision portant sur la Demande de la Défense Prlić de reconsidérer le rejet de certaines vidéos*”, dated as of 26 January 2010.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-eighth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]