



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: 25 March 2011
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

Order of: 25 March 2011

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR CLARIFICATION
CONCERNING PREPARATION OF PUBLIC VERSION OF FINAL TRIAL
BRIEFS**

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 Stojic
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Zoran Ivanišević 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 Clarification Concerning Preparation of Public Version of Final Trial Briefs”, filed as a confidential document by the Office of the Prosecutor (“Prosecution”) on 16 March 2011 (“Motion”),

NOTING the request of the Chamber addressed to the parties in an email of 4 February 2011, ordering them to file amended public versions of the final trial briefs before 1 April 2011,¹

NOTING the email sent by the Chamber to the parties on 22 March 2011, ordering the Defence teams wanting to reply to the Motion to do so before midday on 23 March 2011,²

CONSIDERING that the Defence teams did not file a response to the Motion,

CONSIDERING that in the Motion, the Prosecution maintains that the preparation of the public versions of the final trial briefs to be filed before 1 April 2011 requires the application of various protective measures ordered by the Chamber leading, therefore, to a number of redactions;³ that out of caution, but also to ensure that it is consistent with the Chamber’s wishes with respect to the protection of witnesses and confidentiality, it seizes the Chamber of a request for clarification relating to the extent of the redactions needed,⁴

CONSIDERING, more precisely, that it presents what it understands to be the position and the practice of the Chamber in the matter of the protection of testimony and documentary evidence, namely that the information that must remain confidential concerns the identity of the protected witnesses and/or the source of some evidence, and not the actual content of the evidence, as long as the evidence, or its content, does not enable on its own or in conjunction the identity of witnesses and/or the source of

¹ Email sent by the Chamber on 4 February 2011.

² Email sent by the Chamber on 22 March 2011.

³ Motion, para. 1.

⁴ Motion, paras 2 and 7.

the protected information to be identified;⁵ that in this respect it provides examples from the practice of the Chamber in order to illustrate its interpretation,⁶

CONSIDERING that the Prosecution maintains that if it has incorrectly understood the position of the Chamber with respect the application of protective measures with a view to filing a public version of the final trial brief, it would be beneficial to all parties if the Chamber clarified its instructions, namely if it finds that any evidence or testimony given in closed or private session or under seal should not be cited publicly,⁷

CONSIDERING, consequently, that the Prosecution's Motion asks the Chamber to confirm the Prosecution's interpretation set out above or to clarify its position in the matter of the protection of witnesses and confidentiality of information,⁸

CONSIDERING that the Chamber recalls that the practice in the matter of protective measures is clearly established but that, in view of what the Prosecution is requesting, it would now be appropriate to confirm the requirements in the matter before the filing of the public versions of the final trial briefs in the interest of integrity of the proceedings and transparency,

CONSIDERING that, throughout the trial, the Chamber granted a number of measures to protect the identity of witnesses and sources, pursuant to Article 22 of the Statute of the Tribunal and Rules 69, 70 and 75 of the Rules of Procedure and Evidence ("Rules"); that in respect of witnesses and sources protected by the protective measures ordered by the Chamber, the Chamber deems that any information that enables protected witnesses and sources to be identified should be omitted by using the pseudonyms given by the Chamber or by redacting any extracts of testimony or documentary evidence that would enable the public to identify the protected witnesses or sources and/or to deduce that the person in question was involved in the present case,

CONSIDERING, moreover, that the Chamber specifies that the content of evidence itself could be included in the public version of the final trial briefs as long as this

⁵ Motion, paras 2 and 6.

⁶ Motion, paras 3 to 5.

⁷ Motion, para. 7.

⁸ Motion, paras 2 and 7.

evidence or its content does not in itself or in conjunction enable the protected witnesses or protected sources of information to be identified,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

RECALLS its interpretation of the application of protective measures which it ordered during the trial, as set out in the present Decision,

AND

ORDERS the parties to conform to it in their public versions of the final trial briefs.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]