



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: 16 May 2008
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 Hans Holthuis

Order of: 16 May 2008

THE PROSECUTOR

v.

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

PUBLIC

**ORDER ON SLOBODAN PRALJAK'S MOTION
CONCERNING THE TRANSLATION OF DOCUMENTS**

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 Tomašević-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 “Slobodan Praljak’s Motion Requesting that the Trial Chamber Order the Registrar to Facilitate Translations”, filed confidentially and urgently by Counsel for the Accused Praljak (“Praljak Defence”) on 24 January 2008 (“Motion”), in which the Praljak Defence asks the Chamber to order the Registry to take measures to ensure the translation of documents needed by the Accused to effectively prepare his defence.

NOTING the “Scheduling Order” issued by the Chamber on 27 September 2007, in which it ordered, pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”), each Accused to file the list of exhibits they intend to present in support of their case and disclose to the Office of the Prosecutor (“Prosecution”) copies of the exhibits in question, translated into English as needed,

NOTING the “Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting a New Schedule”, rendered by the Chamber on 28 January 2008 (“Decision of 28 January 2008”), in which it decided that the Accused were to file the lists of exhibits and witnesses as provided in Rule 65 *ter* (G) of the Rules on 31 March 2008,

NOTING the oral Decision rendered by the Chamber on 28 January 2008, in which it asked the Registry to submit its written observations regarding the Motion in accordance with Rule 33 (B) of the Rules,¹

NOTING the “Registry Submission Pursuant to Rule 33 (B) of the Rules on Slobodan Praljak’s Motion Requesting Translations”, filed confidentially by the Registry on 12 February 2008, in which it asks the Chamber to deny the Motion and order the Praljak Defence to conform to the procedure set out in the “Registry Policy Governing Translation Services Provided by the Registry” dated 16 November 2006,

NOTING “Slobodan Praljak’s Request for Leave to Reply to the Registry’s Response to Praljak’s Motion Requesting Order to Facilitate Translation and Praljak’s Reply to

¹ Court transcript in French (“CT(F)”, p. 26871.

the Registry's Submission", presented confidentially by the Praljak Defence on 14 February 2008, in which it asks the Chamber to grant the Motion,

NOTING the meeting held on 27 February 2008 pursuant to Rule 65 *ter* (D) (iv) and (v) of the Rules attended by the Chamber's senior legal officer, representatives of the Conference and Language Services Section ("CLSS") and members of the Praljak Defence team, with the aim of bringing the Parties together in order to facilitate the resolution of questions regarding document translation,

NOTING the "Supplemental Information Regarding Praljak's Motion to Order the Registrar to Facilitate Translations", filed confidentially and *ex parte* by the Praljak Defence on 28 February 2008, in which it indicates the subject of its exhibits and notes the fact that it is unable to prioritize them,

NOTING the "Registry Submission Pursuant to Rule 33 (B) Providing Supplemental Information Related to Praljak's Request for Translations", filed confidentially by the Registry on 3 March 2008 ("Supplementary Observations"), in which it asks the Chamber to bear in mind the limited translation capacity of CLSS when it decides on the number of documents it will authorise the Praljak Defence to request for translation and when it sets the filing dates,

NOTING the "Notice Regarding Registry's Submission of Supplemental Information on the Motion to Order the Registrar to Facilitate Translations", filed confidentially and *ex parte* by the Praljak Defence on 4 March 2008, in which it repeats that it is unable to establish an order of priority among the exhibits it intends to include on the list filed pursuant to Rule 65 *ter* (G) of the Rules and that it consequently requests the translation of all the documents submitted to CLSS in preparation of its defence,

NOTING the "Order on Slobodan Praljak's Motion Concerning the Translation of Documents", rendered by the Chamber on 19 March 2008 ("Order of 19 March 2008") in which it partially responded to the Motion by allowing the Praljak Defence to be an exception to the obligation to produce the translations of exhibits on the exhibits list on 31 March 2008 and stayed its ruling in all other respects,

NOTING "Slobodan Praljak's Submission Pursuant to Rule 65 *ter*", filed on 31 March 2008 ("65 *ter* (G) Submission") to which three confidential annexes are

attached, in which the Praljak Defence submits to the Chamber its lists of witnesses and exhibits in accordance with Rule 65 *ter* (G) of the Rules,

NOTING the Pre-Defence Conference held on 21 April 2008 pursuant to Rule 73 *ter* of the Rules (“73 *ter* Conference”) before the Chamber in the presence of representatives of the Defence and representatives of the Prosecution during which the Chamber heard the Parties’ views on various issues related to the conduct of the Defence case,²

NOTING the “Decision Adopting Guidelines for the Presentation of the Defence Case”, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”), in which it established the guidelines for the presentation of the Defence case,

CONSIDERING that the Praljak Defence indicated to the Chamber during the 73 *ter* Conference that it had received the translation of 2,000 pages of documents from CLSS and that 625 documents corresponding to 2,100 pages of documents not yet translated had been included on the list of exhibits filed pursuant to Rule 65 *ter* (G) of the Rules on 31 March 2008 (“65 *ter* Exhibit List”),³

CONSIDERING that the Praljak Defence also requested that CLSS translate 5,000 pages of supplementary documents corresponding to the translation of the witness statements that the Praljak Defence wants to submit in future to the Chamber pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules,⁴

CONSIDERING that pursuant to the Decision of 28 January 2008, it was incumbent upon the Praljak Defence to file its exhibit list and to disclose to the Prosecution copies of these exhibits, translated into English as needed, on 31 March 2008,⁵

CONSIDERING that in its Order of 19 March 2008, the Chamber granted the Praljak Defence an exception to the obligation to produce these translations on 31 March 2008, under the condition that the Praljak Defence provide a precise translated

² CT(F) pp. 27349-27452.

³ CT(F) p. 27365.

⁴ Supplementary Observations, para. 6.

⁵ Decision of 28 January 2008, pp. 8 and 9.

summary of the contents of each exhibit on its list of exhibits and classify the exhibits by subject during the filing of the said list,⁶

CONSIDERING that the Chamber indicated in the Order of 19 March 2008 that it was considering the possibility of setting a maximum number of document pages which the Accused will have the right to request the Tribunal to translate,⁷

CONSIDERING that the Chamber also indicated in the Order of 19 March 2008 that it would take its decision on this matter after analysing the lists of exhibits and witnesses filed by the Praljak Defence pursuant to Rule 65 *ter* (G) of the Rules,⁸

CONSIDERING that the 65 *ter* (G) List indicates for each exhibit the subject to which it refers, but that this list includes too many different subjects, often redundant and imprecise, and does not form an organised whole,⁹

CONSIDERING that the 65 *ter* (G) List does not indicate which exhibits have their translation pending and does not provide a detailed summary of these exhibits,¹⁰

CONSIDERING that the Chamber consequently finds that the 65 *ter* (G) List does not respect the Chamber's instructions in the Order of 19 March 2008,

CONSIDERING that it is incumbent upon the Chamber to ensure that the rights of the Accused are fully respected and that the Accused have adequate facilities for the preparation of his defence,¹¹

CONSIDERING also that pursuant to Rule 90 (F) of the Rules, the Chamber exercises control over the mode of the presentation of evidence to ensure their effectiveness for ascertaining the truth and to avoid the needless consumption of time,

CONSIDERING that in the present case, the Appeals Chamber noted the importance of Rule 90 (F) of the Rules and decided that the Chamber enjoyed considerable discretionary power in the implementation of this Rule,¹²

⁶ Order of 19 March 2008, p. 7.

⁷ Order of 19 March 2008, p. 6.

⁸ Order of 19 March 2008, p. 6.

⁹ 65 *ter* (G) Submission, confidential annex (B).

¹⁰ 65 *ter* (G) Submission, confidential annex (B).

¹¹ See the Statute of the Tribunal ("Statute"), Article 20 (1), Article 21 (4) (b).

CONSIDERING that the Appeals Chamber furthermore recognized it was a legitimate goal to ensure that the proceedings incurred no unjustified delay and that the trial ended within a reasonable period,¹³

CONSIDERING furthermore that in its Decision of 24 April 2008, the Chamber adopted Guideline 8 whereby a Party wishing to tender an exhibit into the record does so, in principle, by presenting this exhibit to a witness at the hearing who is likely to attest to its reliability, relevance or probative value,¹⁴

CONSIDERING also that in its Decision of 24 April 2008, the Chamber adopted Guideline 9 whereby a Defence team may seize the Chamber of a written motion requesting the admission of exhibits that were not presented to a witness at the hearing, provided, *inter alia*, it gave the Chamber the reasons why the Party considered this exhibit essential for the determination of the case,¹⁵

CONSIDERING that it is consequently incumbent upon the Praljak Defence to make a choice by identifying the exhibits that are strictly necessary for the determination of the issues in dispute and that neither the Prosecution nor the Chamber may make this choice in place of the Praljak Defence, particularly since it alone knows the strategy it intends to follow,

CONSIDERING that the Chamber notes that the 65 *ter* (G) Exhibit List does not organise the exhibits by subject or provide a detailed summary allowing the Chamber to determine whether the numerous exhibits not yet translated on this list are necessary to the presentation of the Accused Praljak's defence.

CONSIDERING consequently that the Chamber finds that the Praljak Defence has not shown that the translation of all the numerous documents on the 65 *ter* (G) List is necessary for the preparation of its defence,

¹² *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Decision on Joint Defence Interlocutory Appeal against the Trial Chamber's Oral Decision of 8 May 2006 relating to Cross-Examination by Defence and on Association of Defence Council's Request for Leave to File an *Amicus Curiae* Brief", rendered by the Appeals Chamber on 4 July 2006 ("Decision of 4 July 2006"), p. 3.

¹³ Decision of 4 July 2006, p. 4.

¹⁴ Decision of 24 April 2008, p. 8, para. 27..

¹⁵ Decision of 24 April 2008, pp. 9 and 10, para. 35.

CONSIDERING next that the Chamber notes that the Praljak Defence said it wanted to use the 2,308 documents on the 65 *ter* (G) List as a pool of documents likely to be submitted to the Chamber as appropriate,¹⁶

CONSIDERING that the Chamber recalls in this regard that the list of exhibits submitted pursuant to Rule 65 *ter* (G) must contain only exhibits “the defence intends to offer in its case”,

CONSIDERING that Article 21 (4) (b) of the Statute of the Tribunal (“Statute”) guarantees an accused the right to adequate facilities to prepare his defence,

CONSIDERING consequently that the Praljak Defence may not use Article 21 (4) (b) of the Statute and Rule 65 *ter* (G) of the Rules to request the translation of documents that it has not determined are necessary for its defence,

CONSIDERING that the Chamber notes that the Praljak Defence is attempting to infer such a right from the fact that the Prosecution had more than 9,000 exhibits on its exhibit list while the Chamber only admitted 4,469 exhibits,¹⁷

CONSIDERING that the Chamber recalls in this regard that it did not render its first decision adopting guidelines on the presentation and admission of documents until 13 July 2006,¹⁸ consequently after the filing of the Prosecution’s exhibit list on 19 January 2006,¹⁹

CONSIDERING that since 13 July 2006, the Chamber has always requested that the Parties choose the documents they intend to tender into the record²⁰ and that consequently the argument of the Praljak Defence based on a practice prior to 13 July 2006 is moot,

CONSIDERING that the Chamber notes that CLSS informed it in an informal communication dated 11 April 2008 that it had translated: (1) 3,506 standard United

¹⁶ 65 *ter* (G) Submission, p. 3, para. 10, CT(F) p. 27337.

¹⁷ 65 *ter* (G) Submission, p. 3, para. 10.

¹⁸ *The Prosecutor v. Prlić et al*, Case No. IT-04-74-T, Decision on Admission of Evidence (“Decision of 13 July 2006”), amended on 29 November 2006 by the Decision Amending the Decision on the Admission of Evidence dated 13 July 2006 (“Decision of 29 November 2006”).

¹⁹ *The Prosecutor v. Prlić et al*, Case No. IT-04-74-T, Prosecution’s Rule 65 *ter* Exhibit List, 19 January 2006.

²⁰ Decision of 13 July 2006, p. 7; Decision of 29 November 2006, p. 5, Decision of 24 April 2008, pp. 8-11.

Nations pages for the Prlić Defence, (2) 382 standard United Nations pages for the Stojić Defence, (3) 1,990 standard United Nations pages for the Prajak Defence, (4) 577 standard United Nations pages for the Petković Defence, (5) 914 standard United Nations pages for the Čorić Defence and (6) 883 standard United Nations pages for the Pušić Defence,

CONSIDERING that in this communication, CLSS also indicated to the Chamber that the following translations were pending: (1) 937 physical pages for the Prlić Defence, (2) 36 physical pages for the Stojić Defence, (3) 2,130 physical pages for the Praljak Defence, (4) 268 physical pages for the Petković Defence, (5) 271 physical pages for the Čorić Defence and (6) no physical pages for the Pušić Defence,

CONSIDERING that the Chamber notes that in an informal communication dated 7 May 2008, CLSS indicated to the Chamber that a standard United Nations page consists of 300 words and that this number is based on the Practice Direction on the Length of Briefs and Motions adopted by the President of the Tribunal on 16 September 2005, whereby an average page must not be longer than 300 words,

CONSIDERING that the Chamber finds that since the co-accused must respond to similar allegations from the Prosecution, a similar number of standard United Nations pages of documents should allow each one of them to effectively ensure his own defence,

CONSIDERING that the Chamber notes that the number of standard United Nations pages of translation received by each of the Accused Praljak's co-accused constitutes a relevant indication of the volume of translation that is sufficient to organise an effective presentation of their case and that a similar number of standard United Nations pages is therefore sufficient to also allow the Praljak Defence to ensure its effective defence,

CONSIDERING that the Chamber observes that the number of translations that the co-accused of the Accused Praljak received varies from 382 to 3,506 standard United Nations Pages,

CONSIDERING consequently that the Chamber finds that it is reasonable to allow the Accused Praljak to request the translation of a maximum of 3,800 standard United Nations pages of documents,

CONSIDERING consequently that since the Praljak Defence has already received the translation of documents equivalent to 1,990 standard United Nations pages, the Chamber finds it reasonable to allow the Praljak Defence to request the translation of additional documents equivalent to 1,810 standard United Nations pages,

CONSIDERING that the Chamber notes that this limitation of the translation requests applies to the entirety of the documents that the Praljak Defence may request for translation and includes the translation of the statements of witnesses that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules,

CONSIDERING also that in its Decision of 24 April 2008, the Chamber adopted Guideline 8 in which the Party presenting a witness must disclose to the other Parties and the Chamber a list of all the exhibits it intends to present within the scope of the witness's testimony two weeks before the appearance of the said witness and that these documents must be translated into one of the official languages of the Tribunal and into the language of the Accused,²¹

CONSIDERING that the Praljak Defence should therefore disclose to the Chamber and the Parties the documents on its 65 *ter* (G) List gradually as they are translated, no later than two weeks before the appearance of a witness through whom it intends to present the document,

CONSIDERING furthermore that the Chamber finds that in order to conform to Guidelines 8 and 9 of the Decision of 24 April 2008 and in order to facilitate the translation by CLSS in due time of documents needed to organise its defence, it is incumbent upon the Praljak Defence to indicate to CLSS the order of priority of the exhibits that it requests for translation,

²¹ Decision of 24 April 2008, p. 8, para. 28.

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 (1) and 21 (4) (b) of the Statute and Rules 54, 65 *ter* (G) and 90 (F) of the Rules,

ORDERS:

(i) the Praljak Defence to indicate to the Tribunal Registry as soon as possible the documents that it wishes to have translated into one of the two working languages of the Tribunal or into the language of the Accused, including the witness statements that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules, while respecting the maximum of 1,810 standard United Nations pages,

(ii) in the process, the Praljak Defence to notify the Registry of the order of priority of the documents that it wants to be translated, including the witness statements that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules,

(iii) the Tribunal Registry to translate the documents thus identified by the Praljak Defence up to a limit of 1,810 standard United Nations pages,

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this sixteenth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]