



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: 20 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

Order of: 20 May 2010

THE PROSECUTOR

v.

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

PUBLIC

**ORDER ON PRALJAK DEFENCE MOTION TO ADMIT
EVIDENCE (FRANJO LOZIĆ)**

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 “Slobodan Praljak’s Motion for the Admission of Franjo Lozić’s Statement, the Bosnian Muslim Press Conference Transcript, and Associated Ministry of Justice Netherlands Forensic Institute Documents”, filed publicly by counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 20 April 2010, to which 9 public annexes are attached (“Motion”), in which the Praljak Defence seeks admissions of the written statement of Franjo Lozić (3D 03779), the transcript from the press conference of the Muslim opposition leaders of Bosnia and Herzegovina held on 14 July 1993 (3D 03780) and four documents from the Ministry of Justice Netherlands Forensic Institute (3D 03817, 3D 03818, 3D 03819 and 3D 03820) (“Proposed Exhibit(s)”),

NOTING the “Prosecution Response to Slobodan Praljak’s Motion of 20 April 2010 Requesting the Admission of a Transcript of a Press Conference held on 14 July 1993 and Additional Evidence”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 4 May 2010 (“Response”) in which the Prosecution asks the Chamber to deny the Motion for the admission of the Proposed Exhibits,

NOTING the request for leave to reply and the reply of the Praljak Defence “Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s Response to Slobodan Praljak’s Motion for the Admission of Franjo Lozić’s Statement, the Bosnian Muslim Press Conference Transcript and Associated Ministry of Justice Netherlands Forensic Institute Document and Slobodan Praljak’s Reply to the Prosecution’s Response”, filed confidentially by the Praljak Defence on 11 May 2010 (“Request to Reply”; “Reply”),

CONSIDERING that in support of the Motion, the Praljak Defence explains that it was contacted in July 2009 by Franjo Lozić, who was a journalist with *Stadtspiegel* in

July 1993,¹ and who was offering an audio recording and transcript of a press conference held on 14 July 1993 by the Muslim leaders of Bosnia and Herzegovina,²

CONSIDERING that the Praljak Defence specifies that on 29 September 2009, it took a written statement from Franjo Lozić regarding the circumstances of the disclosure of this recording; that it requested the Ministry of Justice Netherlands Forensic Institute to analyse the conformity of the audio recording and the transcript and that the Ministry of Justice Netherlands Forensic Institute issued a report on 30 March 2010 confirming the conformity between the recording and the transcript,³

CONSIDERING that the Praljak Defence argues that the Proposed Exhibits are relevant and have probative value in that they contribute information on the origins of the conflict between the Croats and Muslims in Bosnia;⁴ that they are reliable and authentic in view of the analysis conducted by the Ministry of Justice Netherlands Forensic Institute,⁵ that the written statement of Franjo Lozić (3D 03779) meets the conditions set out under Article 92 *bis* of the Rules of Procedure and Evidence (“Rules”)⁶ and argues that, if necessary, the Proposed Exhibits should be added to its list of exhibits pursuant to Rule 65 *ter* of the Rules (“65 *ter* List”),⁷

CONSIDERING that in support of its Response, the Prosecution argues that the Motion firstly seeks the admission of the transcript of the press conference of 14 July 1993 under number 3D 03780, and that the written statement of Franjo Lozić (3D 03779) is secondary in that it only explains how the written transcript of the recording came about and how it was disclosed to the Praljak Defence,⁸

CONSIDERING that the Prosecution submits, *inter alia*, that if the Praljak Defence wished to have Proposed Exhibit 3D 03780 admitted, it should have instead put forth statements from the press conference participants,⁹

¹ See written statement from Franjo Lozić under number 3D 03779 in Annex D of the Motion.

² Motion, para. 7.

³ Motion, para. 8.

⁴ Motion, paras 16 to 24

⁵ Motion, para. 25.

⁶ Motion, paras 26 to 30.

⁷ Motion, paras 31 to 35.

⁸ Response, paras 4 to 6.

⁹ Response, paras 7 to 12.

CONSIDERING, finally, that the Prosecution argues that the Motion is late and that the Praljak Defence has not provided valid reasons to justify this lateness, and that since coming into possession of Proposed Exhibit 3D 03780, it had had numerous occasions to tender it for admission,¹⁰

CONSIDERING that in the Reply, the Praljak Defence merely replies to the Prosecution by reiterating and reformulating the arguments set out in the Motion,

CONSIDERING, firstly, that since the Reply does not contribute any new arguments to the Motion, the Chamber decides to reject the Motion for Leave to Reply,

CONSIDERING that the Chamber notes that the audio recording and the transcript of the press conference of 14 July 1993 under number 3D 03780 have been in the possession of the Praljak Defence since July 2009, and that the written statement of Franjo Lozić under number 3D 03779 has been in their possession since 29 September 2009,

CONSIDERING that the Chamber understands well the Praljak Defence wish to be certain about the authenticity and reliability of Proposed Exhibit 3D 03780 before requesting its admission,

CONSIDERING that the Praljak Defence could have, however, notified the Chamber, well before the Motion, of its intention to subsequently introduce this new Proposed Exhibit and any other Proposed Exhibits that might be related to it,

CONSIDERING, furthermore, that the Chamber notes that it is only in this Motion, and moreover peripherally, that the Praljak Defence seeks the addition of the Proposed Exhibits to its 65 *ter* List; that the Chamber however notes no explanation that would justify this motion for addition not being filed previously and independently of the authentication procedure at the Ministry of Justice Netherlands Forensic Institute that was ongoing,

CONSIDERING, moreover, that the Chamber recalls that the Praljak Defence concluded its case as of 13 October 2009; that the Chamber noted this several times,

¹⁰ Response, paras 13 to 15.

notably in its Decisions of 4 December 2009,¹¹ and 16 February 2010;¹² that the Praljak Defence never reacted to this acknowledgement by notifying the Chamber that it had taken steps to authenticate evidence that had recently come into its possession and for which it wished to request admission as soon as possible,

CONSIDERING that, under these conditions, the Chamber deems that the Motion is much too late and decides to deny the Motion,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 89, 92 *bis* and 126 *bis* of the Rules,

DENIES the Motion for Leave to Reply, **AND,**

DENIES the Motion,

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

The Presiding Judge attaches a separate and concurring opinion to this order.

Judge Treschel shall subsequently attach a separate and concurring opinion to this order.

¹¹ "Decision on Accused Praljak's Motion for Provisional Release", confidential, 4 December 2009, para. 34.

¹² "Decision on Slobodan Praljak's Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules", confidential, 16 February 2010 ("Decision of 16 February 2010"), para. 47.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twentieth day of May 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

Separate and concurring opinion of Presiding Judge Jean-Clude Antonetti

The Trial Chamber **unanimously** decided to deny the Praljak Defence motion for the admission of the written statement of Franjo Lozić (3D 03779) and four documents from the Ministry of Justice Netherlands Forensic Institute (3D 03817, 3D 03818, 3D 03819, 3D 03820) on the grounds of **lateness**.

I note that the Praljak Defence had information as of July 2009 about the existence of this press conference held on 14 July 1993 by the Muslim leaders of the Republic of Bosnia and Herzegovina.

Considering the argument of the Praljak Defence on the wish of some Muslim leaders to create an **Islamic State**, the Praljak Defence should at least have informed the Trial Chamber of this in a motion to add to its 65 *ter* list, and as rightly pointed out by the Prosecution, it could have put document 3D 03780 to one of its witnesses or to a witness of the other accused in court, which it did not do.

The main question I asked myself was whether denying this motion could prejudice the Praljak Defence or could run counter to revealing the truth.

Since it appears from the evidence already admitted that the political regime of Alija Izetbegović could not have been monolithic as there were other Muslims who did not share his views, as proven by the direct contacts between Fikret Abdić and the Croats in the Republic of Croatia and the HVO, I concluded that these documents might not be admitted as they are superfluous.

The notion of **lateness** can serve as an obstacle to the admission of documents, but in my view, if the interest of justice demands, on the other hand, that this notion be overridden, **a reasonable trier of fact** is required to admit the document, which is not the case here.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twentieth day of May 2010

At The Hague

The Netherlands