



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: 5 October 2010  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before: Judge Jean-Claude Antonetti, Presiding Judge**

**Registrar: Mr John Hocking**

**Order of: 5 October 2010**

**THE PROSECUTOR**

**v.**

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

***PUBLIC***

**ORDER BY THE CHAMBER'S PRESIDING JUDGE CONCERNING THE  
PRLIĆ DEFENCE REQUEST SEEKING DISCLOSURE OF  
CORRESPONDENCE**

**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

**NOTING** the Statute,

**NOTING** the Rules of Procedure and Evidence,

**NOTING** particularly Rules 15(B), 19, 37(B), 54, 73, 126 *bis* and 127 of the Rules,

**NOTING** the request of 1 October 2010 by the Prlić Defence,

**NOTING** the supplement to the request by the Prlić Defence dated 4 October 2010,

**NOTING** the Decision of 4 October 2010 by the President of the Tribunal,

**CONSIDERING** that the Prlić Defence, by its request dated 1 October 2010, asked that I disclose the correspondence previously sent to Judge Prandler relating to the request for disqualification and withdrawal as well as the response of Judge Prandler. The Prlić Defence alleges in its submissions that, in the interests of justice, the Prlić Defence ought to be apprised of all correspondence sent and that there is no legitimate reason for denying the parties this information;

**CONSIDERING** that, in its further submission dated 4 October 2010, the Prlić Defence draws attention to the fact that Judge Kwon, in his Decision of 29 September 2010, had stated “the answers provided by Judge Prandler will be disclosed in [his] report in the interests of maintaining the transparency of the process (...)”;

**CONSIDERING** that the Prlić Defence is alleging discrepancies in Judge Kwon’s findings;

**CONSIDERING** that I fully acknowledge the need for procedural transparency, I nevertheless cannot base my reasoning on the alleged discrepancies in Judge Kwon’s positions, as I do not have any jurisdiction whatsoever to assess them;

**CONSIDERING** at the same time that procedural transparency, while being an obligation, does nevertheless derogate from the practice of so-called *ex parte* proceedings;

**CONSIDERING**, moreover, that internal documents between the Judges who are shielded by the secrecy of deliberations or the confidentiality of correspondence are not intended for automatic disclosure to third parties;

**CONSIDERING** as well, that Rule 15 (B)(i) of the Rules does not place any duty upon the parties to disclose the situation report, let alone the annexes, for otherwise the text would have been phrased thus: “[...] [t]he Presiding Judge shall confer with the Judge in question and report to the President[, **after having informed the parties**].”

**CONSIDERING** that the practice observed in this respect varies and is dependent upon the scope of **discretion** enjoyed by the author of the report concerning whether to inform the party(-ies) in full or in part about the contents of his or her report;

**CONSIDERING** that the request by the Prlić Defence must be harmonised with the proceedings resulting from the Decision of the President of the Tribunal, who had entrusted Judge Kwon with the task of writing the situation report concerning the problem raised;

**CONSIDERING** that Judge Kwon submitted his report on 1 October 2010 regarding this issue, attaching to his report the memorandum that Judge Prandler drafted on 30 September 2010, which the Prlić Defence already has in its possession;

**CONSIDERING** that the President of the Tribunal, on 4 October 2010, rendered his public decision to deny the motions brought by the Prlić and Praljak Defences;

**CONSIDERING** that in this decision, it is stated in paragraph 11 that Judge Kwon had denied the same motion;

**CONSIDERING** that this point was likewise examined in detail, as stated in paragraph 12 of the Decision of 4 October 2010, since Judge Kwon clarified the issue of my report in his decision on 1 October 2010;

**CONSIDERING** that the consequence of the fact that the President of Chamber III being seized is that my report, my supplemental report and the annexes were nullified by the Decision of the President of the Tribunal, seized of **my reports**;

**CONSIDERING** that under these conditions, my ruling would necessarily deny the request, as these reports and annexes were not supposed, from a procedural standpoint, to have ever occurred, having been drafted by a judge without jurisdiction under Rule 15 (B) of the Rules;

