



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: 12 November 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 12 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRALJAK DEFENCE REQUEST FOR RECONSIDERATION
OR FOR CERTIFICATION TO APPEAL THE ORDER OF 14 OCTOBER
2008**

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 Request for Reconsideration, or in the Alternative for Certification to Appeal the Trial Chamber’s 14 October 2008 Decision Denying the Admission of ‘Urbicide’”, filed by the Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 21 October 2008 (“Request”), in which they request the Chamber, principally, to reconsider the “Order on the Admission of Evidence Related to Borislav Puljić”, rendered by the Chamber on 14 October 2008 (“Puljić Order”) or, should the Chamber deny this request, to certify the appeal it intends to bring against this Order in accordance with Rule 73(B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Prosecution’s Response to Slobodan Praljak’s Request for Reconsideration, or in the Alternative for Certification to Appeal the Trial Chamber’s 14 October 2008 Decision Denying the Admission of ‘Urbicide’”, filed by the Office of the Prosecutor (“Prosecution”) on 3 November 2008 (“Response”), in which the Prosecution indicates, on the one hand, that the exclusion of Exhibit 3D 00785-1 entitled “Urbicide Mostar 92” is justified since the Praljak Defence did not comply with Guideline 8 of the Decision of 24 April 2008¹ in its request for admission and, on the other hand, requests the Chamber to deny the Praljak Defence request for certification on the ground that the conditions of Rule 73 (B) have not been met,

NOTING “Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s Response to Praljak’s Motion regarding 14 October Decision Denying the Admission of ‘Urbicide’ and Slobodan Praljak’s Reply to the Prosecution’s Response”, filed by the Praljak Defence on 10 November 2008 (“Request for Leave to Reply and Reply”),

NOTING the Puljić Order in which the Chamber refused to admit into evidence Exhibit 3D 00785-1 on the ground that the Praljak Defence failed to specify which

¹ Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered on 24 April 2008 (“Decision of 24 April 2008”), Guideline 8 related to the admission of documentary evidence through a witness.

pages of this document entitled "Urbicide Mostar 92" it was requesting for admission, as so required by paragraph 30 of the Decision of 24 April 2008,

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

CONSIDERING that in support of the Request, the Praljak Defence submits that the Chamber erroneously interpreted its request for the admission of Exhibit 3D 00785-1 in that the Praljak Defence did not seek the admission of the excerpts of the book but rather the admission of the book in its entirety, which would justify the fact that it did not specify the numbers of the pages it was requesting for admission,²

CONSIDERING that according to the Praljak Defence, paragraph 30 of the Decision of 24 April 2008 would only apply when a Party requests the admission of excerpts and not when that Party requests the admission of a document in its entirety,³

CONSIDERING moreover that the Praljak Defence recalls that Witness Borislav Puljić gave evidence before the Chamber about the book in its entirety; that this is an important document related to the situation in Mostar prior to the conflict between the HVO and the BH Army and attests to the destruction caused by the JNA in Mostar in 1992,⁴

CONSIDERING that in the Request, the Praljak Defence considers that Exhibit 3D 00785-1 should be admitted since pursuant to the conditions of paragraph 27 of the Decision of 24 April 2008, Witness Borislav Puljić testified as to its reliability, relevance and probative value,⁵

CONSIDERING that in the alternative, should the Chamber refuse to reconsider its decision and not admit Exhibit 3D 00785-1, the Praljak Defence requests certification to appeal the Puljić Order under Rule 73 of the Rules, since the exclusion of this exhibit would in fact affect the fair and expeditious conduct of the proceedings or the outcome of the trial,⁶

² Request, para. 3.

³ Request, paras. 3 and 16.

⁴ Request, paras. 8,9 and 11.

⁵ Request, para. 13.

⁶ Request, paras. 18 and 19.

CONSIDERING that in the Response, the Prosecution notes that the exclusion of Exhibit 3D 00785-1 is fully justified since paragraph 30 of Guideline 8 does not permit the admission of a book in its entirety,⁷

CONSIDERING that in the Response, the Prosecution also objects to the Praljak Defence's request in the alternative to certify the appeal of the Puljić Order, since the fair and expeditious conduct of the proceedings or the outcome of the trial would not be jeopardized by the Chamber's refusal to admit into evidence Exhibit 3D 00785-1, and that the immediate resolution of this issue by the Appeals Chamber would not materially advance the proceedings,⁸

CONSIDERING that in the Response, the Prosecution further indicates that the Praljak Defence has other means at its disposal to request the admission of this exhibit, such as its admission through another witness or by way of a written motion filed pursuant to Rule 89 (C) of the Rules and the guidelines set out in the Decision of 24 April 2008,⁹

CONSIDERING that in support of the Request for Leave to Reply and Reply, the Praljak Defence argues that the Chamber should grant it leave to file a reply, which would allow it to clarify the new issues raised by the Prosecution in its Response,¹⁰

CONSIDERING that, as a preliminary remark, the Chamber considers that the arguments raised in the Request for Leave to Reply and Reply do not touch upon fundamentally new issues with respect to those set out in the Request and therefore do not justify the filing of a reply,

CONSIDERING that a Chamber has the inherent power to reconsider its own decisions and that it may grant a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error or that particular circumstances, which may be new facts or new arguments,¹¹ justify its reconsideration in order to avoid an injustice,¹²

⁷ Response, para. 4.

⁸ Response, paras. 8-14.

⁹ Response, para. 13.

¹⁰ Request for Leave to Reply and Reply, paras. 1 and 2.

¹¹ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing *The Prosecutor v. Laurent Semanza*, Case No. ICTR-

CONSIDERING that the Chamber notes that Exhibit 3D 00785-1 is a book of 259 pages entitled “Urbicide Mostar 92” written in several languages, including BCS and English, and containing numerous photographs,

CONSIDERING that the Chamber notes that in the Request, the Praljak Defence again requests the admission of this book in its entirety,

CONSIDERING that the Chamber first recalls that a document will by no means be admitted in its entirety simply because the witness has given general testimony about its reliability, relevance and probative value,

CONSIDERING that compliance with paragraph 27 of Guideline 8 does not in fact give rise to an exemption from the requirements of paragraph 30 of the said Guideline,

CONSIDERING that the Chamber next recalls that the premise of Guideline 8 is that it is impossible for a Party to present in court a work in its entirety, 259 pages in this case, and that it is therefore up to that Party to select the passages it believes are most relevant to its case,

CONSIDERING that it is not for the Chamber to sort through the evidence that the Parties put before it and that, on the contrary, the Parties must make sure that only those exhibits and excerpts which are strictly necessary for the determination of the issues in dispute are submitted to the Chamber,¹³

CONSIDERING that the Chamber recalls, contrary to the assertion of the Praljak Defence,¹⁴ that the Chamber has applied this rule consistently since 13 July 2006, except for laws and decrees,¹⁵

97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witness, 9 May 2002, para. 8.

¹² *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing in particular *The Prosecution v. Zdravko Mucić et al.*, Case No. IT-96-21Abis, Appeals Judgment on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 bis, 19 October 2006, p. 4.

¹³ Decision on Admission of Evidence, 13 July 2006; Decision of 24 April 2008, Guideline 8, para. 27.

¹⁴ Request, paras. 3 and 8.

¹⁵ Decision on Admission of Evidence, 13 July 2006, p. 9, Guideline 4. As regards the exception made for laws and decrees, see Decision on Petković Defence Motion for Reconsideration of or Certification to Appeal Two Orders Dated 1 September 2008, 1 October 2008, p. 6.

CONSIDERING that the Chamber would further note that the Praljak Defence will not be prejudiced by the exclusion of document 3D 00785-1, since it will have the opportunity, during the presentation of its case, to submit this same document again and request, if appropriate, the admission of excerpts subject to the requisite terms and conditions of the Decision of 24 April 2008,

CONSIDERING that as a result, the Chamber finds no error in the Puljić Order and in its decision to exclude Exhibit 3D 00785-1 or particular circumstance justifying a reconsideration to avoid an injustice¹⁶ and that, consequently, the Chamber denies the request for reconsideration of the Puljić Order,

CONSIDERING that in accordance with Rule 73 (B) of the Rules, “decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”,

CONSIDERING that consequently, certification to appeal is a matter within the discretionary power of the Chamber, which must first verify whether the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in this case,¹⁷

CONSIDERING that the Chamber holds that the Praljak Defence has failed to demonstrate that the subject matter of the Request involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and that an immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings,

FOR THESE REASONS,

IN ACCORDANCE with Rules 73 (B) and 89 of the Rules,

¹⁶ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, pp. 3 and 4, citing in particular *The Prosecution v. Zdravko Mucić et al.*, Case No. IT-96-21A^{bis}, Appeals Judgment on Sentence, 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 *bis*, 19 October 2006, p. 4.

¹⁷ *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

DENIES the Request for Leave to Reply and Reply,

DENIES the Praljak Defence request for reconsideration of the Puljić Order for the reasons set out in this decision, **AND**

DENIES the Praljak Defence Request for certification to appeal the Puljić Order for the reasons set out in this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twelfth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]