



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: 4 March 2009
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

Acting Registrar: Mr John Hocking

Decision of: 4 March 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE REQUEST FOR CERTIFICATION TO
APPEAL THE DECISION OF 12 FEBRUARY 2009 REGARDING
SUPPLEMENT TO THE ACCUSED PRLIĆ'S RULE 84 *BIS* STATEMENT**

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 “Jadranko Prlić’s Request for Certification to Appeal under Rule 73 (B) against the ‘*Décision relative au supplément de l’Accusé Prlić en vertu de l’article 84 bis du Règlement*,’ 12 February 2009”, filed by Counsel for the Accused Prlić (“Prlić Defence”) on 13 February 2009 (“Request”), in which the Prlić Defence requests that the Chamber certify the appeal it intends to lodge against the said decision pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Prosecution Response to Jadranko Prlić’s Request for Certification to Appeal under Rule 73 (B) against the *Décision relative au supplément à la déclaration de l’Accusé Prlić en vertu de l’article 84 bis du Règlement*, 12 February 2009”, filed by the Office of the Prosecutor (“Prosecution”) on 23 February 2009 (“Response”), in which the Prosecution requests that the Chamber deny the Request of the Prlić Defence on the ground that the conditions set forth in Rule 73 (B) of the Rules have not been fulfilled,

NOTING the “Decision Regarding Supplement to the Accused Prlić’s Rule 84 *bis* Statement”, rendered by the Chamber on 12 February 2009 (“Decision of 12 February 2009”),

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

CONSIDERING that in support of the Request, the Prlić Defence alleges that the refusal of the Chamber, in its Decision of 12 February 2009, to admit the written supplement to the statement given by Jadranko Prlić pursuant to Rule 84 *bis* of the Rules (“Supplement”) infringes upon the right of the Accused Prlić to a fair trial, firstly, in that it does not allow him to participate effectively in his own defence and, secondly, in that it violates the principle of equality of arms since, in the impugned decision, the Chamber did not take into consideration the constraints of time and resources imposed upon the Prlić Defence,¹

¹ Request, para. 6.

CONSIDERING that the Prlić Defence also submits that the Chamber's refusal to admit the Supplement may, for purely procedural reasons, lead to the exclusion of evidence likely to offer indicia of relevance which, in particular, might form the basis for the acquittal of the Accused Prlić,²

CONSIDERING that the Prlić Defence maintains, for the aforementioned reasons, that the refusal of the Chamber to admit the Supplement would affect the fair and expeditious conduct of the proceedings or outcome of the trial, within the meaning of Rule 73 (B), and that an immediate resolution of the issue will materially advance the proceedings,³

CONSIDERING that, in its Response, the Prosecution requests that the Chamber deny the Request on the ground that the fair and expeditious conduct of the proceedings or outcome of the trial are not jeopardised by the refusal of the Chamber to admit the Supplement and that an immediate resolution of this issue by the Appeals Chamber will not materially advance the proceedings,⁴

CONSIDERING that, in its Response, the Prosecution rejects in particular the allegations made by the Prlić Defence regarding the infringement of the Accused Prlić's right to a fair trial and submits, firstly, and based in particular upon the fact that the Accused Prlić gave a statement pursuant to Rule 84 *bis*, that there are no indications that the Accused Prlić has not participated fully in the preparation of his case⁵ and, secondly, that the claims of time constraints and lack of resources alleged by the Prlić Defence in support of its Request are unfounded,⁶

CONSIDERING that the Prosecution recalls specifically, first, that the Prlić Defence, as opposed to the other defence teams, did not appeal the "Decision Allocating Time to the Defence to Present its Case" of 25 April 2008 and did not ask for additional time for the cross-examination of Expert Witness William Tomljanovich during the Prosecution case,⁷ and maintains, second, that the argument about a lack of resources was raised too late by the Prlić Defence and should have

² Request, para. 7.

³ Request, paras 6 and 7.

⁴ Response.

⁵ Response, para. 5.

⁶ Response, paras 6 and 7.

⁷ Response, paras 6-10.

been raised with the Trial Chamber prior to the beginning of the case-in-chief of the Accused Prlić, if the Prlić Defence regarded this as necessary,⁸

CONSIDERING that in the Reponse, the Prosecution also submits that Tribunal jurisprudence suggests that requests for certification to appeal are the exception and not the rule, and stresses that the Prlić Defence has other means at its disposal to request the partial admission of this Supplement, in particular as part of the Prlić Defence closing brief,⁹

CONSIDERING that, pursuant to Rule 73 (B) of the Rules, “[D]ecisions 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, consequently, that certification to appeal is a matter within the discretionary power of the Chamber which must, in any event, first ensure that the two cumulative conditions set forth in Rule 73 (B) of the Rules have been met in the case in question,¹⁰

CONSIDERING that the Chamber based its Decision of 12 February 2009 on Rule 84 *bis* of the Rules, according to which an accused may, after the opening statements of the parties, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber,

CONSIDERING that, in its Decision of 12 February 2009, the Chamber held that the procedure provided for under Rule 84 *bis* of the Rules was not appropriate for admitting a Supplement to the statement of an accused,

CONSIDERING, nonetheless, that, although the Chamber is convinced that the Decision of 12 February 2009 is founded in law, it holds firstly that the Prlić Defence has nonetheless demonstrated that the refusal of the Chamber to accept the

⁸ Response, para. 10.

⁹ Response, paras 13 and 14.

¹⁰ *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

Supplement could be perceived in this case as an infringement on the right of the Accused Prlić to participate in the preparation of his defence and, more broadly, on his right to a fair trial,

CONSIDERING, consequently, that the Chamber holds that the Decision of 12 February 2009 deals with an issue that would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial and that it is necessary to find out whether the refusal to admit the supplement on procedural grounds could constitute an infringement of the right of the Accuse Prlić to a fair trial,

CONSIDERING that the Chamber notes, secondly, that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings and would not be detrimental to the Prosecution and to the other Defence teams,

FOR THESE REASONS,

IN ACCORDANCE with Rule 73 (B) of the Rules,

GRANTS the Request of the Prlić Defence,

AND

CERTIFIES the appeal of the Prlić Defence of the Decision of 12 February 2009.

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

The Presiding Judge has attached a separate opinion to this decision.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]