



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: 23 July 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: 23 July 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JADRANKO PRLIĆ'S MOTION TO BE RELIEVED FROM
THE STRICT APPLICATION OF GUIDELINE 9
OF THE DECISION OF 24 APRIL 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 Jadranko Prlić’s Motion to be Relieved from the Strict Application of Guideline 9 of the Guidelines for the Presentation of Defence Evidence, filed by Counsel for the Accused Prlić (“Prlić Defence”) on 25 June 2008 (“Motion”) in which the Prlić Defence asks the Chamber (1) to relieve it of the strict application of guideline 9 of the Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”), in particular to be relieved of the requirement to file motions requesting the admission of documentary evidence “promptly” after the end of the presentation of all the evidence in respect of a given municipality or subject, (2) to grant it a reasonable period of time to submit documentary evidence after the close of its case, and (3) to authorise it to request the admission of other relevant documentary evidence until the end of the defence case if good cause is shown,

NOTING the Prosecution Response to Jadranko Prlić’s Motion to be Relieved from the Strict Application of Guideline 9 of the Guidelines for the Presentation of Defence Evidence, filed by the Office of the Prosecutor (“Prosecution”) on 8 July 2008 (“Response”) in which the Prosecution requests that the Chamber deny the Motion,

CONSIDERING that Counsel for the other Accused in this case did not file any response to the Motion,

CONSIDERING that in support of the Motion, the Prlić Defence argues that the collection and presentation of the information required by Guideline 9 is extremely time-consuming and burdensome and that it is virtually impossible to satisfy the obligation to file motions for the admission of evidence “promptly” after the end of the presentation of evidence relative to a given municipality or subject,¹

CONSIDERING that the Prlić Defence furthermore submits that when the Chamber adopts guidelines, it should not modify the fundamental principles governing the

¹ Motion, para. 1.

admission of evidence that are at the heart of the Rules of Procedure and Evidence (“Rules”), in particular Rule 89,²

CONSIDERING that it next notes that the Chamber should not put the Defence at a disadvantage compared to the Prosecution and that the rules on the admission of documentary evidence that applied during the presentation of the Prosecution case did not require the Prosecution to file its motions “promptly” in this regard,³

CONSIDERING that it also notes in this regard that the Chamber apparently admitted exhibits tendered by the Prosecution even when the relative motions requesting the admission of documentary evidence were not filed promptly,⁴

CONSIDERING that the Prlić Defence finally maintains that it should not be treated differently from the other accused appearing before the Tribunal, since in other trials the Defence and the Prosecution would have been allowed to move for the admission of documentary evidence on the last day of the presentation of their respective cases, and even, in certain cases, after this date,⁵

CONSIDERING that the Prosecution argues that there is no cause to render an order in advance relieving the Prlić Defence from strictly applying guideline 9 and that the Prlić Defence should provide convincing grounds before the Chamber grants an exception,⁶

CONSIDERING that the Prosecution requests that the Prlić Defence be treated the same as the Prosecution,⁷

CONSIDERING that the Prosecution objects in particular to the Chamber authorising the Prlić Defence to present documentary evidence until the close of the Defence case on the ground that this solution would be unfair to both the Chamber and the Prosecution,⁸

² Motion, para. 2.

³ Motion, para. 3.

⁴ Motion, para. 3.

⁵ Motion, para. 4.

⁶ Response, para. 4 (b).

⁷ Response, para. 4 (a).

⁸ Response, paras. 4 (c) and 24.

CONSIDERING that paragraph 35 of the Decision of 24 April 2008 (guideline 9) requires that any motion requesting the admission of documentary evidence be presented “promptly” after the end of the presentation of all the evidence in respect of a given municipality or subject,

CONSIDERING that the Chamber recalls the Decision Amending the Decision on the Admission of Evidence dated 13 July 2006, dated 29 November 2006 (“Decision of 29 November 2006”) in which it invited the Prosecution, as appropriate, to present written motions “as soon as possible” after all the evidence concerning a given municipality or subject had been presented,⁹

CONSIDERING that the Chamber consequently notes that the rules governing the filing of motions to admit documentary evidence during the presentation of the Defence case are identical to those applied during the presentation of the Prosecution case,

CONSIDERING that the Chamber next notes, contrary to what the Prlić Defence seems to allege, that every decision by the Chamber on a request to admit documentary evidence is based on Rule 89 of the Rules,¹⁰

CONSIDERING that guideline 9 merely gives concrete expression to the procedure applicable in this regard and thus responds to Article 20 (1) of the Tribunal’s Statute (“Statute”) and to Rule 90 (F) of the Rules that require the Chamber to exercise control over the mode of presenting evidence so as to make it effective for the ascertainment of the truth and avoid the needless consumption of time,

CONSIDERING that requesting that written motions asking for the admission of documentary evidence be presented “promptly” after the presentation of all the evidence concerning a given municipality or subject makes it possible in particular for the presentation of evidence to be as coherent as possible,¹¹

CONSIDERING that allowing the Prlić Defence to present evidence after the presentation of its case or until all the Accused have presented their cases would be

⁹ Decision of 29 November 2006, p. 7.

¹⁰ Decision of 29 November 2006, p. 7 and Decision of 24 April 2008, p. 12.

¹¹ Decision of 29 November 2006, p. 5.

detrimental not only to the Prosecution but also to the other Accused, since such a practice could considerably delay the pronouncement of the judgement in this case,

CONSIDERING furthermore that a general comparison of different cases brought before the Tribunal would bring no new argument in this regard and that every Trial Chamber renders decisions that are appropriate in the light of the specific circumstances of each case, in particular their complexity and scope,

CONSIDERING finally that the argument presented by the Prlić Defence that “the collection and presentation of the information required by Guideline 9 is extremely time-consuming and burdensome” and that “it is virtually impossible to strictly comply with the requirement that motions for the admission of documentary evidence be filed ‘promptly’” is unfounded,

CONSIDERING that the Chamber recalls in this regard that it is incumbent upon the Accused to prepare their defence in the pre-trial phase, that the Prlić Defence filed a list of exhibits it intends to present in support of its case pursuant to Rule 65 *ter* (G) of the Rules on 31 March 2008, and that it consequently must have made a selection of the exhibits that are important for its case, all the more so since it is already in the phase of presenting its evidence before the Chamber,

CONSIDERING furthermore that the Prlić Defence, just as the other parties in the trial, must present the exhibits that it wishes to tender into evidence through a witness at the hearing,¹² which implies that the Prlić Defence is familiar with its exhibits and has made a selection in order to present exhibits to witnesses at the hearing,

CONSIDERING that the Chamber therefore decides to uphold guideline 9 adopted by the Decision of 24 April 2008 and to deny the Motion,

CONSIDERING that, having said this, the Chamber does not rule out the possibility of a Defence team having valid reasons to request an extension of the deadline to file a motion pursuant to paragraph 35 of the Decision of 24 April 2008, but that there is no question of granting a motion for general relief,

¹² Decision of 24 April 2008, para. 27; Decision on the Admission of Evidence, 13 July 2006.

CONSIDERING that the Prlić Defence began to present its evidence on 6 May 2008 and to date has brought nine witnesses before the Chamber for 41 hours and 10 minutes,¹³

CONSIDERING that the Chamber believes that at this advanced phase in the presentation of its case, the Prlić Defence knows exactly how it will proceed and at what moment it will have ended the presentation of evidence for a given municipality or subject, and that it is consequently able to announce when it will file, as appropriate, motions requesting the admission of documentary evidence,

CONSIDERING that at present the Chamber would like to know when the Prlić Defence counts on filing motions pursuant to paragraph 35 of the Decision of 24 April 2008 in order to verify that the due dates correspond to the notion of “promptly” in order to ensure the proper conduct of the trial and avoid any unnecessary delay,

FOR THE FOREGOING REASONS,

PURSUANT TO Article 20 (1) of the Statute and Rules 54, 89 and 90 (F) of the Rules,

DENIES the Motion, **AND**

REQUESTS the Prlić Defence to inform it no later than 1 September 2008 when, as appropriate, it counts on filing written motions pursuant to paragraph 35 of the Decision of 24 April 2008.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Unofficial email notice from the Registrar to the Chamber and all the Parties on 23 July 2008.