



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 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: 4 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON REQUEST FOR RECONSIDERATION OR FOR
CERTIFICATION TO APPEAL THE ORDER OF 13 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 to reconsider or in the alternative for certification to appeal the Order on Slobodan Praljak’s Motion Regarding the Translation of Documents, rendered by the Chamber on 13 October 2008 (“Order of 13 October 2008”),¹ filed by Counsel for the Accused Praljak (“Praljak Defence”) on 20 October 2008 (“Request”), in which it requests that the Chamber reconsider the Order of 13 October 2008 or, in the alternative, certify the appeal they intend to lodge against it, to which a confidential annex is attached,

NOTING the Order of 13 October 2008,

CONSIDERING that the other Parties did not inform the Chamber of their observations regarding the Request,

CONSIDERING that in the Order of 13 October 2008, the Chamber decided that the Praljak Defence could request the Conference and Language Services Section (“CLSS”) to translate 4307 standard United Nations (“Standard UN”) pages in total,

CONSIDERING that since CLSS had already translated 2807 Standard UN pages for the Accused Praljak’s count, the Chamber decided that he could request the translation of an additional 1500 Standard UN pages,

CONSIDERING consequently that in the Order of 13 October 2008, the Chamber had requested:

- (i) the Praljak Defence to identify and send to CLSS no later than 7 November 2008, the documents it wishes to receive in translation, including the witness statements that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules, while respecting the maximum limit of 1500 Standard UN pages,

¹ Slobodan Praljak’s Request for Reconsideration, or in the Alternative, for Certification to Appeal the Trial Chamber’s 13 October 2008 Decision on the Translation of Defence Evidence, 20 October 2008.

- (ii) the Praljak Defence to inform CLSS of the order of priority for the translation of the documents thus identified,
- (iii) CLSS to translate the documents thus identified by the Praljak Defence within the limit of 1500 Standard UN pages.

CONSIDERING that in the Request, the Praljak Defence repeats the arguments that were already dealt with by the Chamber in the Order of 13 October 2008 and it will thus not re-discuss them in the present decision,

CONSIDERING that the Praljak Defence furthermore argues that the examples provided by the Chamber in the Order of 13 October 2008 in support of its analysis have no basis and that the Defence consequently requests it be reconsidered or in the alternative be certified to appeal it,²

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and may grant a request for reconsideration if the requesting party demonstrates to the Chamber the existence of a clear error of reasoning in the impugned decision or of particular circumstances, which may be new facts or new arguments,³ justifying its reconsideration in order to avoid an injustice,⁴

CONSIDERING that in the Order of 13 October 2008, the Chamber found as follows:

“Given that the Appeals Chamber requested the Chamber to make an individual assessment of the Praljak Defence translation needs, the Chamber made a new examination of Annex B-1 attached to the 65 *ter* (G) Submission. The Chamber still notes that the Praljak Defence has not provided summaries of the exhibits on the list. It furthermore finds that the information provided does not allow it to make a *prima facie* assessment of the relevance and probative value of the documents for the presentation of the Accused Praljak’s Defence case.

² Request, paras. 19 and 20.

³ *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 Prosecution v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8.

⁴ *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.

For example, 122 of the documents are entitled ‘Reminder for Mr Praljak’. In addition to the date, Annex B-1 indicates the subject ‘Slobodan Praljak’. Since the Praljak Defence did not provide detailed summaries of the contents of these documents, the Chamber has no way of establishing to which of the facts alleged in the Indictment they refer.”⁵

CONSIDERING that in the Request, the Praljak Defence notes that documents entitled “Reminder for Mr Praljak” are already translated, that their relevance is clear and that consequently the Chamber’s argument was without basis,⁶

CONSIDERING that the Chamber recalls that in the Order of 13 October 2008, it had expressly indicated that the assessment of Annex B-1 attached to the 65 *ter* (G) Submission⁷ should include all of the documents on the list, since the Praljak Defence had failed to indicate which documents had been translated and which documents were waiting to be translated,⁸

CONSIDERING consequently that even if the documents entitled “Reminder for Mr Praljak” have indeed been translated, this does not constitute a clear error in the Chamber’s reasoning,

CONSIDERING that the Chamber finds on the other hand that some of the documents entitled “Reminder for Mr Praljak” lack any relevance in the present case,⁹

CONSIDERING furthermore that the example of these documents indicates just how much the Praljak Defence has failed in its obligation to provide the Chamber with information allowing it to assess the translation needs of the Accused Praljak, since neither Annex B-1 attached to the 65 *ter* (G) Submission nor the Annex attached to the Request make it possible for the Chamber to identify the exhibits whose translation is missing or pending,¹⁰

⁵ Order of 13 October 2008, para. 50.

⁶ Request, para. 19.

⁷ Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*, 31 March 2008.

⁸ Order of 13 October 2008, para. 46.

⁹ See for example 3D 01319, 3D 01320, 3D 01321 and 3D 01339.

¹⁰ The Chamber notes that the Praljak Defence claims that it indicates in the Annex attached to the Request which documents have already been translated. See footnote 1 of the Request: “Annex A is a report from the eCourt system, pasted into a spreadsheet for the convenience of the Trial Chamber. It is **generally** evident which documents are already translated because they have two sequential items with no alteration other than the Doc ID field. Items requiring translation **appear** to begin on 3D01993, Doc ID 3D31-0001” (our emphasis). Regardless of the fact that the Praljak Defence does not seem sure

CONSIDERING furthermore that the Chamber found in the Order of 13 October 2008:

“Without the necessary information available to assess Annex B-1 attached to the 65 *ter* (G) Submission, the Chamber nonetheless doubts the relevance of several documents classified in the category of ‘Miscellaneous’ or numerous book extracts requested for translation by the Praljak Defence. Even a superficial examination of this Annex shows that a large number of documents do not seem relevant for the presentation of the Defence case, such as the book entitled ‘Al Qaida’s Jihad in Europe: The Afghan-Bosnian Network’.”¹¹

CONSIDERING that in the Request, the Praljak Defence notes that most of the documents classified as “Miscellaneous” do not need translation since they are available in English and that the other documents that require translation are fully relevant for the case,¹²

CONSIDERING that the Chamber finds that the example of the translated book entitled “Al Qaida’s Jihad in Europe: The Afghan-Bosnian Network” clearly shows that some of the documents listed in Annex B-1 attached to the 65 *ter* (G) Submission lack relevance,

CONSIDERING that the Chamber consequently finds that the Praljak Defence has neither shown that the Order of 13 October 2008 includes a clear error nor advanced new facts or new arguments justifying its re-examination in order to avoid an injustice, so that the request for reconsideration must thus be denied,

CONSIDERING that pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“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,”

about this information, the Chamber notes that this annex does not make it possible to identify the documents whose translation is pending.

¹¹ Order of 13 October 2008, para. 51.

¹² Request, para. 20.

CONSIDERING that Article 21 (4) (b) of the Statute that guarantees an accused the right to adequate facilities for the preparation of his defence, upon which the Order of 13 October 2008 is based, touches on an essential aspect of the right to a fair trial,

CONSIDERING also that the Chamber based the Order of 13 October 2008 on Rule 90 (F) of the Rules whereby the Chamber exercises control over the mode of presenting evidence so as to guarantee its effectiveness for the ascertainment of the truth and avoid the needless consumption of time, and that this provision directly concerns the expeditiousness of the trial,

CONSIDERING consequently that although the Chamber is convinced of the reasonable nature of the Order of 13 October 2008, it finds that the Praljak Defence has nonetheless shown that it involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial for which an immediate resolution by the Appeals Chamber may materially advance the proceedings,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 73 (B) of the Rules,

DENIES the request to reconsider the Order of 13 October 2008,

PARTIALLY GRANTS the Request by certifying the appeal that the Praljak Defence intends to lodge against the Order of 13 October 2008.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]