



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: 7 December 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

Registrar: Mr John Hocking

Decision of: 7 December 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION AMENDING DECISIONS REGARDING ADMISSION OF
TESTIMONY OF STJEPAN MESIĆ AND WITNESS DP**

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”),

PROPRIO MOTU,

NOTING the “Decision on the Prosecution Motion for Admission of Transcript of Evidence Pursuant to Rule 92 *bis* of the Rules” rendered publicly by the Chamber on 28 September 2006 (“Mesić Decision”), in which the Chamber: 1) admitted in part the testimony of Stjepan Mesić heard in *The Prosecutor v. Tihomir Blašić* case from 16 to 19 March 1998, in its redacted version attached in the Annex to the Mesić Decision; 2) authorised Counsel for the six Accused to cross-examine Stjepan Mesić and 3) stayed its decision on the admission of exhibits tendered into evidence during the testimony of Stjepan Mesić in *The Prosecutor v. Tihomir Blašić* case until they had been presented to the witness and debated before the Chamber,

NOTING the “Decision on Prosecution Motion for Admission of Eleven Pieces of Evidence Pursuant to Rule 92 *bis* of the Rules” rendered confidentially by the Chamber on 14 February 2007 (“Prozor Decision”), in which the Chamber admitted the testimony of Witness DP together with the exhibits attached to his statement, and ordered his appearance for cross-examination,

CONSIDERING that the Chamber notes that neither Stjepan Mesić nor Witness DP have appeared before the Chamber for cross-examination; that the Prosecution has closed its case and these two witnesses can no longer be called by the Prosecution to appear for cross-examination; that this fact, therefore, gives rise to some uncertainty with regard to the status of their testimonies which had been admitted by the Chamber on account of the need to cross-examine them,

CONSIDERING that in the Mesić Decision, the Chamber noted that the testimony of Stjepan Mesić dealt with elements essential to the Prosecution's case, namely the existence and functioning of the joint criminal enterprise and the role played by the authorities of the Republic of Croatia in the events alleged by the Amended Indictment of 11 June 2008 (“Indictment”); that this factor could, according to the

Chamber, argue for the dismissal of the testimony of Stjepan Mesić pursuant to Rule 92 *bis* (A) (ii) (c) of the Rules of Procedure and Evidence (“Rules”);¹ that, nevertheless, by authorising the Defence to cross-examine Stjepan Mesić, it fully protected the right of the Accused to a fair trial; that it is, therefore, under these circumstances that the Chamber admitted Stjepan Mesić's testimony,²

CONSIDERING that the Chamber now finds that the admission of Stjepan Mesić's testimony, who did not, therefore, appear for cross-examination, no longer meets the conditions set forth in the Mesić Decision; that, consequently, it decides to amend the said Decision and reject the testimony of Stjepan Mesić and the exhibits pertaining to the said testimony for which the Chamber had decided to stay its decision on their admission until the appearance of Stjepan Mesić,

CONSIDERING, furthermore, that in the Prozor Decision, the Chamber found that the statement of Witness DP referred to the alleged sexual acts mentioned in paragraph 55 of the Indictment whereas no other witness had given or would give oral evidence before the Chamber and that, moreover, he contradicted himself regarding the circumstances of the death of a person mentioned in the confidential Annex to the Indictment,³

CONSIDERING that the Chamber therefore held that under those circumstances the requirements of a fair trial made it necessary for the Defence to be given the right to cross-examine Witness DP in order to fully verify the Prosecution's argument and respond to all concerns regarding the reliability of the statement,⁴

CONSIDERING that the Chamber now finds that the admission of the statement of Witness DP, who did not appear for cross-examination either, no longer meets the conditions set forth in the Prozor Decision; that, consequently, it decides to amend the said Decision and reject the testimony of Witness DP and the exhibits attached to the said statement,

¹ Mesić Decision, paras 33 and 35.

² Mesić Decision, para. 33.

³ Prozor Decision, para. 47.

⁴ Prozor Decision, para. 47.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 92 *bis* and 92 *ter* of the Rules,

AMENDS the Mesić and Prozor Decisions, **AND**

DISMISSES the testimony of Stjepan Mesić⁵ and the statement of Witness DP (P09199) together with the pertaining exhibits.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventh day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ The Chamber notes that the testimony of Stjepan Mesić and the pertaining exhibits were not uploaded onto *ecourt* and do not bear a reference number.