

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-04-74-T**

**Before: Judge Jean-Claude Antonetti, Presiding  
Judge Arpad Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua**

**Registrar: Mr. John Hocking**

**Date filed: 14 July 2010**

**THE PROSECUTOR**

**v.**

**JADRANKO PRLIĆ  
BRUNO STOJIĆ  
SLOBODAN PRALJAK  
MILIVOJ PETKOVIĆ  
VALENTIN ĆORIĆ  
BERISLAV PUŠIĆ**

***PUBLIC WITH CONFIDENTIAL ANNEXES***

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**JADRANKO PRLIĆ'S NOTICE OF HIS INTENT TO REQUEST  
REOPENING OF HIS CASE SHOULD THE TRIAL CHAMBER GRANT  
THE PROSECUTION MOTION TO ADMIT EVIDENCE IN REOPENING**

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**Office of the Prosecutor:**

**Mr. Kenneth Scott  
Mr. Douglas Stringer**

**Counsel for the Accused:**

**Mr. Michael G. 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**

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
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REOPENING OF HIS CASE SHOULD THE TRIAL CHAMBER GRANT  
THE PROSECUTION MOTION TO ADMIT EVIDENCE IN REOPENING**

Jadranko Prlić, through his Counsel, respectfully submits this Notice informing the Trial Chamber and the Parties of his intent to request the reopening of his Defence Case in the event the Trial Chamber grants the Prosecution Motion to Admit Evidence in Reopening, filed on 8 July 2010. This notice is made necessary due to the principle of equality of arms. The material disclosed by the Prosecution, which was purportedly found in the Mladić residence in Belgrade, Serbia by the Serbian authorities, reveals that the Mladić diary (a composite of numerous notebooks), contains highly relevant and probative evidence on issues supporting Dr. Prlić's Defence Case. Should the Prosecution's motion to admit evidence through the reopening of its case-in-chief be granted, Dr. Prlić will move to have his case reopened in order to have evidence from the Mladić diary admitted, as well as any other supplementary evidence and *viva voce* testimony deemed necessary as a result of the admission of evidence from the Mladić diary. The affixed annexes to and in support of this Notice are provided confidentially out of abundance of caution, despite the public filing of its annexes to the Prosecution Motion to Admit Evidence in Reopening.

**I. BACKGROUND**

1. On 21 April 2010 the Prosecution filed a Notice of its Intent to Request Reopening of its Case ("Prosecution Notice"), after having been provided on 29 March 2010 with the electronic scanned form of the Mladić diary.<sup>1</sup> The

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<sup>1</sup> Prosecution Notice, para. 6.

- Prosecution invited the Defence “to make whatever use of the diary materials it deems appropriate.”<sup>2</sup>
2. On 26 April 2010 the Prosecution reiterated its intent to request reopening of its case with its Notice Regarding Rebuttal and Reopening of its Case.
  3. On 21 May 2010 the Prosecution filed its Motion to Reopen its Case-in-chief (Mladić’s Materials) (“First Prosecution Motion”), where it stated that “[i]f necessary the Trial Chamber can grant sufficient time to prepare the challenges and defences in respect of the Mladić materials, or, if necessary, to reopen their cases to tender evidence or call witnesses for this purpose.”<sup>3</sup>
  4. On 4 June 2010 the Prlić Defence filed its Response to the First Prosecution Motion (“Response”). The Prlić Defence, considering the Mladić diary as fresh evidence that could not have been obtained despite exercising all reasonable diligence,<sup>4</sup> has reserved its right of possibly requesting reopening of its case “should it be deemed necessary, equitable and just.”<sup>5</sup>
  5. On 9 June 2010 the Prosecution filed its Combined Reply to the Defence Responses to the Prosecution Motion to Reopen its Case-in-chief (Mladić Materials) and to Defence Requests to Suspend the Deadline for Response. The Prosecution estimated to have the transcription of all the notebooks completed by approximately mid-June 2010 and their translation into English by the first week of July 2010.<sup>6</sup> It further proposed 9 July 2010 as the deadline “for the filing of its 89(C) and 92bis Motions, whereby it would formally tender *all* Mladić related evidence... .”<sup>7</sup>
  6. On 16 June 2010 the Trial Chamber issued the *Décision Portant sur la Requête de l’ Accusation en Réouverture de sa Cause* (“16 June 2010 Decision”) declaring the Prosecution Motion as premature<sup>8</sup> and setting the 9<sup>th</sup>

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<sup>2</sup> *Id.*, para. 11.

<sup>3</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, Prosecution Motion to Reopen its Case-in-chief, 21 May 2010, para. 29 (emphasis added).

<sup>4</sup> Response, para. 12.

<sup>5</sup> *Id.*, p. 6.

<sup>6</sup> *Prosecutor v. Prlić et al.*, IT-04-74-T, Prosecution Combined Reply to the Defence Responses to the Prosecution Motion to Reopen its Case-in-chief (Mladić Materials) and to Defence Requests to Suspend the Deadline for Response, 9 June 2010, para. 4.

<sup>7</sup> *Id.*, para. 47.

<sup>8</sup> 16 June 2010 Decision, p. 6. No official translation available yet.

- of July 2010 as a deadline for the Prosecution to file a consolidated motion comprising not only the Mladić diary but also the supplementary documentary evidence that it would wish to tender for admission in the context of the reopening of its case.<sup>9</sup>
7. On 8 July 2010 the Prosecution filed its Motion to Admit Evidence in Reopening (“Second Prosecution Motion”).

## II. DISCUSSION

8. The principle of equality of arms has been recognized by the ICTY jurisprudence “as being only one feature of the wider concept of a fair trial.”<sup>10</sup> This principle requires that the accused is given procedural rights equal to those of the Prosecution.<sup>11</sup> The Appeals Chamber has held that it is “equally important and inherent in the concept of equality of arms that each party be afforded a reasonable opportunity to present his or her case under conditions that do not place him at an appreciable disadvantage *vis-à-vis* his opponent.”<sup>12</sup>
9. The principle of equality of arms also requires that the same standard of diligence is applied, when seeking the reopening of the case in order to submit additional evidence for admission. Judge Trechsel in his book *Human Rights in Criminal Proceedings* notes that:

The defence must be given a fair chance to challenge evidence against the accused and to bring its own evidence. This must be granted under the same conditions as those applicable to the prosecution, which serves the general principle of equality of arms.<sup>13</sup>

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<sup>9</sup> *Id.*, p. 4.

<sup>10</sup> *Prosecutor v. Kordić*, IT-95-14/2-A, Decision on the Application by Mario Čerkez for Extension of Time to File his Respondent’s Brief, 11 September 2001, para. 5.

<sup>11</sup> *Prosecutor v. Brđanin & Talić*, IT-99-36-T, Public Version of the Confidential Decision on the Alleged Illegality of Rule 70 of 6 May 2002, 23 May 2002, para. 22.

<sup>12</sup> *Id.* (emphasis added). See also *Prosecutor v. Orić*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 7, where it is stated that: “At a minimum, equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case, certainly in terms of procedural equality.” This is consistent with Article 21(4)(b) of the Statute which requires that “[i]n the determination of any charge against the accused ..., the accused shall be entitled to ... [*inter alia*] in full equality ... have adequate time and facilities for the preparation of his defence.”

<sup>13</sup> STEFAN TRECHSEL, *HUMAN RIGHTS IN CRIMINAL PROCEEDINGS* 292 (Oxford University Press, 2005) (emphasis added).

10. Thus, should the Prosecution be granted the right at this stage of the proceedings to have selective entries from the Mladić diary admitted, which it claims are relevant and probative to its case-in-chief, then based on the principle of equality of arms, as well as fairness and equity, the Trial Chamber “shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.”<sup>14</sup> Suffice it to say, only when all the Mladić materials have been actually made available, i.e. fully translated, and after sufficient time has been afforded to Dr. Prlić to review the material and identify all the parts relevant to his case, will he be in a position to make a reasoned decision on the extent to which he will need to reopen his case.

### III. RELEVANCE OF THE MATERIALS

11. Dr. Prlić has already identified several excerpts from the Mladić diary for which the Prosecution does not intend to seek admission but which are deemed relevant and of probative value for his Defence Case. In the affixed Confidential Annex I, Dr. Prlić identifies *some* of the materials based on which he intends to request the reopening of his case:

- (a) Annex I-A (“Internationals in BiH (Viktor Andreev)”) refers to entries from the Mladić diary showing that the United Nations Civil Affairs Advisor in BiH, Viktor Andreev, was providing the Bosnian Serb political and military leadership with inside information, thus influencing the events on the ground as well as the negotiating table. In many instances, Mladić records Andreev advising the Bosnian Serbs against the proposed peace plans. Given his position, his actions call into question the accuracy and reliability of many of the UN documents, and in particular UNPROFOR documents, which have been admitted thus far. His actions also call into question the accuracy and reliability of any testimony of witnesses who relied on or who were associated with Andreev.

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<sup>14</sup> *Prosecutor v. Tadić*, IT- 94-1-A, Judgement, 15 June 1999, para. 52.

- (b) Annex I-B (“Internationals in BiH (General Morillon)”) refers to excerpts from the Mladić diary about the contacts between General Mladić and General Morillon. These excerpts add context to much of the evidence submitted by the Prlić Defence by providing inside information from the UN’s top military commander in BiH. Specifically, on Mladić’s entry of 25 June 1993, General Morillon remarked that “...Alija IZETBEGOVIĆ...[o]n the one hand, ...called for peace, and on the other, asked for weapons.” and that “the city of Sarajevo has been put under blockade by Alija IZETBEOVIC.”
- (c) Annex I-C (“Meeting in Graz & Bilateral Negotiations”) refers to entries from the Mladić diary that concretely show that the so-called “Graz Agreement,” upon which the Prosecution has relied as evidence of an alleged plan between the Bosnian Serbs and the Croats to carve up BiH, never existed. Indeed, Mladić in his entry of 6 May 1992 attributes Karadžić of having said the following after the meeting in Graz: “With the Croats we cannot agree on anything.”
- (d) Annex I-D (“Geneva Negotiations and January 15 1993 ‘*Ultimatum*’”) refers to entries from the Mladić diary that corroborate the evidence presented during the trial proceedings in support of the Prlić Defence case, according to which the Croats were the only party that was actually seeking peace at the Geneva negotiations. According to Mladić’s entries of January 1993, Mate Boban stated: “The principles presented by Mr. Vance are the principles that the Croats in BH have been continuously proposing to the other peoples.” Entries in Mladić’s diary also show that the HVO HZ HB Decision of 15 January 1993<sup>15</sup> is inappropriately characterized as an “*ultimatum*.” In his entry of 3 January 1993, Mladić records both Nambiar and Lord Owen as having proposed during the negotiations the withdrawal of the army from the provincial borders. This lends further credence to the testimony by Accused Praljak as to the agreement reached in Zagreb

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<sup>15</sup> **Exh.** P01155, Stamped decision signed by Prlić Jadranko, dated 15 January 1993.

between Izetbegović and Boban, after which Praljak drafted the order and relayed it to the Minister of Defence of BiH and the HVO HZ HB, and upon which the 15 January 1993 Decision is based.

- (e) Annex I-E (“Negotiations between Serbs and Croats encouraged by the Internationals”) refers to entries from the Mladić diary showing that the internationals encouraged the Parties (Serbs, Croats and Muslims of BiH) to hold multilateral and bilateral meetings with the aim of promoting the peace process. These entries further show that a) the UN representatives were providing inside information to the Serbs, and b) the Bosnian-Serb leadership during these meetings did not view the Croats as allies as the Prosecution suggests.
- (f) Annex I-F (“Mladić / Bosnian Serb view of Croats”) refers to entries where the Croats are characterized as “Ustashas.” This runs counter to the Prosecution’s theory that Bosnian Serbs and Croats of BiH were allies. Moreover, various entries from the Mladić diary also show that the Bosnian Serbs considered the Muslims and Croats to be in a “coalition” which needed to be disrupted.

Lastly, Annex I-G (“Serb / Muslim Cooperation”) refers to entries from the Mladić diary that support evidence adduced disputing the allegations that there was a Serb-Croat cooperation for the re-establishment of the borders of the 1939 Banovina. On the contrary, many entries from the Mladić diary show that the Bosnian Serb political and military leadership was cooperating with the Muslims to effectively carve-up the territory of BiH. For instance, in the entry of 30 October 1993, Milošević is recorded to have said that a Serbian-Muslim summit meeting must be held “at all costs” in order to discuss the distribution of the territory of BiH. At the same meeting, Mladić explicitly said that “[The Serbs] must not allow the creation of a Greater Croatia.” According to Mladić’s entry of 21 December 1993, a meeting that was scheduled to be held between Oručević, a Muslim with close connections to Izetbegović (logistics coordinator for President Alija Izetbegović and the designated SDA Mayor of Mostar at the time) and the Bosnian Serb military

leadership. Oručević was expected to reveal his/the Muslim leadership's intentions of regionalizing "the Neretva from Bradina to Grbavica with the municipalities of Jablanica, Konjic, Prozor, Mostar, (temporary municipalities Nevesinje, Gacko, Bileća, Stolac and Trebinje)." This confirms evidence adduced by Accused Praljak.<sup>16</sup> Also, noteworthy of the Serb-Muslim cooperation and collaboration are entries attributed to General Grubač wherein he states:

"The Muslims hold the left Neretva bank along a narrow 2-3 km strip to Buna. They have no defence against us, only observers.

[...]"

"We should try to get them to operate on the other bank of the Neretva and leave the left bank to us. The Muslims are not interested in Stolac, there are no Muslims left there, they would like to go to Gubavica."

12. In the affixed Confidential Annex II, provided in electronic form, the relevant supporting materials to each chapter of Annex I are provided for convenience. Each of the chapters of Annex II is to be read together with the respective chapter of Annex I.

#### IV. CONCLUSION

13. By this Notice Dr. Prlić informs the Trial Chamber and the Parties that should the Second Prosecution Motion be granted, he will move to reopen his case. With the 16 June 2010 Decision the Prosecution was given 23 days to file its consolidated motion with which it requested admission of all the relevant to its case entries. Dr. Prlić respectfully submits that should it become necessary to seek the admission of evidence by reopening his case, he be afforded at least equal time as that provided to the Prosecution.

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<sup>16</sup> See Witness Miro Salcin, Trial Transcript, 19 February 2007, pp. 14285- 14287, quoting from **Exh. 3D00749, ESAD SEJTANIC, EXCERPT FROM THE BOOK THE HERZEGOVINIANS AT IGNEOUS GATE OF BOSNIA**, pp. 180- 182.

Dated: 14 July 2010  
The Hague, The Netherlands

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Karnavas', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Michael G. Karnavas  
Counsel for Jadranko Prlić

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