



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: 19 April 2007
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: 19 April 2007

THE PROSECUTOR

v.

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

DECISION ON PROSECUTION MOTION TO ADD EXHIBITS TO ITS EXHIBIT LIST

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy 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 Čorić
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 the “Prosecution Motion to Add Exhibits to its Exhibit List (Vareš Case)” and its confidential annex (“Motion”) filed on 19 February 2007 by the Office of the Prosecutor (“Prosecution”), whereby the Prosecution requests the leave of the Trial Chamber to add 57 documents to its list of exhibits filed on 19 January 2006 pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Proposed Exhibits”),

NOTING the “Supplement to Prosecution Motion to Add Exhibits to its Exhibit List (Vareš case)” and its confidential annex of 27 February 2007 and the “Amended Supplement to Prosecution Motion to Add Exhibits to its Exhibit List (Vareš Case)” and its confidential annex and CD-ROM of 28 February 2007, whereby the Prosecution supplemented and corrected its Motion,

NOTING the oral decision of 22 February 2007 whereby the Chamber extended to 12 March 2007 the time-limit by which the Defence teams could file their responses,¹

NOTING the “Petković Defence Response to Prosecution Motion filed 19 February to Add Exhibits to its Exhibits List (Vareš Case)” and its confidential annex, filed on 12 March 2007 (“Response”),

NOTING the “Joinder of the Accused Praljak in Petković Defence Response to Prosecution Motion Filed 19 February 2007 to Add Exhibits to its Exhibit List (Vareš Case)” filed on 13 March 2007, in which the Accused Praljak joins the Petković Defence Response,

CONSIDERING, *in limine*, that the Chamber finds that the Accused Praljak’s Response was filed after the time-limit prescribed by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”) and that he offered no explanation for this delay; the Chamber considers that the Accused Praljak’s response is therefore inadmissible,

¹ French transcript, p. 14577.

CONSIDERING that the Accused Prlić, Stojić, Čorić, and Pušić did not file a response,

CONSIDERING that the Prosecution argues that the Proposed Exhibits are relevant to Paragraphs 6-10, 17(a)-(l), 17.3(a), 17.3(e)-(g), 17.4 (a)-(o), 25, 27, 204-217, and 218-228 of the Amended Indictment and directly concern the events alleged in Vareš and Stupni Do,

CONSIDERING that the Prosecution argues that the Proposed Exhibits were obtained from Ivica Rajić between 2005 and 2006, and then in 2007 in the context of a guilty plea and sentencing agreement approved during the hearing of 26 October 2005 in the case of the *Prosecutor v. Ivica Rajić*.

CONSIDERING that the Prosecution submits that it was not able to include these documents in its Rule 65 *ter* list of 19 January 2006 because the Judgement in the Rajić case was rendered on 8 May 2006 and because of various other problems, including delays in the hand-over to the Prosecution of documents from the Defence for Ivica Rajić, delays in translation and the examination of these documents carried out in order to choose the Proposed Exhibits,

CONSIDERING that the Prosecution argues that between 17 March and 25 November 2006, it disclosed a number of documents and sound and audiovisual recordings to the Defence, 21 of which are among the Proposed Exhibits,

CONSIDERING that the Prosecution submits that Ivica Rajić informed it in November 2006 that he had new documents and that it obtained them only on 19 January 2007 as a result of various difficulties and delays; and that the Prosecution subsequently chose 36 Proposed Exhibits,

CONSIDERING furthermore that the Prosecution submits that it wanted to examine all of the documents obtained before selecting the 21 and 36 Proposed Exhibits,

CONSIDERING, finally, that the Prosecution submits that the 57 Proposed Exhibits were disclosed to the Defence without specifying the date of disclosure for 36 of them;

CONSIDERING that the Petković Defence has no objection to the Motion as regards seven of the Proposed Exhibits, but requests that it be denied in all other respects,

CONSIDERING that in support of its request to deny the Motion, the Petković Defence submits, *inter alia*, that the Prosecution failed to act with diligence as regards the delays in reviewing and translating 21 of the 57 documents; that the Prosecution failed to demonstrate sufficiently how the Proposed Exhibits are essential for its case and relevant and necessary for its outcome; and that two of the Proposed Exhibits have no probative value whatsoever;

CONSIDERING that in order to grant a request to add exhibits to the list of exhibits filed by the Prosecution under Rule 65 *ter* of the Rules, the Chamber must ensure that the rights of the Defence are respected by making sure that any additional exhibits are disclosed sufficiently in advance and do not adversely affect the Defence in the preparation of its cross-examination,²

CONSIDERING that the Chamber may take into account other factors which support the granting or denial of the request to add exhibits to the list, such as the relevance to the Indictment or any other valid reason which may justify the amendments to the list of exhibits,³

CONSIDERING furthermore that pursuant to Rule 89(C) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value,

CONSIDERING that the Chamber finds that to date all of the Proposed Exhibits have been disclosed to the Defence and that the Defence does not claim that any prejudice was caused by their tardy disclosure,

CONSIDERING that the Chamber also finds that the Defence fails to explain in its Response how, at this stage of the trial, the amendment to the 65 *ter* list would infringe upon the rights of the Accused,

² See for example *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution's Motion to Amend its Rule 65 *ter* Exhibit List, 15 December 2005, p. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to Amend the Rule 65 *ter* Exhibit List, ("Popović Decision"), 6 December 2006, p. 8; *Prosecutor v. Dragomir Milošević*, Decision on the Prosecution Motion to Amend its Rule 65 *ter* Exhibit List, 21 December 2006 ("Milošević Decision"), p. 2.

³ See for example Popović Decision, p. 7; Halilović Decision, p. 3; Milošević Decision, p. 2.

CONSIDERING that the Chamber finds that, at this stage of the trial, an amendment to the 65 *ter* list cannot infringe upon the rights of the Accused inasmuch as they have sufficient time to prepare their Defence,

CONSIDERING furthermore that the Chamber finds that the Prosecution did face some difficulties, in particular delays due to a change of counsel, as well as significant delays in translation, in order to choose the 57 Proposed Exhibits, and that it takes into account the efforts made by the Prosecution to select them among the significant number of documents it had at its disposal,

CONSIDERING that the Chamber further finds that the Proposed Exhibits are relevant and have a certain probative value, and considers that it is in the interests of justice to add them to the list of exhibits,

CONSIDERING, nevertheless, that should the Prosecution intend to introduce the Proposed Exhibits through a witness, the Defence must have the necessary time to prepare itself for its cross-examination and the examination of the 57 Proposed Exhibits,

CONSIDERING, therefore, that the Prosecution may not present the Proposed Exhibits in court prior to 16 May 2007,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 89(C) and 126 *bis* of the Rules of Procedure and Evidence,

DENIES the Accused Praljak's response on the grounds that it is inadmissible,

GRANTS the Motion,

AND DECIDES that the Prosecution may not present the Proposed Exhibits in court prior to 16 May 2007.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of April 2007
At The Hague
The Netherlands

[Seal of the Tribunal]