



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: 6 September 2007
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 Hans Holthuis

Decision of: 6 September 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR REVIEW OF A DECISION OR, IN
THE ALTERNATIVE, FOR ADMISSION OF DOCUMENTARY EVIDENCE
(PRESIDENTIAL TRANSCRIPTS)**

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 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 “Reply to Defence Notices under Rule 94 *bis* (B) (Expert Report of Charles A. Sudetić) and Motion for Admission of Evidence under Rule 89 (C)”, filed by the Office of the Prosecutor (“Prosecution”) on 18 July 2007 (“Motion”), in which the Prosecution files, principally, a reply to the Defence notices pursuant to Rule 94 *bis* (B) of the Rules of Procedure and Evidence (“Rules”)¹ concerning the report of Prosecution Expert Witness Charles A. Sudetić (“Sudetić Report”) and requests the admission of the said report and in which it requests the Chamber, in the alternative, to admit eighty presidential transcripts pursuant to Rule 89 (C) of the Rules (“Proposed Exhibits”),

NOTING the Chamber’s Oral Decision of 4 July 2007² whereby it denied the “Prosecution Submission of the Expert Report of Charles A. Sudetić dated 14 February 2007, with Corrigendum” filed by the Prosecution on 23 May 2007, in which it requested the admission of the Sudetić Report pursuant to Rules 94 *bis* (A) and (B) of the Rules,

NOTING the Chamber’s Oral Decision of 5 July 2007³ in which it granted the Prosecution leave to file written submissions for the reconsideration of its Oral Decision of 4 July 2007,

NOTING “Jadranko Prlić’s Response to Prosecution’s Motion for Admission of Evidence under Rule 89 (C) Attached to Prosecution’s Reply to Defence Notices

¹ “Praljak’s Response to Prosecution’s Submission of the Expert Report of Charles A. Sudetić Dated 14 February 2007, with Corrigendum” filed by Counsel for the Accused Praljak on 13 June 2007; “Jadranko Prlić’s Response to Prosecution Submission of the Expert Report of Charles A. Sudetić dated 14 February 2007, with Corrigendum” filed by Counsel for the Accused Prlić on 18 June 2007; “Joinder of the Accused Ćorić in Jadranko Prlić’s Response to Prosecution Submission of Expert Report of Charles A. Sudetić Dated 14 February 2007, with Corrigendum” filed by Counsel for the Accused Ćorić on 19 June 2007; “Notice of Bruno Stojić pursuant to Rule 94 *bis* (B) (Charles A. Sudetić)”, filed by Counsel for the Accused Stojić on 21 June 2007, “Notice of Berislav Pušić pursuant to Rule 94 *bis* (B) (Charles A. Sudetić)”, filed by Counsel for the Accused Pušić on 22 June 2007; “Milivoj Petković Notice under Rule 94 *bis* (B) Responding to Prosecution 23 May 2007 Filing of Corrected Report of Proposed Expert Witness Charles Sudetić”, filed by Counsel for the Accused Petković on 22 June 2007.

² Transcript in French (“T(F)”), pp. 20762 and 20763.

Under Rule 94 *bis* (B) (Expert Report of Charles A. Sudetić”, filed by Counsel for the Accused Prlić (“Prlić Defence”) on 21 July 2007 (“Prlić Response”) in which the Prlić Defence objects to the admission of the Sudetić Report and Proposed Exhibits,

NOTING the “Petković Response to Prosecution Submission of 17 July 2007 concerning Sudetić Report and Admission of Presidential Transcripts”, filed by Counsel for the Accused Petković (“Petković Defence”) on 31 July 2007 (“Petković Response”) in which it objects to the admission of the Sudetić Report and Proposed Exhibits,

CONSIDERING that in support of the Motion, the Prosecution principally submits in particular that Mr. Sudetić clearly has specialised experience and knowledge which attest to his status as an expert according to the criteria established by Tribunal jurisprudence,⁴

CONSIDERING that the Prosecution next submits that Tribunal jurisprudence shows that the fact that a witness is or was employed by the Office of the Prosecutor does not prevent him from testifying as an expert witness,⁵

CONSIDERING that the Prosecution also argues that the Sudetić Report is relevant and probative because it presents, in a structured and analytical manner, information directly concerning the allegations contained in the Amended Indictment of 16 November 2005 (“Indictment”), in particular in respect of the existence of a joint criminal enterprise, Croatia’s effective control over the leaders of Herceg Bosna and the HVO and the existence of an international armed conflict involving Croatia in Bosnia and Herzegovina,⁶

CONSIDERING that the Prosecution submits, in the alternative, that Tribunal jurisprudence and practice allow for the admission of documentary evidence by way of written motions,⁷

CONSIDERING that the Prosecution further submits that the veracity and reliability of the presidential transcripts have not been called into question because the Chamber

³ T(F), p. 20915.

⁴ Motion, paras. 7 and 8.

⁵ Motion, para. 9.

⁶ Motion, paras. 10 and 12.

has already admitted sixteen of them and because the Defence itself has tendered several presidential transcripts into evidence,⁸

CONSIDERING that the Prosecution submits that in order to establish the relevance and probative value of the Proposed Exhibits, it attached the Sudetić Report to the Motion, indicating for each of the Proposed Exhibits the pages of the report in which they are analysed,⁹

CONSIDERING that in support of the Prlić Response, the Prlić Defence principally submits that Mr. Sudetić is not an expert because he does not possess the necessary qualifications and knowledge and that his report, which is merely a selection of documents sprinkled with assumptions, is not an expert report,¹⁰

CONSIDERING that the Prlić Defence argues, in the alternative, that the Sudetić Report cannot serve as a basis for the determination of the probative value and relevance of the Proposed Exhibits and that by attaching it to the Motion, the Prosecution seeks to have it admitted surreptitiously,¹¹

CONSIDERING that the Petković Defence argues principally that Mr. Sudetić does not have the status of an expert and that his report is not reliable and has no probative value or relevance at all,¹²

CONSIDERING that the Petković Defence further submits that the Prosecution has put forth no new arguments which might lead the Chamber to reconsider its Oral Decision of 4 July 2007,¹³

CONSIDERING that the Petković Defence argues in the alternative that, by way of its Motion, the Prosecution presented two applications based on two distinct rules of the Rules and that if it wishes to have the Proposed Exhibits admitted under Rule 89

⁷ Motion, para. 19.

⁸ Motion, para. 20.

⁹ Motion, para. 21.

¹⁰ Prlić Response, para. 1.

¹¹ Prlić Response, para. 3.

¹² Petković Response, para. 10.

¹³ Petković Response, para. 11.

(C) of the Rules, it must do so by way of a separate application in accordance with the Rules and guidelines of the Chamber in this regard,¹⁴

CONSIDERING that the Chamber wishes to examine first the Prosecution's principal request for reconsideration of the Oral Decision of 4 July 2007,

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may grant a request for reconsideration if the moving party demonstrates to the Chamber that there is a clear error in the reasoning of the impugned decision or that particular circumstances, which may include new facts or arguments,¹⁵ justify its reconsideration in order to avoid an injustice,¹⁶

CONSIDERING that the Chamber finds that in this case there is nothing new in the arguments put forth by the Prosecution,

CONSIDERING that in any case the Chamber is not convinced by the arguments put forth by the Prosecution since it considers that although the Sudetić Report provides a selection of presidential transcripts in a structured and topical manner, it does not contain a sufficiently detailed analysis to qualify as an expert report,

CONSIDERING that the Chamber decides therefore to maintain its Decision of 4 July 2007,

CONSIDERING that the Chamber will next examine the Prosecution's request in the alternative to admit the Proposed Exhibits under Rule 89 (C) of the Rules,

CONSIDERING that the Chamber first notes that while the Motion includes two distinct applications, just as the Petković Defence submits, the Defence had the opportunity to respond to the two applications and therefore suffered no prejudice as a result of this fact,

¹⁴ Petković Response, paras. 9 and 12.

¹⁵ *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 Prosecutor 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.

¹⁶ *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 Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A^{bis}, Appeals Judgement on Sentence, 8 April 2003, para. 49; *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.

CONSIDERING furthermore that in evaluating the probative value of the Proposed Exhibits, the Chamber may not, under any circumstances, use the Sudetić Report as it has not been admitted into evidence,

CONSIDERING that the Chamber next finds that while the Prosecution has provided information related to the number, title and description of the Proposed Exhibits, and information related to their source, the relevant paragraphs of the Indictment, the witnesses who have already appeared in the case and the documents admitted which deal with the same paragraphs of the Indictment, and to the importance of the documents to the case, as required under the Chamber's guidelines for the admission of evidence,¹⁷ it has not specified the reasons why it cannot introduce these documents through a witness,¹⁸

CONSIDERING that the Chamber further notes that the 80 Proposed Exhibits are very voluminous, including at times more than 100 pages, and deal with multiple subjects, many of which bear no relation to the Indictment,

CONSIDERING that the Chamber holds that since the burden of proof rests on the Prosecution, in order to allow the Chamber to assess the relevance and probative value of the Proposed Exhibits, the Prosecution must specify which excerpts of the said documents are relevant to this case,

CONSIDERING that the Chamber next notes that documents P 00037, P 00089, P 00134, P 00312, P 01325, P 01452, P 02059, P 03112, P 03240, P 03517, P 06251, P 07475 and P 08012 have already been admitted and that, consequently, the request for their admission is moot,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules of Procedure and Evidence,

CONFIRMS the Decision of 4 July 2007,

DENIES the Motion AND

¹⁷ Guideline 6 as amended by the "Decision Amending the Decision on the Admission of Evidence of 13 July 2006", rendered on 29 November 2006 ("Guideline 6").

¹⁸ As required by item (a) (vi) of Guideline 6.

INVITES the Prosecution to file an application requesting the admission of the relevant excerpts of the Proposed Exhibits by specifying the reasons why it cannot introduce these documents through a witness.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of September 2007

At The Hague

The Netherlands

[Seal of the Tribunal]