



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: 22 October 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: 22 October 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PROSECUTION MOTION TO ADD EXHIBITS TO ITS
EXHIBIT LIST AND FOR ADMISSION OF SUCH EXHIBITS (28
DOCUMENTS FROM THE PRESIDENTIAL OFFICE OF THE REPUBLIC
OF CROATIA)**

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 the *Prosecution Motion to Add Exhibits to its Exhibit List (Presidential Office) and for Admission of such Exhibits* with two annexes (“Motion”), filed by the Office of the Prosecutor (“Prosecution”) on 11 September 2007, in which the Prosecution asks the Chamber to authorise the addition of 28 documents from the Presidential Office of the Republic of Croatia to its Exhibit List¹ (“Proposed Exhibits”) and to admit them,

NOTING the *Corrigendum to Prosecution Motion to Add Exhibits to its Exhibit List (Presidential Office) and for Admission of such Exhibits* filed by the Prosecution on 19 September 2007 (“Corrigendum”) in which the Prosecution submits the English translation of document P 10267, which is one of the Proposed Exhibits,

NOTING the *Joint Defence Response to Prosecution Motion to Add Exhibits to its Exhibit List (Presidential Office) and for Admission of such Exhibits*, filed jointly by the six Counsel for the Defence (“Defence”) on 25 September 2007 (“Response”), in which the Defence opposes the Motion and asks the Chamber to deny it, and to which Counsel for the Praljak Defence (“Praljak Defence”) and Counsel for the Petković Defence (“Petković Defence”) attached Annexes I and II respectively,

NOTING the *Prosecution Request for Leave to Reply and Reply to Joint Defence Response to Prosecution Motion to Add Exhibits to its Exhibit List (Presidential Office) and for Admission of such Exhibits* filed by the Prosecution on 2 October 2007 (“Reply”), in which it requests leave to file a reply to the Response and files a reply, to which an annex is attached,

CONSIDERING that in its Motion, the Prosecution maintains that the Republic of Croatia transmitted the Proposed Exhibits to it in late June 2007 or early July 2007

¹ Exhibit List, filed confidentially on 19 January 2006.

and sets out the various circumstances that it claims justify the fact that it was not able to take possession of them earlier,²

CONSIDERING that the Prosecution notes among these circumstances the fact that after having been informed in the second half of 2005 that documentation from the Republic of Croatia Presidential Office had been moved to the Croatian State Archive in Zagreb, the Prosecution sent numerous requests for assistance pursuant to Article 29 of the Tribunal's Statute ("Statute") to the Republic of Croatia, but the Proposed Exhibits were not provided to it; that in early 2007, a new request for assistance in connection with investigations of other Tribunal cases led to a mission being sent to Zagreb during which numerous relevant documents were identified; that when this mission returned, the Prosecution sent a request for assistance to the Republic of Croatia asking for copies of the identified documents; that once they were transmitted to the Prosecution around 27 June 2007, these documents, which included the Proposed Exhibits, first had to be studied and translated into English before being submitted by means of the Motion,³

CONSIDERING that the Prosecution also maintains that these documents are similar to documents already known to the Chamber and the Defence, that they come from a source from which many other documents have already been admitted during the proceedings and that there will be no prejudice to the Defence by their addition to the Exhibit List,⁴

CONSIDERING that the Prosecution finally maintains that the Proposed Exhibits are relevant, have probative value and meet the conditions set out in Guideline 6 of the Decision Amending the Decision on the Admission of Evidence of 13 July 2006, rendered 29 November 2006 ("Decision of 29 November 2006"),⁵

CONSIDERING that in its Response, the Defence alleges that the Prosecution did not exercise due diligence in obtaining the Proposed Exhibits and that their admission would prejudice the Accused given the late stage of the proceedings,⁶

² Motion, paras. 1-3.

³ Motion, paras. 2.

⁴ Motion, para. 4.

⁵ Motion, paras. 1, 5 and Annexes 1 and 2, Decision Amending the Decision on the Admission of Evidence of 13 July 2006, 29 November 2006 ("Decision of 29 November 2006").

⁶ Response, paras. 4-7.

CONSIDERING that the Defence also submits that the Motion constitutes an abuse of process and refers the Chamber to the arguments developed by the Defence in the “Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process” filed on 4 September 2007,⁷

CONSIDERING in addition that the Defence argues that the Motion to admit the Proposed Exhibits contravenes the stipulation of Guideline 6(a)(vi) of the Decision of 29 November 2006,⁸

CONSIDERING finally that the Praljak Defence and the Petković Defence presented arguments in their own capacity supporting their opposition to the admission of some of the Proposed Exhibits,⁹

CONSIDERING that in support of its request for leave to file the Reply, the Prosecution maintains the need to reply to the Defence allegations concerning the so-called abusive nature of the Motion and the fact that it will otherwise have no opportunity to respond,¹⁰

CONSIDERING that in its Reply, the Prosecution refers on the one hand to the arguments developed in the “Response to Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process”, filed on 18 September in response to Defence assertions concerning the fact that the Motion constitutes an abuse of process, and on the other hand to the Chamber’s justification set out in the “Decision on Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process” rendered on 27 September 2007 (“Decision of 27 September 2007”),¹¹

CONSIDERING that the Prosecution also indicates in the Reply that it disclosed the Proposed Exhibits to the Defence in their BCS version as soon as it received the documents,¹²

⁷ Response, para. 8.

⁸ Response, paras. 9-10.

⁹ See Annexes I and II of the Response, respectively.

¹⁰ Reply, para. 5.

¹¹ Reply, para. 2.

¹² Reply, para. 6.

CONSIDERING that in the Reply, the Prosecution reiterates the fact that it acted with due diligence to obtain the Proposed Exhibits and notes in particular constraints linked to the voluminous documentation in the Croatian State Archive and the lack of cooperation from the Republic of Croatia with regard to its obligations pursuant to Article 29 of the Statute,¹³

CONSIDERING finally that the Prosecution withdraws its request to admit document P 01245,

CONSIDERING, first of all, that the Chamber authorises the Prosecution to file the Reply on the grounds that the Response raises new arguments that the Prosecution did not address in the Motion and which it could not have reasonably expected,

CONSIDERING that the Chamber will first concentrate on the Prosecution request to amend the Exhibit List submitted pursuant to Rule 65 *ter* of the Rules by adding the Proposed Exhibits,

CONSIDERING that in order for the Chamber to grant a request to add exhibits to the Exhibit List submitted by the Prosecution pursuant to Rule 65 *ter* of the Rules, it must make sure that the rights of the Defence are respected by ensuring that any added documents are disclosed sufficiently in advance and do not hinder the Defence in its preparations,¹⁴

CONSIDERING that the Chamber may bear in mind other factors that argue for or against a request to add exhibits to the list, such as a connection to the Indictment or any other valid reason that would justify amending the Exhibit List.¹⁵

CONSIDERING that pursuant to Article 20 of the Statute, the Chamber shall ensure that the trial is fair and expeditious with full respect for the rights of the accused, and that pursuant to Article 21 of the Statute, an accused has the right to be tried without

¹³ Reply, paras. 7-8.

¹⁴ See *The 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; *The 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, 6 December 2006 ("Popović Decision"), p. 7; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, Decision on the Prosecution Motion to Amend its Rule 65 *ter* Exhibit List, 21 December 2006, ("Milošević Decision"), p. 2.

¹⁵ See the Popović Decision, p. 8; *The Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Prosecution's Application to Vary its Exhibit List Filed Pursuant to Rule 65 *ter* (e)(iii) of the Rules, 14 February 2005, p. 3 ("Halilović Decision"); Milošević Decision.

undue delay and to have adequate time and facilities for the preparation of his defence,

CONSIDERING that amending the Exhibit List at this stage of the proceedings could prejudice the rights of the Accused as mentioned above,

CONSIDERING that the Chamber notes that in order to justify the belated presentation of the Proposed Exhibits, the Prosecution merely reports that various requests for assistance of a general nature were sent to the Republic of Croatia between 2005 and 2007, and the fact that these requests did not result in the documents in question being produced,

CONSIDERING however that during this same period, i.e. from the moment the Prosecution was informed in the second half of 2005 that documentation from the Republic of Croatia Presidential Office had been moved to the Croatian State Archive in Zagreb, to sending a mission to Zagreb during 2007 at which time the Proposed Exhibits were identified, the Prosecution did not send a single mission to the Croatian State Archive in Zagreb, even after the proceedings commenced in April 2006,

CONSIDERING that under such conditions, the Chamber cannot have faith in the Prosecution's claim that it exercised due diligence in searching for and obtaining the Proposed Exhibits,

CONSIDERING that indeed it is not enough for the Prosecution to use cooperation problems as an excuse, since once it established the need to obtain new evidence, *a fortiori* during the presentation of its case, it had to undertake the necessary steps in order to find, obtain and present this new evidence without delay,

CONSIDERING that sending general requests for assistance asking the Republic of Croatia for "relevant documentation" or "relevant materials"¹⁶ for a case in trial clearly does not constitute sufficient steps in this case,

CONSIDERING that the Chamber notes however that once the Prosecution received these documents in late June or early July 2007, it disclosed their BCS version to the Defence without delay, which does not seem to be disputed by the Defence,¹⁷

¹⁶ Motion, para. 2.

CONSIDERING furthermore that these documents are in keeping with the allegations developed by the Prosecution through evidence already contained on its Rule 65 *ter* list that was presented through witnesses such as Peter Galbraith and Josip Manolić,

CONSIDERING that under these circumstances and subject to the conditions set out below concerning how the Proposed Exhibits are to be presented and admitted, the Chamber holds that their belated addition to the Rule 65 *ter* Exhibit List does not prejudice the rights of the Accused in preparing their defence.

CONSIDERING furthermore that the Chamber notes that the Proposed Exhibits are *prima facie* relevant and have a certain probative value,

CONSIDERING that the Chamber therefore holds that it is in the interest of justice to add them to the Exhibit List,

CONSIDERING that the Prosecution does not plan to call any witnesses to testify about these documents,¹⁸

CONSIDERING firstly however that in order to allow the Defence to prepare its defence for the Proposed Exhibits, the Chamber invites the Prosecution to present them, as far as possible, to forthcoming witnesses and ask for their admission through them,

CONSIDERING that among the witnesses summoned by the Prosecution to appear in the coming months, the Chamber has identified at least two who would be able to present and discuss some of the Proposed Exhibits, Witness BF and the witness under number 189 on the list of Prosecution *viva voce* witnesses submitted pursuant to Rule 65 *ter* of the Rules,

CONSIDERING furthermore that the Prosecution has already shown the possibility of presenting and discussing at least one of the documents among the Proposed Exhibits by means of a witness,¹⁹

¹⁷ See Reply, para. 6; Transcript of hearing in English, p. 22631.

¹⁸ Annex 1 of the Motion.

¹⁹ See the discussion on document P 10267 by the intermediary of Witness Nicholas J. Miller, Transcript of hearing in French, pp. 22623-22628.

CONSIDERING secondly that for documents that cannot be presented through an appropriate witness, the Chamber invites the Prosecution, if need be, to seize it of a written request asking for their admission in accordance with Guideline 6 of the Decision of 29 November 2006,

CONSIDERING consequently that the Chamber denies the request to admit the Proposed Exhibits at this stage of the proceedings,

CONSIDERING finally that the Chamber duly notes the Prosecution's withdrawal of its request to add document P 01245 to its Rule 65 *ter* Exhibit List,

CONSIDERING however that given that document P 01245 is not one of the Proposed Exhibits, the Chamber concludes that the Prosecution made a typing error and was actually requesting the withdrawal of document 10245.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 89 (C) and 73 *bis* of the Rules,

AUTHORISES the Prosecution to file the Reply,

PARTIALLY GRANTS the Motion and consequently,

DULY NOTES the withdrawal of document 10245,

AUTHORISES the Prosecution to add the Proposed Exhibits to the Rule 65 *ter* Exhibit List,

INVITES the Prosecution, as far as possible, to present the Proposed Exhibits to forthcoming witnesses,

INVITES the Prosecution, if need be, to seize the Chamber of a written request in accordance with Guideline 6 of the Decision of 29 November 2006 asking for the admission of documents that cannot be presented through an appropriate witness,

REJECTS the Motion in all other respects,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]