



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: 17 August 2009
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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: 17 August 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION FOR THE ADMISSION OF
DOCUMENTARY EVIDENCE (co-operation between Herceg-Bosna/HVO
authorities and international organisations; compliance with international
humanitarian law norms)**

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 Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION

1. 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") is seized of "Bruno Stojić's Motion for the Admission of Documentary Evidence related to Cooperation between Herceg-Bosna/HVO Authorities and International Organisations and Compliance with International Humanitarian Law Norms with Annexes I, II and III" to which 3 Annexes are attached, publicly filed by Counsel for the Accused Stojić ("Stojić Defence") on 6 May 2009 ("Motion"), in which the Stojić Defence requests the admission into evidence of 21 documents¹ ("Proposed Exhibits").

II. PROCEDURAL BACKGROUND

2. On 7 May 2009, the Stojić Defence publicly filed "Bruno Stojić's Motion for the Admission of Documentary Evidence Related to Cooperation Between Herceg-Bosna/HVO Authorities/Forces and ABiH Authorities/Forces With Annexes I, II and III" ("Stojić Motion of 7 May 2009") in which it submits legal arguments regarding the authenticity, reliability and probative value of the Proposed Exhibits.²

3. On 20 May 2009, Counsel for the Accused Praljak ("Praljak Defence") and the Accused Petković ("Petković Defence") publicly filed the "Joint Response of Slobodan Praljak and Milivoj Petković to Bruno Stojić's 6 May 2009 Motion for the Admission of Documentary Evidence Related to Cooperation between Herceg-Bosna/HVO Authorities and International Organisations and Compliance with International Humanitarian Law Norms with Annexes I, II and III" ("Joint Response").

4. On 26 May 2009, the Stojić Defence publicly filed "Bruno Stojić's Addendum to Motions for Admission of Documentary Evidence with Annex" accompanied by an

¹ 2D 00098, 2D 00460, 2D 00465, 2D 00517, 2D 00519, 2D 00521, 2D 00652, 2D 00654, 2D 00706, 2D 00707, 2D 00708, 2D 00751, 2D 00761, 2D 00793, 2D 00795, 2D 00977, 2D 01026, 2D 01035, 2D 01491, 3D 00708 and 4D 00320.

² See Motion, para. 2.

Annex ("Addendum"), in which it specifies the sources of some of the Proposed Exhibits that were unavailable at the time the Motion was filed.³

5. On 28 May 2009, the Office of the Prosecutor ("Prosecution") publicly filed the "Prosecution Response to the Five Motions Filed by Bruno Stojić Pursuant to Rule 89 (C) with Public Annex", accompanied by an Annex ("Prosecution Response").

6. On 28 May 2009, the Chamber rendered an oral decision in which it granted leave to the Stojić Defence to reply to the Prosecution Response no later than 11 June.⁴

7. Finally, on 11 June 2009, the Stojić Defence publicly filed "Bruno Stojić's Request for Leave to Reply to Prosecution Response to the Five Motions Filed by Bruno Stojić Pursuant to Rule 89 (C) With Public Annexes I and II and Bruno Stojić's Reply to the Joint Response" accompanied by 2 Annexes ("Reply").

III. APPLICABLE LAW

8. Under Rule 89 (C) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), a Chamber may admit any relevant evidence which it deems to have probative value. Moreover, in accordance with Rule 89 (C), every decision by the Chamber on a request to admit documentary evidence is based on this Rule.⁵

9. Furthermore, the Chamber recalls its previous decisions in which it set out the principles for the admissibility of evidence, notably the "Decision on Admission of Evidence", rendered on 13 July 2006, the "Decision Amending the Decision on the Admission of Evidence 13 July 2006", rendered on 29 November 2006, and the "Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008" ("Decision of 24 April 2008").

10. Guideline 9 of the Decision of 24 April 2008 ("Guideline 9") concerns in particular the admission of documentary evidence by way of a written motion. Pursuant to Guideline 9, a Defence team presenting its case may seize the Chamber of a written motion requesting the admission of exhibits which have not been put to a

³ Addendum, paras 2 and 3. The Stojić Defence specifies the sources of two of the Proposed Exhibits that the Motion deals with, namely Proposed Exhibits 2D 00654 and 2D 01491; the other precisions provided in the Addendum do not concern this Motion.

⁴ Open session of 28 May 2009, Transcript in French pp. 40961 to 40963.

witness in court.⁶ The said motion, providing sufficient reasons, must contain the following information, failing which it may be denied:

1. Number, title, and description of the exhibit,
2. Source of the exhibit and a description of its indicia of reliability,
3. Reference to the relevant paragraphs of the Indictment,
4. References to the witnesses who have already appeared before the Chamber and to the exhibits admitted as evidence dealing with the same paragraphs of the Indictment,
5. Reasons why the exhibit is not introduced through a witness,
6. Reasons why the party considers the document important for the determination of the case.⁷

IV. ARGUMENTS OF THE PARTIES

11. In the Motion, the Stojić Defence refers to the arguments that it submitted in the Stojić Motion of 7 May 2009 and puts forth that the Proposed Exhibits are all relevant, reliable and probative as explained in Annex I.⁸ It adds furthermore that they were collected from institutions recognised by the Tribunal as being reliable, such as the Croatian National Archives and the Government of the Federation of Bosnia and Herzegovina.⁹ It specifies that some of the Proposed Exhibits were collected from other sources, and cites, as an example, the Sarajevo Intelligence Services and the Accused Bruno Stojić himself.¹⁰ The Stojić Defence also points out that the majority of the Proposed Exhibits were to be presented through witnesses that it has called to

⁵ "Decision on Jadranko Prlić's Motion to be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008", 23 July 2008, p. 4 ("Decision of 23 July 2008").

⁶ Decision of 24 April 2008, para. 35.

⁷ Decision of 24 April 2008, para. 35.

⁸ *See*, in this sense, the Stojić Motion of 7 May 2009, paras 6-8.

⁹ *See*, in this sense, the Stojić Motion of 7 May 2009, para. 6.

¹⁰ *See*, in this sense, the Stojić Motion of 7 May 2009 para. 6.

appear during its case, but that it was unable to proceed in this manner due to time constraints.¹¹

12. In their Joint Response, the Praljak Defence and Petković Defence object to the admission of some Proposed Exhibits and argue that (1) Exhibit 2D 00795 has already been admitted into evidence by the Decision of 6 October 2008 as Exhibit 1D 02202;¹² (2) that Exhibit 2D 00652 does not present sufficient indicia of reliability, that its translation is incomplete and that the reasons given by the Stojić Defence to justify its admission are erroneous;¹³ and (3) that Exhibit 2D 00654 contains an error regarding the function carried out by Veso Vegar¹⁴ but that they do not object to the admission of this exhibit if the error is corrected.¹⁵

13. By way of the Addendum, the Stojić Defence provided clarifications on the sources of Proposed Exhibits number 2D 00654 and 2D 01491: thus, the Stojić Defence points out that Document 2D 00654 was disclosed by Safet Idrizović¹⁶ and that Exhibit 2D 01491 was disclosed by Besim Hodžić.¹⁷

14. In its Response, the Prosecution requests that the Chamber deny admission of the Proposed Exhibits to which it objects in its annex for the reasons set out in it and for any other reason determined by the Chamber.¹⁸ It adds that the interpretations and descriptions of the Proposed Exhibits provided by the Stojić Defence to show why they are important for the determination of the case must be considered as simple arguments and not evidence as such.¹⁹ It argues that certain Proposed Exhibits (1) do not present sufficient guarantees of authenticity and that they were obtained from unknown or questionable sources, such as an investigator for the Stojić Defence

¹¹ See, in this sense, the Stojić Motion of 7 May 2009, para. 4.

¹² Joint Response, para. 3 (i).

¹³ Joint Response, para. 3 (ii).

¹⁴ Joint Response, para. 3 (iii). The Praljak Defence and the Petković Defence point out that Veso Vegar held the position of assistant to the minister in charge of information and propaganda within the HZ H-B HVO Ministry of Defence and not within the HVO Main Staff as indicated in Exhibit 2D 00654.

¹⁵ Joint Response, para. 3 (iii).

¹⁶ Addendum, annex p. 6.

¹⁷ Addendum, annex p. 7.

¹⁸ Prosecution Response, para. 4. The Proposed Exhibits to which the Prosecution objected in its Motion are the following: 2D 00652, 2D 00654, 2D 00795 and 2D 01035.

¹⁹ Prosecution Response, para. 3.

named Vinko Vrbanac²⁰ and (2) that they come under the principle of *tu quoque* and, as such cannot be admitted as evidence.²¹

15. Finally, in the Reply, the Stojić Defence asks the Chamber to grant it leave to reply to the Prosecution Response due to compelling circumstances, namely the need to clarify issues regarding documents already admitted and the underlying reasons for the admission of the Proposed Exhibits.²² The Stojić Defence goes on to respond to the arguments raised in the Prosecution Response²³ and submits that (1) the Prosecution did not specify the reasons why it considers that a Proposed Exhibit obtained from the Accused Stojić or from an investigator could not be admitted as evidence, or why that type of document would be less reliable than another, and notes that the inadequacy or lack of information about the source of a document is an issue that affects the weight or the probative value of this document but not its admissibility;²⁴ (2) that the Prosecution considers that certain Proposed Exhibits come under the principle of *tu quoque* and are therefore not admissible while, according to the Stojić Defence, they refute the allegations in the Amended Indictment of 11 June 2008 ("Indictment")²⁵; (3) that the Proposed Exhibits relating to the medical assistance requested from international organisations by the HVO authorities of the HZ-HB are relevant; that they show that the said authorities provided precise information to the international organisations and co-operated with them; and that, according to the Stojić Defence, these Proposed Exhibits run counter to the allegations in the Indictment as they show that the medical treatment offered by the HVO medical services was provided without discrimination.²⁶ Finally, by way of its Reply, the Stojić Defence withdraws its requests for admission of some of the Proposed Exhibits.²⁷

²⁰ Annex to the Prosecution Response. This objection relates to Exhibits 2D 00652, 2D 00654 and 2D 01035.

²¹ Annex to the Prosecution Response. This objection relates to Exhibits 2D 00652, 2D 00654, 2D 00795 and 2D 01035.

²² Motion, para. 1.

²³ Reply, paras 1 to 16. The Prosecution raised objections to the following Proposed Exhibits 2D 00652, 2D 00654, 2D 00795 and 2D 01035. In its Reply, the Stojić Defence responds to the objections related to the following Proposed Exhibits: 2D 00654, 2D 00795 and 2D 01035.

²⁴ Reply, paras 4 to 7.

²⁵ Reply, paras 8 to 15.

²⁶ Reply, para. 14.

²⁷ Reply, para. 16. The Proposed Exhibits in question are the following: 2D 00098, 2D 00460, 2D 00465, 2D 00519, 2D 00521, 2D 00706, 2D 00707, 2D 00751, 2D 00761, 2D 00793 and 3D 00708.

V. DISCUSSION

16. *In limine*, the Chamber decides to grant leave for the Reply insofar as on the one hand, the Stojić Defence withdraws the requests for admission regarding some of the Proposed Exhibits and on the other, specifies the arguments raised in the Motion and responds to the new arguments contained in the Prosecution Response on which it did not comment in the Motion.

17. The Chamber firstly takes note of the withdrawal by the Stojić Defence of the requests for admission as evidence of the following Proposed Exhibits: 2D 00098,²⁸ 2D 00460,²⁹ 2D 00465,³⁰ 2D 00519,³¹ 2D 00521,³² 2D 00706,³³ 2D 00707,³⁴ 2D 00751,³⁵ 2D 00761,³⁶ 2D 00793,³⁷ and 3D 00708³⁸ and considers that the Motion is thus moot with regard to them.

18. The Chamber also notes, like the Praljak and Petković Defence,³⁹ that Proposed Exhibit 2D 00795 had already been admitted by the “Order Admitting Evidence Related to Witness Martin Raguž” of 6 October 2008 as Exhibit 1D 02202 and considers that the Motion is thus moot with regard to the said exhibit.

19. With regard to Proposed Exhibit 2D 00652, the Chamber notes, like the Prosecution,⁴⁰ that it does not bear a signature, date or stamp and thus concludes that it does not present sufficient indicia of authenticity.

20. The Prosecution next notes that the Stojić Defence has not indicated the source of Proposed Exhibit 2D 00654 and objects, for that very reason, to its admission as evidence.⁴¹ The Chamber notes that, according to the Stojić Defence, this Proposed Exhibit was provided by the Prosecution, which is said to have obtained it through

²⁸ Annex I to the Reply, p. 76.

²⁹ Annex I to the Reply, p. 76.

³⁰ Annex I to the Reply, p. 76.

³¹ Annex I to the Reply, p. 77.

³² Annex I to the Reply, p. 78.

³³ Annex I to the Reply, p. 80.

³⁴ Annex I to the Reply, p. 80.

³⁵ Annex I to the Reply, p. 82.

³⁶ Annex I to the Reply, p. 82.

³⁷ Annex I to the Reply, p. 82.

³⁸ Annex I to the Reply, p. 86.

³⁹ See Joint Response, para. 3 (i).

⁴⁰ Annex to the Prosecution Response, p. 49.

⁴¹ Annex to the Prosecution Response, p. 49.

Witness Safet Idrizović.⁴² At this stage, the Chamber does not have any information at its disposal that would cast doubt on the good faith of the Stojić Defence and the reliability of this source. Consequently, the Chamber deems that Proposed Exhibit 2D 00654 cannot be denied on this ground.

21. Furthermore, the Chamber notes that Proposed Exhibit 2D 01035, provided by an investigator from the Stojić Defence team is *prima facie* reliable as it bears sufficient indicia of authenticity. Moreover, the Prosecution did not explain how the lack of information on this investigator could affect the reliability of the Proposed Exhibit.

22. The Chamber further wishes to point out that according to several decisions,⁴³ it has recalled that the principle of *tu quoque* does not constitute a means of defence in international humanitarian law. Nevertheless, it has specified that the evidence related to the atrocities committed against the Bosnian Croats could be admissible should it go to refuting one of the allegations in the Indictment, but unless the Defence shows how this evidence goes to refuting one or more of these allegations and presents, in that context, a certain degree of relevance, the Chamber will not admit it.⁴⁴ The Tribunal's case-law clearly established that evidence intended to prove that the Bosnian Muslims committed atrocities against Croat civilians in the municipalities that are not covered by the Indictment are not relevant as they do not contribute to refuting the accusations contained in the Indictment with regard to the Accused.⁴⁵ Equally, in the Kupreškić Decision, Trial Chamber II found that the evidence produced to demonstrate that one of the parties to the Croat-Muslim conflict was responsible for triggering the conflict was irrelevant.⁴⁶

23. In this case, the Stojić Defence requests the admission of Proposed Exhibits related to crimes committed against Bosnian Croat civilians and on the tension and

⁴² Annex I to the Reply, pp. 79 and 80. *See also* Addendum, para. 2 and the annex to the Addendum, p. 6.

⁴³ "Order to Admit Defence Evidence Relative to Witness Christopher Beese", 27 September 2006, p. 3; Oral Decision of 16 February 2009, T(F) p. 36878; "Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh", 27 February 2009, p. 3; "Order Admitting Evidence Related to Witness Veso Vegar", 5 May 2009, pp. 2 and 3.

⁴⁴ *See* "Order to Admit Defence Evidence Relative to Witness Christopher Beese", 27 September 2006, p. 3

⁴⁵ *See, in this sense, The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case No. IT-95-16, "Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*", 17 February 1999 ("*Kupreškić Decision*"), p. 3.

⁴⁶ *Ibidem*.

conflicts between the HVO and the ABiH.⁴⁷ The Chamber deems it justifiable to present evidence on attacks from the enemy side on civilians belonging to the side of an accused if they go to refuting, for example, the allegation of a general or systematic attack on a civilian population, the allegation of the existence of a concerted plan of attacks on several villages, to explain the behaviour of the accused and provide information on the organisation and activities of the ABiH and the HVO.⁴⁸ However, it is important in that case that this evidence relates to duly defined issues. In other words, it is up to the party wishing to produce such evidence to explain, for each piece of evidence, the precise link, particularly geographical and temporal, with the crimes alleged in the municipalities of the Indictment and/or with the alleged responsibility of the Accused for these crimes, whether their commission is alleged within or outside the framework of a joint criminal enterprise.

24. The Chamber notes that Proposed Exhibits 2D 00654, 2D 00708 and 2D 01035 relate to crimes committed against Bosnian Croat civilians. The Chamber deems that the Stojić Defence did not establish a sufficiently precise link between the aforementioned Proposed Exhibits, the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes. As an example, the Chamber notes that the Stojić Defence requested the admission of Proposed Exhibit 2D 01035, that would supposedly prove that the ABiH prevented the free movement of UNPROFOR, of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees in the municipality of Konjic.⁴⁹ According to the Stojić Defence, Proposed Exhibit 2D 01035 would therefore go against the allegations of the Indictment according to which the HVO hindered the movement of international organisations, more specifically access to the Bosniak population⁵⁰ and that it cannot be held responsible for impeding the free movement of international organisations in combat zones under the control of the ABiH.⁵¹

⁴⁷ See Proposed Exhibits 2D 00652, 2D 00654, 2D 00708, 2D 00795 and 2D 01035.

⁴⁸ See, in this sense, *Kupreškić* Decision, p. 4; *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case No. IT-95-16-T, Judgment, 14 January 2000, paras 515-520; *The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23&23/1-A, Judgment on Appeal, 12 June 2002, paras 87-88.

⁴⁹ Annex I to the Motion, p. 14.

⁵⁰ Annex I to the Motion, p. 14.

⁵¹ Annex I to the Reply, p. 85.

25. The Chamber deems that the Stojić Defence did not demonstrate how Exhibit 2D 01035, according to which the 43rd Brigade of the ABiH, based in the municipality of Konjić, received an order to limit the movement of international organisation in its zone of responsibility, is sufficiently relevant to the Indictment. The Chamber notes that the aforementioned document deals with an issue that has not been sufficiently defined and notes that the Stojić Defence did not explain the link between the said exhibit and the crimes alleged in the municipalities in the Indictment. Furthermore, the fact that the ABiH Command might have prevented the free movement of international organisations in its zone of responsibility does not imply that the HVO forces of the HZ H-B did not act in the same manner.

26. In light of the information provided by the Stojić Defence in the Motion, in the Addendum and in the Reply, the objections raised with regards to some of the Proposed Exhibits by the Prosecution in the Prosecution Response and by the Praljak Defence and Petković Defence in the Joint Response, the Chamber decides to admit the Proposed Exhibits marked "Admitted" in the Annex to this Decision as they present sufficient indicia of reliability, relevance and probative value with respect to the Indictment and they should therefore be admitted.

27. Finally, the Chamber denies the Proposed Exhibits marked "Not Admitted" in the Annex to this Motion and specifies in the same Annex, for each of the Proposed Exhibits, the grounds for their rejection.

FOR THE FOREGOING REASONS,

PURSUANT to Rule 89 (C) of the Rules of Procedure and Evidence,

AUTHORISES the Reply,

DISMISSES as moot the Motion with regard to Proposed Exhibits 2D 00098, 2D 00460, 2D 00465, 2D 00519, 2D 00521, 2D 00706, 2D 00707, 2D 00751, 2D 00761, 2D 00793, 2D 00795 and 3D 00708 for the reasons set out in the attached Annex,

ADMITS into evidence the Proposed Exhibits marked “Admitted” in the Annex, attached to the present Decision, **AND**

DENIES the Motion in all other respects for the reasons set out in the attached Annex.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

Annex

Proposed Exhibits	Admitted/Not Admitted/ Moot
2D 00098	Moot (Already admitted by the Order To Admit Evidence Regarding Ivan Bagarić (“Order of 14 May 2009”))
2D 00460	Moot (Already admitted by the Order of 14 May 2009)
2D 00465	Moot (Already admitted by the Order of 14 May 2009)
2D 00517	Admitted
2D 00519	Moot (Already admitted by the Order of 14 May 2009)
2D 00521	Moot (Already admitted by the Order of 14 May 2009)
2D 00652	Not Admitted (The document does not present sufficient guarantees of authenticity)
2D 00654	Not Admitted (The Chamber deems that the Proposed Exhibit is not sufficiently relevant to the Indictment)
2D 00706	Moot (Already admitted by the Order of 14 May 2009)
2D 00707	Moot (Already admitted by the Order of 14 May 2009)
2D 00708	Not Admitted (The Chamber deems that the Proposed Exhibit does not present a sufficiently relevant link to the Indictment)
2D 00751	Moot (Already admitted by the Order of 14 May 2009)
2D 00761	Moot (Already admitted by the Order of 14 May 2009)
2D 00793	Moot (Already admitted by the Order Admitting Evidence Related to Witness Dragan Jurić of 15 May 2009)
2D 00795	Moot (Already admitted as Exhibit 1D 02202 by the Order Admitting Evidence Related to Witness Martin Raguž of 6 October 2008)
2D 00977	Admitted
2D 01026	Admitted
2D 01035	Not Admitted (The Chamber deems that the Proposed Exhibit does not present a sufficiently relevant link to the Indictment)
2D 01491	Admitted
3D 00708	Moot (Already admitted by the Order of 14 May 2009)
4D 00320	Admitted