



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: 14 January 2010
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 John Hocking

Order of: 14 January 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS 4D-AB

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

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"),

NOTING the request to admit 28 exhibits submitted by Counsel for the Accused Milivoj Petković ("Petković Defence"),¹ the request to admit 10 exhibits submitted by Counsel for the Accused Bruno Stojić ("Stojić Defence"),² the request to admit one exhibit submitted by the Counsel for the Accused Slobodan Praljak ("Praljak Defence"),³ and the request to admit 9 new exhibits submitted by the Office of the Prosecutor ("Prosecution")⁴ ("Proposed Exhibits"), all relating to the testimony of Witness 4D-AB who appeared from 23 to 26 November 2009,

NOTING the objections formulated by the Petković Defence to two of the Proposed Exhibits submitted by the Prosecution,⁵ the objection formulated by the Stojić Defence to one of the Proposed Exhibits submitted by the Prosecution,⁶ the objections formulated by the Prosecution to one of the Proposed Exhibits submitted by the Petković Defence⁷ and the nine of the Proposed Exhibits submitted by the Stojić Defence,⁸ and the Reply filed by the Stojić Defence in response to objections formulated by the Prosecution,⁹

NOTING the "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses" of 27 November 2008 ("Decision of 27 November 2008"),

NOTING the "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", rendered by the Appeals Chamber on 26 February 2009 confirming the Decision of 27 November 2008 ("Decision of 26 February 2009"),

¹ IC 01130.

² IC 01131.

³ IC 01132.

⁴ IC 01133.

⁵ IC 01134.

⁶ IC 01135.

⁷ IC 01136.

⁸ IC 01136.

⁹ IC 01140.

CONSIDERING, first, that the Chamber notes that the BCS version of Proposed Exhibit P 11077, for which the Prosecution seeks admission, as uploaded on to the e-court system, is of poor quality; that the Chamber holds that even though the English translation of this exhibit is complete, the Prosecution must upload on to e-court a good copy of the BCS version of this Proposed Exhibit,

CONSIDERING, moreover, that the Chamber notes that the Prosecution argues that it submitted Proposed Exhibits P 11076, P 11077 and P 11086 in order to test the credibility of the Witness and that it therefore seeks their admission for this reason,¹⁰

CONSIDERING that with regard to Proposed Exhibit P 01747, for which the Prosecution seeks admission, the Chamber notes that this is a "new document" within the meaning of the Decision of 27 November 2008;¹¹ that the Chamber notes that the Prosecution seeks admission of this Proposed Exhibit as it is relevant with regard to events that took place in the municipalities of Konjic and Jablanica in the spring of 1993;¹² that the Stojić Defence objects to the admission of Proposed Exhibit P 01747 on the ground that it is a "new document" within the meaning of the Decision of the Appeals Chamber of 26 February 2009 and that the Prosecution had failed to explain the exceptional circumstances that would justify the admission of such a document at this stage of the proceedings, as required by this decision,¹³

CONSIDERING that the Chamber recalls its Decision of 27 November 2008 which stipulates that if the Prosecution wishes to tender into evidence a "new document" after the end of its case with the aim of establishing the guilt of one or more of the Accused, it must explain the exceptional circumstances that, in the interest of justice, could provide justification for them to be admitted and, more specifically, when and how it obtained these documents, when it disclosed them to the Defence and why it did not present them until after its case was completed,¹⁴

CONSIDERING that with regard to Proposed Exhibits P 01747, the Chamber notes that the Prosecution does not mention the exceptional circumstances justifying the request to admit the Prosecution's "new documents" after the completion of its case;

¹⁰ IC 01133.

¹¹ IC 01133; Decision of 27 November 2008.

¹² IC 01133.

¹³ IC 01135.

¹⁴ Decision of 27 November 2008, paras 20 and 23.

that the Chamber will assess the admissibility of the Proposed Exhibits solely as to whether they go to disprove the credibility of the witness,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its "Decision on Admission of Evidence" of 13 July 2006 ("Decision of 13 July 2006") and in its "Decision Adopting Guidelines for the Presentation of Defence Evidence" of 24 April 2008 ("Decision of 24 April 2008"),¹⁵

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked "Admitted" in the Annex attached to this Order since they were put to Witness 4D-AB in court and bear sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked "Not Admitted" in the Annex attached to this decision since they are not consistent with the instructions laid out in the Decision of 13 July 2006 and the Decision of 24 April 2008 for the reasons set out in the Annex attached to this Order,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DENIES the request for admission of the Praljak Defence,

PARTIALLY GRANTS the requests for admission of the Petković Defence, the Stojić Defence and the Prosecution,

ORDERS the Prosecution to upload on to e-court a good copy of the BCS version of Exhibit P 11077 for the reasons set out in the present Order,

DECIDES that Proposed Exhibits P 11076, P 11077 and P 11086 should be admitted into evidence solely to the extent that they go to disproving the credibility of the Witness,

¹⁵ Guideline 8 on the Admission of Documentary Evidence through a Witness.

DECIDES that the other Proposed Exhibits submitted by the Petković Defence, the Stojić Defence and the Prosecution marked “Admitted” in the Annex attached to this Order should be admitted into evidence,

AND

REJECTS, by majority, Proposed Exhibits 4D 00090, 4D 00137 and 4D 00140, for which the Petković Defence seeks admission, Proposed Exhibits 2D 00765 and 2D 00786, for which the Stojić Defence seeks admission, Proposed Exhibit 3D 0032, for which the Praljak Defence seeks admission, Proposed Exhibit P 01747, for which the Prosecution seeks admission, and dismisses in all other respects the requests for admission of the Proposed Exhibits of the Petković Defence, the Stojić Defence and the Prosecution, for reasons set out in the Annex attached to the present Order,

The Presiding Judge attaches a dissenting opinion to this order.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this fourteenth day of January 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
4D 00074	Petković Defence	Admitted
4D 00083	Petković Defence	Admitted
4D 00090	Petković Defence	Not admitted by a majority (Reason: the Chamber holds that the Petković Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment.)
4D 00091	Petković Defence	Admitted
4D 00096	Petković Defence	Admitted
4D 00137	Petković Defence	Not admitted by a majority (Reason: the Chamber holds that the Petković Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment.). In this respect, the Chamber refers the Petković Defence to the Decision of 21 July 2009.) ¹⁶
4D 00140	Petković Defence	Not admitted by a majority (Reason: the Chamber holds that the Petković Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment. In this respect, the Chamber refers the Petković Defence to the Decision of 21 July 2009.)
4D 00421	Petković Defence/ Prosecution	Admitted

¹⁶ "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH)", public, 21 July 2009 ("Decision of 21 July 2009"), paras 28 to 32.

4D 00427 in its entirety or, in the alternative, page 3 ¹⁷	Petković Defence	Not admitted by a majority (Reason: the Chamber holds that the Petković Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment. Moreover, Witness 4D-AB did not comment on the relevance and probative value of the Exhibit.)
4D 00433	Petković Defence/ Prosecution	Admitted
4D 00548	Petković Defence	Admitted
4D 00549	Petković Defence	Admitted
4D 00551	Petković Defence	Admitted
4D 00599	Petković Defence	Admitted
4D 00806	Petković Defence	Admitted
4D 00872	Petković Defence	Admitted
4D 00874	Petković Defence	Admitted
4D 01168	Petković Defence	Admitted
4D 01175	Petković Defence	Not admitted (Reason: the Witness did not comment on the relevance and probative value of the Exhibit.)
4D 01522	Petković Defence	Admitted
4D 01556	Petković Defence	Admitted
4D 01558	Petković Defence	Admitted
P 01712	Petković Defence	Admitted
P 01887	Petković Defence	Admitted
IC 01123	Petković Defence	Admitted
IC 01124 under seal	Petković Defence	Admitted under seal
IC 01125	Petković Defence	Admitted
IC 01127	Petković Defence	Admitted
2D 00176	Stojić Defence	Not admitted by a majority (Reason: the Chamber holds that the Stojić Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment. In this respect, the Chamber refers the Stojić Defence

¹⁷ Page number in e-court. system.

		to the Decision of 21 July 2009.)
2D 00234	Stojić Defence	Not admitted by a majority (Reason: the Chamber holds that the Stojić Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment. In this respect, the Chamber refers the Stojić Defence to the Decision of 21 July 2009.)
2D 00403	Stojić Defence	Admitted
2D 00639	Stojić Defence	Admitted
2D 00641	Stojić Defence	Admitted
2D 00765	Stojić Defence	Not admitted by a majority (Reason: the Chamber holds that the Stojić Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment. In this respect, the Chamber refers the Stojić Defence to the Decision of 21 July 2009.)
2D 00780	Stojić Defence	Admitted
2D 00784	Stojić Defence	Admitted
2D 00786	Stojić Defence	Not admitted by a majority (Reason: the Chamber holds that the Stojić Defence did not establish, through Witness 4D-AB, a sufficiently relevant link between the document and the Indictment.)
4D 01052 (page 25 of the English version)	Stojić Defence	Admitted with respect to pages 1 and 25 of the English version on e-court
3D 00332 (Minutes 28:33-29:39)	Praljak Defence	Not admitted by a majority (Reason: the Chamber holds that the Praljak Defence did not establish, through Witness

		4D-AB, a sufficiently relevant link between the document and the Indictment.)
P 01747	Prosecution	Not admitted by a majority (Reason: the Witness did not comment on the probative value and the relevance of the document. Moreover, the Prosecution failed to show exceptional circumstances justifying the admission of these "new documents" after the completion of its case.)
P 11076 under seal (with the aim of bringing into question the credibility of the Witness)	Prosecution	Admitted under seal (Reason: this document is admitted solely in that it goes to disprove the credibility of Witness 4D-AB.)
P 11077 under seal (with the aim of bringing into question the credibility of the Witness)	Prosecution	Admitted under seal (Reason: this document is admitted solely in that it goes to disprove the credibility of Witness 4D-AB.)
P 11086 under seal (with the aim of bringing into question the credibility of the Witness)	Prosecution	Admitted under seal (Reason: this document is admitted solely in that it goes to disprove the credibility of Witness 4D-AB.)
4D 00374	Prosecution	Admitted
4D 01591	Prosecution	Admitted

**DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI**

Since the Trial Chamber decided by majority not to admit documents 4D 0090, 4D 00137, 4D 00140, 2D 00765, 2D 00786, 3D 00332 and P 01747, I feel compelled to present once more my position on this question.

The practice of all the chambers (with the exception of the present one) is to admit a document when it presents criteria of reliability and has a link to the Indictment.

A careful examination of all the preceding and ongoing trials confirms that in practice **few** exhibits are not admitted when admission is sought.

It suffices to refer to the "symbolic" trial of the Accused Slobodan Milošević to realise that the documents submitted by the Prosecution **and** the Accused were admitted without any difficulty.

In case of doubt, an MFI number was nevertheless assigned. Why did the majority of judges in this Chamber decide to act differently?

The scope of this trial and the **record number** of exhibits could lead to a consideration of the practice followed by other chambers.

However, I consider that faced with an avalanche of documents, the Trial Chamber was quite at liberty to admit them even if it meant asking the parties at the end of the trial to make **a selection** in their final submissions in order to start a useful discussion about certain exhibits that have been admitted.

This sensible solution inspired by professional judicial practice of several decades was not followed by the majority of the judges.

The art of international criminal justice consists of finding a proper balance between previous procedural rules (sometimes obsolete) and new constraints; in a word, an

international judge must adapt to the present in an efficient way in order to respect also the obligations imposed by the Security Council in its Resolution 1901 (2009) of 16 December 2009 which states:

"Urging the International Tribunal to take all possible measures to complete its work expeditiously."

It is not through lengthy deliberations on the admission of exhibits that run into the thousands that this Chamber can complete its work expeditiously with a decision and opinion!

Exhibit 4D 00090

This is a military report sent to General **PAŠALIĆ** on 22 April 1993 on the events in Konjic. This document testifies to the violence in combat (three soldiers dead) and also the ways telephone calls were intercepted between the warring parties, establishing that there were **three warring parties**.

Exhibit 4D 00137

This is a document of 23 April 1993 from the office for refugees and displaced persons relating to crimes committed in Konjic by the BH Army and, in particular, concerning crimes committed in Trusina.

This context of crimes, it seemed to me, could be taken into account in the final assessment by the Chamber of events that occurred during 1993, without entering the domain of "*tu quoque*".

It should be noted that this document was sent to the Red Cross, to the UNHCR, to the European Monitoring Mission and to UNPROFOR. It is, therefore, a public document that bears all indicia for admission.

Exhibit 4D 00140

This is a document from the same office dated 24 April 1993, which lists 23 Croatian towns which were the sites of BH Army activities, sometimes including crimes.

I believe that to exclude this type of document would mean taking a **univocal** approach to the conflict.

Exhibit 2D 00765

This is a document dated 3 June 1992, signed by the **Muslim** head of the town of Konjic, establishing that within the municipality there were two military units **recognised** by the War Presidency: the TO and the HVO.

This document is especially interesting in connection with the discussion on the legal or illegal role of the HVO.

Exhibit 2D 00786

This is an HVO document dated 8 May 1993 about the villages in the KLIS area, where food aid was needed.

It could, therefore, appear to a reasonable judge that, at the time, there was a lack of food that affected **all** the ethnic groups.

Exhibit 3D 00332

This is a document from the Praljak Defence regarding a DVD during the visit of Witness BEESE.

This DVD is especially interesting because it concerns the presence of MUJAHIDIN in Zenica and any possible role they could have played during the events.

Exhibit P 01747

This is a document in BCS which was supposed to be given an MFI number before admission and **after** translation.

It should be noted that this document mentions the names of the Accused STOJIC and PETKOVIĆ.

I attach to my opinion for each exhibit a complete copy of documents so that the reader may better understand the problem raised by the rejection of these exhibits.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this fourteenth day of January 2010

The Hague

[Seal of the Tribunal]