



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: 27 April 2010
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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

Order of: 27 April 2010

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIC
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS ZDENKO ANDABAK

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”),

NOTING the request for the admission of 29 Exhibits presented by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”),¹ the request for the admission of three Exhibits presented by Counsel for the Accused Bruno Stojić (“Stojić Defence”),² the request for the admission of seven Exhibits presented by Counsel for the Accused Slobodan Praljak (“Praljak Defence”),³ the request for the admission of three Exhibits presented by Counsel for the Accused Milivoj Petković (“Petković Defence”),⁴ and the request for the admission of 12 Exhibits presented by the Office of the Prosecutor (“Prosecution”),⁵ regarding the testimony of Zdenko Andabak who appeared from 15 to 18 March 2010 (“Proposed Exhibit(s)”),

NOTING the objections of the Stojić Defence to Proposed Exhibit P 02202 sought for admission by both the Petković Defence and the Prosecution⁶ and the objections of the Ćorić Defence to two Proposed Exhibits sought for admission by the Petković Defence⁷ and to six Exhibits sought for admission by the Prosecution,⁸

NOTING the “Response of the Petković Defence to Bruno Stojić’s Objection to Milivoj Petković’s Request for Admission of an Exhibit Through 5D Witness Zdenko Andabak” (“Response”), in which the Petković Defence responds to the objections of the Stojić Defence to Proposed Exhibit P 02202,⁹

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

¹ IC 01208.

² IC 01209.

³ IC 01210.

⁴ IC 01211.

⁵ IC 01212.

⁶ IC 01214 and IC 01215.

⁷ “Valentin Ćorić’s Opposition Against the Defence for Milivoj Petković’s Request to Tender Certain Exhibits into Evidence Through Witness Zdenko Andabak”, 23 March 2010.

⁸ “Valentin Ćorić’s Opposition Against the Prosecution’s Request to Tender Certain Exhibits into Evidence Through Witness Zdenko Andabak”, 23 March 2010.

⁹ IC 01220.

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 publicly by the Appeals Chamber on 26 February 2009 in which it upheld the Decision of 27 November 2008 (“Decision of 26 February 2009”),

NOTING the “Order Clarifying Decision of 27 November 2008”, rendered publicly by the Chamber on 12 January 2010 (“Order of 12 January 2010”),

CONSIDERING that, *in limine*, the Chamber notes that Proposed Exhibit P 04010 sought for admission by the Praljak Defence was already admitted by way of the “Supplemental Order to Admit Evidence Regarding Witness NO”, rendered publicly by the Chamber on 21 April 2010 (“Order of 21 April 2010”) and that the request for the admission of this Exhibit is therefore moot,

CONSIDERING, thereafter, that the Chamber notes that two different English translations of Proposed Exhibit P 02963 were uploaded onto *ecourt* and that the Ćorić Defence has not specified which of the two versions is the most accurate translation of the original document in BCS,

CONSIDERING, consequently, that the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit and decides not to admit it into evidence,

CONSIDERING that the Chamber notes that the Petković Defence and the Prosecution both seek the admission of Proposed Exhibit P 02202,

CONSIDERING that the Prosecution requests the admission of Proposed Exhibit P 02202 on the ground that it challenges the credibility of Witness Zdenko Andabak and goes against the argument presented by the Ćorić Defence according to which no units of the HVO Military Police were involved in crimes committed against Muslims in Bosnia,¹⁰

CONSIDERING, furthermore, that the Prosecution states that (1) Proposed Exhibit P 02202 is on its exhibit list compiled pursuant to Rule 65 *ter* of the Rules of Procedure

¹⁰ IC 01212, pp. 3 and 4.

and Evidence (“Rules”) (“65 *ter* List”) and (2) that it did not present Proposed Exhibit P 02202 during the presentation of the Prosecution case on the grounds that the Proposed Exhibit concerns Livno municipality which is not covered in the Second Amended Indictment of 11 June 2008 (“Indictment”) and that, at that time, the Prosecution was not in a position to assess the overall relevance for the case as it did not know what witnesses and evidence the Defence teams would submit to the Chamber,¹¹

CONSIDERING that the Petković Defence also requests the admission of Proposed Exhibit P 02202 in that it considers that the latter serves in particular to show (1) that the head of the Military Police Department of the HVO in charge of general and traffic cases sent his reports directly to the President of the HZ H-B and to the head of the Defence Department, (2) that the HVO Military Police units based in Livno were engaged in combat operations in Prozor and Konjic in April 1993 and (3) the conduct of the Military Police units and other military units when they returned to the town which was their billet after fighting,¹²

CONSIDERING that in its objection to the request for the admission of Proposed Exhibit P 02202 presented by the Petković Defence, the Stojić Defence puts forward that (1) the Exhibit consists of information, notably relating to the situation in Livno municipality, that does not present any link of relevance to the Indictment and (2) that the Chamber, in the past, rejected evidence relating to this municipality for that reason,¹³

CONSIDERING, moreover, that in its objection to the request for the admission of Proposed Exhibit P 02202 presented by the Prosecution, the Stojić Defence notes that (1) the Proposed Exhibit constitutes new evidence within the meaning of the Decision of 27 November 2008 and that the Prosecution has not demonstrated the existence of exceptional circumstances that would justify the admission of this Proposed Exhibit after the presentation of its case, (2) the Prosecution’s overall argument specifying that it was unable to anticipate, at the time of presenting its own case, what Defence evidence and witnesses the Defence teams would present, does not sufficiently justify the admission of new evidence after the close of its case and (3) according to the

¹¹ IC 01212 pp. 1 to 4.

¹² IC 01211, p. 1.

Prosecution, Proposed Exhibit P 02202 deals with an issue, namely the existence of crimes perpetrated against Muslims in Bosnia, that is not a new subject and consequently the Prosecution had the opportunity on several occasions to present Proposed Exhibit P 02202 during the presentation of its case,¹⁴

CONSIDERING, however, that the Stojić Defence has no objection to Proposed Exhibit P 02202 being admitted solely for the purpose of challenging the credibility of Witness Zdenko Andabak,¹⁵

CONSIDERING, furthermore, that the Ćorić Defence also opposes the admission of Proposed Exhibit P 02202 requested by the Prosecution and the Petković Defence, insofar as none of the parties has demonstrated the existence of a link of sufficient relevance between the information contained in this document and the Indictment,¹⁶

CONSIDERING that in its Response, the Petković Defence submits that (1) Proposed Exhibit P 02202 serves notably to demonstrate the existence of tensions between the local and central authorities of the HVO of HZ H-B, and that in this respect, it is relevant with regard to the allegations in the Indictment, (2) the relevance of the Proposed Exhibits should be assessed on a case-by-case basis, and (3) it is difficult to understand why the Stojić Defence henceforth considers the documents relating to Livno municipality as bearing no relevance to the allegations in the Indictment when during its cross-examination of Witness Zvenko Andabak it was asking questions on this very subject,¹⁷

CONSIDERING that, with regard to Proposed Exhibit P 02202, the Chamber notes that the Prosecution seeks its admission not only to challenge the credibility of Witness Zdenko Andabak, but also as Prosecution evidence, and that the Petković Defence has not clearly specified the purpose for which it intends to tender into evidence this new document,

¹³ IC 01215.

¹⁴ IC 01214.

¹⁵ IC 01214.

¹⁶ "Valentin Ćorić's Opposition Against the Defence for Milivoj Petković's Request to Tender Certain Exhibits into Evidence Through Witness Zdenko Andabak", 23 March 2010, para. 2, and "Valentin Ćorić's Opposition Against the Prosecution's Request to Tender Certain Exhibits into Evidence Through Witness Zdenko Andabak", 23 March 2010, para. 4.

¹⁷ IC 01220.

CONSIDERING that the Chamber finds therefore that it is appropriate to examine Proposed Exhibit P 02202 as a “new and mixed document” within the meaning of the Decision of 27 November 2008 and the Order of 12 January 2010,

CONSIDERING, first of all, that the Chamber cannot accept the Prosecution’s arguments according to which (1) it was unable to assess the overall relevance of Proposed Exhibit P 02202 for the case at the time of the presentation of the Prosecution case as it did not know what witnesses and evidence the Defence teams would submit to the Chamber¹⁸ and (2) at the time of the presentation of the Prosecution case Proposed Exhibit P 02202 did not present sufficient relevance insofar as it dealt with Livno municipality which is outside the geographical scope of the Indictment,¹⁹

CONSIDERING that the Chamber finds that Proposed Exhibit P 02202 does not relate exclusively to events that occurred within Livno municipality; that it provides notably information on the chain of command of the HVO of the HZ H-B in force during the month of May 1993 and also information on the intervention and conduct of the Military Police of the HVO of the HZ H-B in Gornji Vakuf, Stolac and Prozor municipalities,²⁰

CONSIDERING that under these circumstances, the Chamber holds that the Prosecution could have presented this document during the presentation of its case, all the more so since the document is on its 65 *ter* List,

CONSIDERING, secondly, that in support of its request for admission, the Petković Defence did not specify the exceptional circumstances that would justify the admission of Proposed Exhibit P 02202 as Defence evidence after the presentation of its case has closed, within the meaning of the Order of 12 January 2010,

CONSIDERING that the Chamber finds therefore that both the Petković Defence and the Prosecution have not demonstrated exceptional circumstances that would justify the admission of Proposed Exhibit P 02202 as either Prosecution or Defence evidence tendered after the close of their respective cases,

¹⁸ IC 01212, p. 1.

¹⁹ IC 01212, pp. 3 and 4.

²⁰ P 02202.

CONSIDERING that the Chamber finds as a consequence that Proposed Exhibit P 02202 can only be admitted for the sole purpose of challenging the credibility of Witness Zdenko Andabak,

CONSIDERING, furthermore, that the Chamber noted that Proposed Exhibits 5D 05094 and 5D 05117 sought for admission by the Ćorić Defence are not on its 65 *ter* List filed on 31 March 2008 and that they were presented by the Ćorić Defence during the re-examination of Witness Zdenko Andabak,²¹

CONSIDERING that the Chamber does not take issue with the prospect that the party presenting a witness requests the admission of documents which are not on its 65 *ter* List and that it presented during its re-examination of the witness, provided that these documents were presented in order to respond to a new subject dealt with for the first time during the cross-examination,²²

CONSIDERING that with regard to Proposed Exhibit 5D 05094, the Chamber notes that the Ćorić Defence specified in court that it related to a cross-examination conducted by the Petković Defence on the subject of “disarming and isolating the Muslims of Livno in July 1993”,²³ yet both during the appearance of Witness Zdenko Andabak and in support of its request for admission, the Ćorić Defence did not indicate as to whether and why it was a new subject,

CONSIDERING that with regard to Proposed Exhibit 5D 05117, the Chamber notes that the Ćorić Defence did not explain, either in court or in its request for admission, to which new subject raised during cross-examination this Proposed Exhibit was related,²⁴

CONSIDERING that as a consequence, the Chamber holds that the Ćorić Defence has not justified the fact that Proposed Exhibits 5D 05094 and 5D 05117 are not on its 65 *ter* List and therefore denies the corresponding request for admission,

²¹T (F), pp. 51163 to 51164 and 51167 to 51168.

²² See on this subject the “Order to Admit Evidence Regarding Witness Radmilo Jasak”, public, 18 March 2010; see also the “Order to Admit Evidence Regarding Witness Vinko Marić”, public, 22 March 2010.

²³ T (F), p. 51167.

²⁴ T (F), pp. 51163 and 51158.

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in the “Decision on the Admission of Evidence”, rendered publicly by the Chamber on 13 July 2006, and in the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered publicly by the Chamber on 24 April 2008,²⁵

CONSIDERING that the Chamber decides to admit into evidence those Exhibits marked as “Admitted” in the Annex attached to this decision since they were put to Witness Zdanko Andabak and present sufficient indicia of relevance, probative value and reliability,

CONSIDERING, in particular, that the Chamber decides to admit Proposed Exhibit P 02202 solely in that it goes to challenging the credibility of Witness Zdenko Andabak,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked as “Not Admitted” in the Annex attached to this decision since they are not consistent with the instructions set out in the Decisions of 13 July 2006 and 24 April 2008,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

GRANTS the request for admission presented by the Stojić Defence,

PARTIALLY GRANTS the requests for admission presented by the Praljak Defence, the Petković Defence, the Ćorić Defence and the Prosecution,

DISMISSES as moot the request for admission of Proposed Exhibit P 04010,

²⁵ Guideline 8 regarding the admission of documentary evidence through a witness.

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
P 00458	Ćorić Defence	Admitted
P 00781	Ćorić Defence	Admitted
P 00970	Ćorić Defence	Admitted
P 01099	Ćorić Defence	Admitted
P 01134	Prosecution	Admitted
P 01460	Ćorić Defence	Admitted
P 01673	Ćorić Defence	Admitted
P 02202	Petković Defence and Prosecution	Admitted solely in that it goes to challenging the credibility of Witness Zdanko Andabak.
P 02230	Ćorić Defence	Admitted
P 02832	Ćorić Defence	Admitted
P 02963	Ćorić Defence	Not admitted (The Ćorić Defence did not indicate which of the two English translations uploaded onto e-court was an accurate translation of the original document in BCS).
P 02996	Ćorić Defence	Admitted
P 03716	Petković Defence and Prosecution	Admitted
P 03792	Prosecution	Admitted
P 03821	Prosecution	Admitted
P 03889	Petković Defence	Admitted
P 04010	Praljak Defence	Moot as already admitted by way of the Order dated 21 April 2010.
P 04063	Ćorić Defence	Admitted
P 04103	Ćorić Defence	Admitted
P 04110	Ćorić Defence	Admitted
P 04228	Prosecution	Admitted
P 04251	Ćorić Defence	Admitted
P 04293	Ćorić Defence	Admitted
P 04819	Ćorić Defence	Admitted
P 05478	Praljak Defence, Ćorić Defence	Admitted
P 05869	Ćorić Defence	Admitted
P 06734	Stojić Defence	Admitted
P 06825	Ćorić Defence	Admitted
P 06867	Prosecution	Admitted
P 08548 (pages 18, 19 and 48 of the BCS version and pages 23 to 25, 72 and 73 of the	Prosecution	Admitted

English version of the Proposed Exhibit)		
P 09668	Prosecution	Admitted
2D 01367	Praljak Defence	Admitted
3D 00478	Stojić Defence	Admitted
3D 03813	Praljak Defence	Admitted
3D 03814	Praljak Defence	Admitted
3D 03815	Praljak Defence	Admitted
3D 03816	Praljak Defence	Admitted
5D 02049	Ćorić Defence	Admitted
5D 02077	Ćorić Defence	Admitted
5D 02078	Prosecution	Admitted
5D 02102	Ćorić Defence	Admitted
5D 02139	Ćorić Defence	Admitted
5D 02164	Ćorić Defence	Admitted
5D 03104	Ćorić Defence	Admitted
5D 04092	Ćorić Defence	Admitted
5D 04094	Ćorić Defence and Prosecution	Admitted
5D 04218	Prosecution	Admitted
5D 04377	Stojić Defence	Admitted
5D 05094	Ćorić Defence	Not admitted (The Proposed Exhibit is not on the Ćorić Defence 65 <i>ter</i> List and the latter did not explain, in court or in its request for admission whether the subject raised during cross-examination by the Petković Defence, to which the document relates, was a new subject with respect to the direct examination, and as such did not justify the fact that it was unable to include it on its 65 <i>ter</i> List).
5D 05117	Ćorić Defence	Not admitted (The Proposed Exhibit is not on the Ćorić Defence 65 <i>ter</i> List and the latter did not explain, in court or in its request for admission, to which new subject raised during cross-examination this document related, and as such did not justify the fact that it was unable to include it on its 65 <i>ter</i> List).