



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: 23 January 2008
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: 23 January 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
DOCUMENTARY EVIDENCE BY SUBJECT (INCLUDING MOTION FOR
RECONSIDERATION)**

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

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 the “Prosecution Motion for Admission of Documentary Evidence by Subject (Including Motion for Reconsideration)” (“Motion”), filed partly confidentially by the Office of the Prosecutor (“Prosecution”) on 10 December 2007, containing three annexes (“Annexes to the Motion”), in which the Prosecution requests the admission into the record, pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”), of 104 documents classified by subject (“Proposed Exhibits”).

II. PROCEDURAL BACKGROUND

2. On 27 November 2007, the Prosecution confidentially filed a motion in which it requested the admission of 43 exhibits it did not have the opportunity to put to Witness EA during his appearance before the Chamber from 12 to 22 November 2007 (“Motion of 27 November 2007”).

3. On 29 November 2007, the Chamber rendered an oral decision (“Decision of 29 November 2007”)¹ in which it denied the Motion of 27 November 2007 on the ground that it failed to adhere to the guidelines of the Chamber concerning the admission of documentary evidence in that it was not related to a municipality or subject.

4. On 29 November 2007, the Prosecution confidentially filed a new motion in which it requested the admission of the same 43 exhibits as those requested for admission in the Motion of 27 November 2007 (“Motion of 29 November 2007”).

5. On 5 December 2007, the Chamber confidentially rendered the “Decision on Prosecution Motion for Admission of Exhibits” (“Decision of 5 December 2007”) in which it declared the Motion of 29 November 2007 inadmissible on the grounds that, even though the Motions of 27 November 2007 and 29 November 2007 are identical,

the Prosecution did not request reconsideration of the Decision of 29 November 2007 or certification to appeal it.

7. By oral decision of 12 December 2007, the Chamber granted the Defence an extension of time up to 7 January 2008 to file its response to the Motion.²

8. On 7 January 2008, Counsel for the Accused Prlić, Stojić, Petković, Ćorić and Pušić (“Defence”) filed the “Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence by Subject (including Motion for Reconsideration)” (“Joint Response”), whereby they object, jointly in the Joint Response and individually in the five confidential annexes (“Annexes to the Joint Response”), to the admission of certain Proposed Exhibits. The same day, Counsel for the Accused Stojić and Ćorić (“Stojić Defence and Ćorić Defence”) filed the “Stojić and Ćorić Clarification of their Position Taken in the Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence by Subject (Including Motion for Reconsideration)” (“Further Response”) in which they clarify the arguments put forth in the Joint Response.

9. By oral decision of 7 January 2008,³ the Chamber granted the Prosecution leave to file a reply to the Joint Response by 9 January 2008. On 9 January 2008, the Prosecution filed the partly confidential “Prosecution Reply to Defence Responses to the Prosecution’s Motion Dated 10 December 2007 for Admission of Documentary Evidence by Subject (Including Motion for Reconsideration)” (“Reply”), whereby it responds to the arguments raised by the Defence in the Joint Response and Further Response and to which two confidential annexes are attached, amending certain Annexes to the Motion (“Annexes to the Reply”).

III. ARGUMENTS OF THE PARTIES

11. In support of the Motion, the Prosecution submits that its request satisfies the criteria established by the Chamber in respect of the admission of documentary

¹ Transcript in French (“T(F)”), pp. 25311-25312.

² T(F), pp. 25735 and 25736.

³ T(F), pp. 25738 and 25739.

evidence,⁴ including guideline 6 as amended by the “Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006” (“Guideline 6”), rendered on 29 November 2006 (“Decision of 29 November 2006”),⁵ and that the Proposed Exhibits are relevant, reliable and have probative value in respect of the acts alleged in the amended indictment of 16 November 2005 (“Indictment”).⁶

11. The Prosecution further submits, while taking into account the nature and scope of the case, that it was careful to make a drastic selection of the Proposed Exhibits,⁷ in accordance with the request made by the Chamber in its Decision of 29 November 2006.⁸

12. In support of the Motion, the Prosecution submits that a motion for reconsideration is the filing of a motion or request identical to a motion that was previously denied by the Chamber, asking the Chamber to reconsider that decision to deny on the same grounds and on the same basis as the previously denied motion.⁹ The Prosecution submits that there was no need to file a motion for reconsideration of the Motion of 27 November 2007 since the Motion of 27 November 2007 and the Motion of 29 November 2007 were not identical.¹⁰ The Prosecution notes nonetheless that the Chamber was critical of the fact that it did not call its Motion of 29 November 2007 a motion for reconsideration and therefore submits the present Motion, calling it a motion for reconsideration, in order to follow the Chamber’s instructions to the letter.¹¹

13. Finally, the Prosecution points out that, in accordance with the Chamber’s instructions, it classified the Proposed Exhibits by subject, namely: HVO military justice; HVO chain of command; “Greater Croatia”/international armed conflict; exchange/transfer of prisoners and/or civilians; Vance-Owen Peace Plan/HVO ultimatums; Herceg-Bosna/HVO political and administrative structures; arrest and detention of Muslims; Croat-Serb division of BiH/Croat-Serb co-operation; HVO

⁴ Motion, para. 1.

⁵ Motion, para. 4.

⁶ Motion, para. 1.

⁷ Motion, para. 12.

⁸ Motion, para. 13.

⁹ Motion, paras. 5 and 10 a. and b.

¹⁰ Motion, paras. 5, 9 and 10.

¹¹ Motion, para. 11.

knowledge of what constitutes war crimes and leadership responsibility; HVO control of humanitarian aid.¹²

14. Through the Joint Response, the Defence objects generally to the admission of the Proposed Exhibits.¹³ Furthermore, the Chamber notes that each Defence team raises individual objections with respect to certain Proposed Exhibits.¹⁴

15. In the Joint Response, the Defence considers in particular that, by stating that the Proposed Exhibits are reliable and relevant, the Prosecution makes an assessment that is reserved for the Chamber.¹⁵ The Defence disputes the Prosecution's interpretation of the Proposed Exhibits, which it considers to lack probative value and on which the Chamber cannot rely.¹⁶ Moreover, Counsel for the Accused Prlić ("Prlić Defence") consider that no probative value may be attached to the grounds put forth by the Prosecution in one of the Annexes to the Motion detailing why the Prosecution believes that the Proposed Exhibits are important.¹⁷

16. The Prlić Defence, Counsel for the Accused Petković ("Petković Defence"), the Ćorić Defence and Counsel for the Accused Pušić ("Pušić Defence"), dispute the relevance or probative value of certain Proposed Exhibits due to the lack of sufficient proof of their authenticity.¹⁸

17. Several Defence teams also point out errors by the Prosecution, such as the fact that certain documents were already admitted or that translations are inaccurate or missing.¹⁹

19. The Prlić Defence further objects to the fact that the Prosecution attempts to have the Proposed Exhibits admitted without the Defence having the opportunity to test them, contrary to the provisions of Article 21 (4) (e) of the Statute of the Tribunal, in

¹² Motion, para. 14.

¹³ Response, p. 1.

¹⁴ See Annexes to the Joint Response.

¹⁵ Joint Response, para. 1.

¹⁶ Joint Response, paras. 1 to 3.

¹⁷ Annex I of the Annexes to the Response, p. 1.

¹⁸ Annex I of the Annexes to the Response, Annex III of the Annexes to the Response, Annex IV of the Annexes to the Response and Annex V of the Annexes to the Response.

¹⁹ Annex I of the Annexes to the Response, Annex III of the Annexes to the Response.

particular the Proposed Exhibits which concern the Accused Prlić directly or those which contain information based on hearsay.²⁰

20. The Stojić Defence objects to the admission of Exhibit P 00185 because it does not concern an act of the Accused Stojić charged in the Indictment; that it has not been proved that the Accused Stojić participated in the relevant events referred to in the document and that the Defence Stojić did not have the opportunity to dispute the content of the documents through a cross-examination.²¹

21. The Pušić Defence also objects to the admission of certain Proposed Exhibits, in that they contain information based on hearsay; that they are not corroborated by other evidence and that they were not put to a witness, which deprives the Accused Pušić of his right to a cross-examination.²²

22. As regards the nature of the Motion as a motion for reconsideration, the Stojić and Ćorić Defences submit that the Prosecution, even though it submitted a motion for reconsideration, fails to demonstrate why the reasoning of the Decision of 5 December 2007 contains a clear error or particular circumstances justifying the reconsideration of the said Decision.²³ The Stojić and Ćorić Defences submit that the Prosecution requests the admission of the same exhibits as those requested for admission in the Motions of 27 November 2007 and 29 November 2007 and on the basis of the same legal ground.²⁴

23. In support of the Reply, the Prosecution submits that it followed the Chamber's practice as regards the admission of evidence²⁵ and it responds to the Defence arguments concerning the reliability and relevance of the Proposed Exhibits and concerning the errors relating to the Proposed Exhibits.²⁶

24. The Prosecution also responds to the arguments of the Stojić Defence with regard to Exhibit P 00185.²⁷ It submits *inter alia* that this exhibit deals with paragraphs 15, 16, 16.1 and 27 of the Indictment; that the jurisprudence of this Tribunal and the

²⁰ Annex I of the Annexes to the Response, p. 1.

²¹ Annex II of the Annexes to the Response.

²² Annex V of the Annexes to the Response.

²³ Further Response, para. 3.

²⁴ Further Response, paras. 2 and 3.

²⁵ Reply, para. 2.

²⁶ Annex I of the Annexes to the Reply.

²⁷ Annex II of the Annex to the Reply.

practice of this Chamber do not require that a document be put to a witness in order for it to be admitted and that Exhibit P 00185 was already admitted in another case tried before this Tribunal, in which a witness verified the existence, the participants and the content of the said document.²⁸

25. The Prosecution further submits that by interpreting the Proposed Exhibits, it is simply following the Chamber's instructions.²⁹ It further notes that the Defence argument disputing the Prosecution's interpretation of the Proposed Exhibits was already dismissed by the Chamber, in particular in its Decision on Admission of Documentary Evidence related to Herceg-Bosna Structures and Processes of 7 March 2007.³⁰ Finally, the Prosecution refutes the Defence argument according to which the Prosecution provides recommended interpretations to the Chamber and points out that its written submissions do not constitute evidence.³¹

26. Moreover, the Prosecution replies to the Further Response by recalling that the Proposed Exhibits in the Motion are classified by subject, in accordance with the instructions of the Chamber in its previous decisions, and recalls that the Proposed Exhibits are relevant to certain paragraphs in the Indictment.³²

27. Finally, the Prosecution withdrew the Proposed Exhibits that have already been admitted by the Chamber.³³

IV. DISCUSSION

28. The Chamber will first examine the Motion's nature as a motion for reconsideration. According to Tribunal jurisprudence, a Trial Chamber has the inherent power to reconsider its own decisions and it may grant a request for reconsideration if the requesting party satisfies the Chamber that the reasoning of the impugned decision contains a clear error or that particular circumstances, which may be new facts or arguments,³⁴ justify its reconsideration in order to avoid an injustice.³⁵

²⁸ Annex II of the Annex to the Reply.

²⁹ Reply, paras. 5 and 7.

³⁰ Reply, para. 6, citing the Decision on Admission of Documentary Evidence related to Herceg-Bosna Structures and Processes, 7 March 2007, pp. 3 and 4.

³¹ Reply, para. 7.

³² Reply, paras. 9 (a) and (b).

³³ Reply, para. 9 (c).

³⁴ *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-

That said, in the present case the Chamber finds that the Motion is not a motion for reconsideration of the Decision of 5 December 2007 to the extent that the Prosecution did not re-submit the Motion of 29 November 2007 while referring to clear errors or particular circumstances. On the contrary, the Motion is a separate filing from the Motion of 29 November 2007, submitting new documents for admission and putting forth legal arguments different from those in the Motion of 29 November 2008. Accordingly, the Chamber considers that there is reason to examine the Motion not as a request for reconsideration of the Decision of 5 December 2007, but as a separate request.

25. The Chamber will next examine the request for admission of the Proposed Exhibits. In view of the arguments of the Parties, the Chamber must again recall the previous decisions in which it set out the principles for the admissibility of evidence, in particular the “Decision on Admission of Evidence” of 13 July 2006, the Decision of 29 November 2006 and the “Decision on Admission of Documentary Evidence relating to Prozor Municipality” of 20 February 2007.

29. The Chamber takes note of the fact that the Prosecution has reduced the number of Proposed Exhibits and ultimately requests the admission of 93 Proposed Exhibits.

30. The Chamber also finds that in the annexes attached to the Motion, the Prosecution has satisfied the criteria set out in Guideline 6 at items (a) (i), (ii), (iii) and (vii) by providing information related to the number, title and description of the documents, to their source, the relevant paragraphs of the Indictment and to the importance of the documents to the case.

31. The Chamber notes nonetheless that some of the Proposed Exhibits have already been admitted; that the original versions of certain documents are partly illegible ; that certain documents have not been translated into the language of the Accused; that the Prosecution failed to specify which excerpts of certain voluminous documents it requests for admission; that it failed to provide sufficiently detailed information

97-20-T, Trial Chamber III, *Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses*, 9 May 2002, para. 8.

³⁵ *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.

regarding the source or author of certain documents and that other documents are not on the list of exhibits filed by the Prosecution in accordance with Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) on 19 January 2006 (“65 *ter* List”). The Chamber therefore decides, as so specified in the annex attached to this decision, that the Motion in respect of these documents is denied or moot.

32. Moreover, the Chamber considers that the Prosecution could have and should have requested the admission of the Proposed Exhibits by way of the motions it filed previously, in particular the “Prosecution Motion for Admission of Documentary Evidence related to Herceg-Bosna/HVO Structures and Processes” filed on 26 January 2007, the “Prosecution Motion for Admission of Documentary Evidence” filed by the Prosecution on 28 June 2007 and amended by the “Amended Prosecution Motion for Admission of Documentary Evidence” filed on 27 August 2007, or the “Prosecution Motion for Admission of Documentary Evidence”, filed partly confidentially on 21 September 2007, which would have helped to expedite the proceedings.

33. With regard to the consideration of the merits, after hearing the Defence objections, in particular those related to the interpretation and weight that should be attached to the Proposed Exhibits, the Chamber must again remind the Defence that at this stage of the trial it is examining only the admissibility of the Proposed Exhibits and need not make its final assessment of their probative value. It will do so only at the end of the trial after all of the prosecution and defence evidence has been tendered into the record. In making this assessment, the Chamber will take into particular account the fact that the Defence disputes the Prosecution’s interpretation of the documents or their authenticity; that certain information is hearsay and that the Defence did not have the opportunity to test the Proposed Exhibits in a cross-examination. The Chamber will also take into account the objections raised by the Defence in respect of the translations of the documents provided by the Prosecution.

34. In view of the objections raised by the Defence and the information provided by the Prosecution, the Chamber considers that Exhibit P 00185 bears sufficient indicia of reliability, relevance and probative value and, consequently, admits it.

35. In view of the information provided by the Prosecution in the Motion and the Reply, and of the objections raised by the Defence on each Proposed Exhibit, the

Chamber decides to admit the Proposed Exhibits indicated “Admitted” in the annex attached to this decision since they bear sufficient indicia of reliability, relevance and probative value in relation to the Indictment and that, consequently, it is appropriate to admit them.

36. Finally, the Chamber dismisses the Proposed Exhibits indicated “Not admitted” in the annex attached to this decision for the reasons explained therein.

FOR THESE REASONS,

IN ACCORDANCE with Rule 89 (C) of the Rules,

DISMISSES as moot the requests for admission of the Proposed Exhibits withdrawn by the Prosecution or previously admitted by the Chamber

PARTIALLY GRANTS the Motion,

DECIDES that there is reason to admit the Proposed Exhibits indicated “Admitted” in the annex attached to this decision,

DENIES the Motion in all other respects for the reasons explained in the annex attached to this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

	Exhibit Number	Admitted/Not admitted/ Moot.
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A. HVO military justice

1.	P 00100	Admitted
2.	P 00101	Admitted
3.	P 00590	MOOT: already admitted on 15 January 2008
4.	P 01173	Admitted
5.	P 06178	Admitted

B. HVO command and control

6.	P 00316	Admitted
7.	P 00600	Admitted
8.	P 00621	MOOT: withdrawn by the Prosecution
9.	P 00754	Admitted
10.	P 00796	Admitted
11.	P 00833	Admitted
12.	P 00849	Admitted
13.	P 00857	Admitted
14.	P 00938	Admitted
15.	P 01316	Admitted
16.	P 02224	Admitted
17.	P 02292	Admitted
18.	P 02518	MOOT: withdrawn by the Prosecution
19.	P 02698	Admitted
20.	P 02781	Admitted
21.	P 02784	Admitted
22.	P 02957	Admitted
23.	P 03060	Admitted
24.	P 03146	Admitted
25.	P 03264	Not admitted (reason: the Prosecution admits that Valentin Ćorić is not the author of this handwritten document. The name of the author, however, is unknown. The Chamber considers that, as such, the document does not bear sufficient indicia of reliability and probative value).
26.	P 03300	Admitted
27.	P 04850	Admitted
28.	P 04937	Admitted

29.	P 05657	Admitted
30.	P 05863	Admitted
31.	P 06020	MOOT: withdrawn by the Prosecution
32.	P 06039	MOOT: withdrawn by the Prosecution
33.	P 06208	Admitted
34.	P 06224	Admitted
35.	P 06870	Admitted
36.	P 06959	Admitted
37.	P 07160	MOOT: withdrawn by the Prosecution
38.	P 07504	Admitted
39.	P 08052	Admitted
40.	P 08132	MOOT: withdrawn by the Prosecution
41.	P 09053	Admitted
42.	P 09329	Admitted
43.	P 09958	Admitted
44.	P 10156	Admitted
45.	P 10268	Admitted
46.	P 10309	Not admitted (reason: the document is not on the 65 <i>ter</i> List).
47.	3D 00825	MOOT: withdrawn by the Prosecution
48.	4D 00844	MOOT: withdrawn by the Prosecution
49.	4D 00851	MOOT: withdrawn by the Prosecution

C. "Greater Croatia"/international armed conflict

50.	P 00185	Admitted
51.	P 00403	Not admitted (reason: the document comes from an unknown source. As a result, the Chamber is unable to assess its reliability and probative value.)
52.	P 03071	Admitted
53.	P 03998	Admitted
54.	P 06575	REJECTED: this document contains 59 pages of which pages 1 to 15 have already been admitted. The request in respect of them is therefore moot. The Prosecution has failed to indicate which excerpts of the document are requested for admission. Consequently, the request is dismissed as regards pages 16 to 59 of the document.
55.	P 06832	Admitted
56.	P 07590	Admitted
57.	P 07794	Admitted
58.	P 07920	Admitted
59.	P 10244	Admitted
60.	P 10248	Admitted
61.	P 10252	Admitted
62.	P 10253	Admitted
63.	P 10259	Admitted
64.	P 10261	MOOT: withdrawn by the Prosecution
65.	P 10265	Admitted
66.	P 10266	Admitted
67.	P 10335	Not admitted (reason: the document is not on the 65 <i>ter</i> List).

D. Exchange/transfer of prisoners and/or civilians

68.	P 00663	Admitted
69.	P 02579	Admitted
70.	P 02691	Admitted
71.	P 05919	Admitted
72.	P 05945	MOOT: already admitted on 16 January 2008.
73.	P 06909	Admitted
74.	P 07007	Admitted
75.	P 07411	Admitted
76.	P 10258	Admitted

E. Implementation of Vance-Owen Peace Plan/HVO ultimatums

77.	P 10250	Admitted
78.	P 01259	Admitted under seal.
79.	P 10260	Admitted

F. Herceg-Bosna/HVO political and administrative structures

80.	P 01691	Not admitted (reason: the document comes from an unknown source. As a result, the Chamber is unable to assess its reliability and probative value.)
81.	P 04346	Admitted
82.	P 06641	Not admitted (reason: the document comes from an unknown source. As a result, the Chamber is unable to assess its reliability and probative value.)
83.	P 10263	Admitted

G. Arrest and detention of Muslims

84.	P 02324	Not admitted (reason: the BCS translation of this document is not in the electronic "ecourt" system).
85.	P 04153	Admitted
86.	P 05018	Admitted
87.	P 05035	Admitted
88.	P 10262	Admitted

H. Croat-Serb division of BiH/Croat-Serb co-operation

89.	P 02966	Admitted
90.	P 06219	MOOT: withdrawn by the Prosecution
91.	P 06307	Admitted
92.	P 06364	Admitted
93.	P 06638	Not admitted (reason: the original document is partly illegible. As a result, it does not bear sufficient indicia of reliability and probative value).
94.	P 09827	Admitted
95.	P 09969	Admitted
96.	P 10153	Admitted
97.	P 10245	Admitted
98.	P 10246	Admitted
99.	P 10251	Admitted

100.	P 10254	Admitted
101.	P 10256	Admitted
102.	P 10257	Admitted

H. HVO knowledge of what constitutes war crimes and leadership responsibility

103.	P 10249	Admitted
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I. HVO control of humanitarian aid

104.	P 10264	Admitted
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