



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: 25 March 2009
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

Acting Registrar: Mr John Hocking

Decision of: 25 March 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT EXCERPTS OF
EXHIBIT P 10768**

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 Admit Limited Excerpts of Exhibit P 10768”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 2 March 2009 (“Motion”), in which the Prosecution requests that the Chamber admit excerpts of Exhibit P 10768 (“Decree”) into evidence (“Excerpts”), which were presented during the cross-examination of Expert Witness Milan Cvikić, who appeared from 12 to 15 January 2009,

NOTING the “Order Admitting Evidence Regarding Expert Witness Milan Cvikić”, rendered publicly by the Chamber on 18 February 2009 (“Order of 18 February 2009”), in which the Chamber refused to admit the Decree into evidence, for the reason that the Prosecution failed to specify the pages of this document that it was requesting for admission as required by paragraph 30 of the Decision of 24 April 2008,¹ even as it had provided an English translation for only some of the passages in the Decree,²

NOTING the “Corrigendum to Prosecution Motion to Admit Limited Excerpts of Exhibit P 10768”, filed publicly by the Prosecution on 3 March 2009 (“Corrigendum”), in which the Prosecution specifies the Excerpts requested for admission, namely: the text of the Decree from the beginning up to Article 4;³ the headings of certain sections of the said Decree;⁴ Article 363 and the final text bearing the date of signature and the signature of the Decree by the President of the Presidency of the RBiH,⁵

NOTING “Jadranko Prlić’s Response to Prosecution Motion to Admit Limited Excerpts of Exhibit P 10768 & Corrigendum to Prosecution Motion to Admit Limited Excerpts of Exhibit P 10768”, filed publicly by Counsel for the Accused Jadranko

¹ Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008 (“Decision of 24 April 2008”).

² Order, p. 6.

³ P 10768, English version, pp. 1 and 2.

⁴ P 10768, English version, pp. 2, 3 and 4.

⁵ P 10768, English version, p. 5.

Prlić (“Prlić Defence”) on 16 March 2009 (“Response”), in which the Prlić Defence requests that the Chamber deny the Motion,⁶

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, in which it affirms the Decision of 27 November 2008,

CONSIDERING that in support of the Motion, the Prosecution recalls that Exhibit P 10768 is a decree promulgated by Alija Izetbegović relating to the establishment of a customs system and that it was presented during the cross-examination of Expert Witness Milan Cvikič,⁷

CONSIDERING that the Prosecution acknowledges that the Chamber’s practice requires the parties, when requesting the admission into evidence of particularly long documents, to specify the excerpts they intend to rely on in the presentation of their case; that, according to the Prosecution, there is however an exception to this practice for laws and decrees, for which the Chamber has often shown flexibility;⁸ that in this case, in light of this flexibility, the Prosecution, therefore, considers that it did not have to specify the excerpts of the Decree which were requested for admission and rejected in the Order,⁹

CONSIDERING, however, that in order to avoid having the Decree translated in its entirety and to avoid unnecessarily burdening the Chamber, the Prosecution now specifies the Excerpts that it requests for admission in its Motion,¹⁰ and subsequently in the Corrigendum,¹¹

⁶ Response, p. 4.

⁷ Motion, p. 1, para. 2.

⁸ Motion, p. 2, para. 3.

⁹ Motion, p. 2, para. 4.

¹⁰ Motion, p. 2, para. 5 and p. 3, para. 6.

¹¹ Corrigendum, p. 1, paras. 2, 3 and 4.

CONSIDERING furthermore, that the Prosecution submits that the Excerpts are relevant;¹² that they challenge the Defence case according to which the authorities of the RBiH took no measures to introduce customs legislation during the period covered by the Indictment;¹³ that the Decree shows that the authorities of the HZ H-B and subsequently the HR H-B had an obligation to pay over to the government of the RBiH the customs duties collected in the territories over which they had control, which they failed to do;¹⁴ and that, finally, the Excerpts impeach the credibility of Expert Witness Milan Cvikič,¹⁵

CONSIDERING that the Prlić Defence submits that Expert Witness Milan Cvikič merely confirmed that in 1995 he had not observed any border crossings set up by the RBiH authorities when he went to that country,¹⁶

CONSIDERING that the Prlić Defence therefore is of the view that that the Prosecution failed to prove that the Decree promulgated in 1992 was implemented in 1995 and that it in no way undermines the credibility of the testimony of expert Milan Cvikič,¹⁷

CONSIDERING that the Prlić Defence further submits that this Decree could have been presented by the Prosecution during the case-in-chief or during the cross-examination of Witness Neven Tomić who, in his capacity as the head of the Finance Department of the HVO HZ H-B, could have effectively attested to its relevance, probative value and reliability,¹⁸

CONSIDERING, as a preliminary matter, that the Chamber notes that in actuality the Motion constitutes a request for reconsideration of the Order of 18 February 2009, in which the Chamber rejected the Decree for the reason that the Prosecution failed to specify which pages it was seeking to admit, while only some articles and headings in the Decree were translated, and that consequently, the motion should be treated as such,

¹² Motion, p. 3, para. 6.

¹³ Motion, pp. 2 and 3, para. 6.

¹⁴ Motion, pp. 2 and 3, para. 6.

¹⁵ Motion, p. 2, paras. 2 and 6.

¹⁶ Response, p. 2, para. 2.

¹⁷ Response, p. 2, para. 2.

¹⁸ Response, p. 2, para. 3.

CONSIDERING that the Chamber notes that in its Motion, the Prosecution specifies that it only seeks the admission of the Excerpts and now specifies the pages it requests for admission, namely pages 1 to 5 of the English version of the Decree in *ecourt*,

CONSIDERING that a Trial Chamber has the inherent power to reconsider its own decisions and that it may allow a request for reconsideration if the requesting party demonstrates to the Chamber that the impugned decision contains a clear error of reasoning or that particular circumstances, which can be new facts or arguments,¹⁹ justify its reconsideration in order to avoid injustice,²⁰

CONSIDERING that the Chamber notes that in its Motion, the Prosecution submits the Decree is a mixed document because it challenges both the credibility of Expert Witness Milan Cvikl and the Defence case as it relates to the lack of action on the part of the RBiH authorities in terms of customs legislation during the conflict,²¹

CONSIDERING that the Chamber notes that the Decree is a “new document” within the meaning of paragraph 4 of the Decision of 27 November 2008 insofar as it has not already been admitted into evidence and that, furthermore, it seeks to both test the credibility of the witness and rebut the Defence case,

CONSIDERING that the Chamber further notes that the Decree was also not on the exhibit list filed by the Prosecution pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules; 65 *ter* List”),

CONSIDERING that the Chamber notes that the Prosecution did not follow the procedure established by the Chamber in paragraphs 20 and 23 of the Decision of 27 November 2008 to request the admission of the Decree since, while its purpose is to rebut the Defence case, it did not explain which exceptional circumstances justify the late presentation of the Decree, when and by which means it obtained this document,

¹⁹ *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-97-20-T, Trial Chamber III, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8.

²⁰ *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, *inter alia*, *The Prosecutor v. Zdravko Mucić et al.*, Case no. IT-96-21A-Bis, Appeals Judgement on Sentence, 8 April 2003, para. 49; *The 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.

²¹ Motion, pp. 2 and 3, para. 6.

when it disclosed it to the Defence and why it presented it only after the closing of its case,

CONSIDERING that the Chamber consequently decides not to admit the Decree in that it would intend to prove the guilt of one or more of the Accused by rebutting the Defence case,

CONSIDERING that the Chamber recalls that the Prosecution may however introduce, during the cross-examination of a Defence witness, documents that were not admitted into evidence for the sole purpose of testing the credibility of a witness or refreshing his memory,²² and that it will analyse the admissibility of the Decree for this purpose only,

CONSIDERING that, firstly, the Chamber holds that it is not in a position to assess the relevance, probative value and reliability of the Excerpts corresponding to the sections of the Decree solely on the basis of the translations of the headings of those sections²³ and in the absence of any translation of their content,

CONSIDERING that, consequently, the Chamber decides to deny the Motion in that it relates to the admission of pages 2 (beginning with “Bonded goods”) to 4 of the English version of the Decree,

CONSIDERING that, secondly, the Chamber deems that the other Excerpts²⁴ now satisfy the admissibility criteria set out in the Decision of 24 April 2008,²⁵ insofar as the Decree was put to Expert Witness Milan Cvikl in court; that the Excerpts bear sufficient indicia of relevance, probative value and reliability; that the Prosecution now specified to the Chamber the pages of the Decree it requests for admission,

CONSIDERING that the Chamber therefore decides that, as an exception, and in the interests of justice, it is appropriate to now admit pages 1, 2 (up to the end of Article 4 “herein”) and 5 of the English version of the Decree, only insofar as these excerpts are intended to impeach the credibility of Expert Witness Milan Cvikl,

²² Decision of 27 November 2008, para. 24.

²³ P 10768, English version, pp. 2-2 (beginning with “Bonded goods”), 3 and 4.

²⁴ P 10768, English version, pp. 1, 2 and 5. Namely p. 1 in its entirety, Articles 3 and 4 on p. 2, and p. 5 in its entirety.

²⁵ Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008, Guideline 8.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules,

PARTIALLY GRANTS the Motion,

DECIDES to admit into evidence pages 1, 2 (up to the end of Article 4 “herein”) and 5 of the English version of Exhibit P 10768 in *ecourt*, insofar as these excerpts are intended to impeach the credibility of Expert Witness Milan Cvikl.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]