



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 May 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

Decision of: 25 May 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON ĆORIĆ REQUEST FOR THE ADMISSION OF DOCUMENTARY
EVIDENCE**

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 “Valentin Ćorić’s Request for the Admission of Documentary Evidence”, filed publicly on 20 April 2010 by Counsel for the Accused Valentin Ćorić (respectively, “Request” and “Ćorić Defence”), to which is attached a confidential annex, in which the Ćorić Defence requests the admission into evidence of 115 documents (“Proposed Exhibits”).

II. PROCEDURAL BACKGROUND

2. On 29 April 2010, the Office of the Prosecutor (“Prosecution”) publicly filed the “Prosecution’s Response to Valentin Ćorić’s Request for the Admission of Documentary Evidence”, to which a public annex is attached (“Prosecution Response”) and in which the Prosecution objects to the admission of 5 Proposed Exhibits.

3. On 29 April 2010, Counsel for the Accused Milivoj Petković (“Petković Defence”) publicly filed “Milivoj Petković’s Response to Valentin Ćorić’s Request for the Admission of Documentary Evidence” (“Response of the Petković Defence”), in which the Petković Defence objects to the admission of one Proposed Exhibit.

4. The other parties did not file any response to the Request.

III. APPLICABLE LAW

5. According to the provisions of Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”), a Chamber may admit any relevant evidence which it deems to have

probative value. Again, under Rule 89 (C), every decision of the Chamber bearing upon a request to admit documentary evidence is based upon the said Rule.¹

6. Moreover, the Chamber recalls its previous decisions clarifying the principles for admitting evidence, notably the “Decision on Admission of Evidence”, rendered publicly on 13 July 2006, the “Decision Amending the Decision on Admission of Evidence Dated 13 July 2006”, rendered publicly on 29 November 2006, and the “Decision Adopting Guidelines for the Presentation of Defence Evidence” rendered publicly on 24 April 2008 (“Decision of 24 April 2008”).

7. Guideline 9 of the Decision of 24 April 2008 (“Guideline 9”) more specifically addresses the admission of documentary evidence by way of written motion. By virtue of 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 witness in court.² The said motion, if properly pled, should notably contain certain information, or risk being denied, that is:

1. Number, title and description of the exhibit;
2. Source of the exhibit and a description of its indicia of reliability;
3. References to 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; and
6. Reasons why the party considers the document important for the determination of the case.³

IV. ARGUMENTS OF THE PARTIES

8. In support of its Request, the Ćorić Defence submits that all of the Proposed Exhibits display sufficient indicia of reliability, in that they come from the Croatian

¹ “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.

² Decision of 24 April 2008, para. 35.

³ Decision of 24 April 2008, para. 35.

State Archives, from the archives of the Cantonal Court of Mostar and from Valentin Ćorić himself.⁴ Concerning the Proposed Exhibits originating in the personal records of the Accused Valentin Ćorić, the Ćorić Defence alleges that their authenticity is beyond question on this point as they contain indicia of reliability such as stamps and signatures, or display similarities of form to certain exhibits previously admitted.⁵ Furthermore, the Ćorić Defence recalls that certain Proposed Exhibits were put to witnesses when they appeared before the Chamber and that they were able to identify them.⁶

9. The Ćorić Defence likewise submits that it selected the documents most essential to the presentation of its case and provides the reasons why it is seeking to have them admitted. The Ćorić Defence argues that the Proposed Exhibits specifically make it possible to:

- (a) establish the subordination of military police units to the operational zone command, as well as to other bodies;⁷
- (b) establish the role Valentin Ćorić played in relation to checkpoints and freedom of movement for aid convoys;⁸
- (c) establish the organisation and functioning of organs involved in crime prevention, investigation and punishment,⁹ the relationships between those organs and military police units¹⁰ as well as the jurisdictions in which the latter operated;¹¹
- (d) establish control and complicating factors in exercising such control over units present at the Heliodrom camp;¹²

⁴ Request, para. 4.

⁵ Request, para. 4.

⁶ Request, paras 4-5. The Ćorić Defence states, notably, that 74 of the 115 Proposed Exhibits were presented in court during the presentation of its case. The witnesses were thereby able to attest to their relevance and their authenticity.

⁷ Request, para. 7.

⁸ Request, para. 7.

⁹ Request, para. 7.

¹⁰ Request, para. 7.

¹¹ Request, para. 7.

¹² Request, para. 8.

(e) highlight selected aspects of events that were occurring in the municipality of Prozor;¹³

(f) disprove the allegations of the Prosecution that Valentin Ćorić sought to promote or at least acquiesced to the commission of crimes against Muslim persons.¹⁴

10. The Ćorić Defence concludes by indicating that the lot of Proposed Exhibits has in fact been produced to illustrate efforts made by the military police units, without discrimination and under difficult circumstances, to investigate and prevent crimes.¹⁵

11. In the Prosecution Response, the Prosecution objects to the admission of Proposed Exhibits 5D 00269, 5D 02040, 5D 04232, 5D 04233 and 5D 05081¹⁶ and points out that 25 of the Proposed Exhibits were already admitted by the Chamber in the “Order to Admit Evidence Regarding Witness Zdenko Andabak”, issued publicly by the Chamber on 27 April 2010 (“Order of 27 April 2010”).¹⁷

12. In the Response of the Petković Defence, the Defence indicates that it is not *per se* opposed to admitting Proposed Exhibit 5D 03091, yet is opposed to admitting the exhibit if such admission into evidence is based on the interpretation supplied by the Ćorić Defence.¹⁸

V. DISCUSSION

13. By way of introduction, the Chamber observes that, in the annex attached to the Request, the Ćorić Defence has met the requirements of Guideline 9 on points (a)(i), (ii), (iii), (iv), (v) and (vi), having provided information concerning the number, the title, the description of the exhibits, their source, the relevant paragraphs of the Amended Indictment of 11 June 2008 (“Indictment”) and the value of the exhibits under consideration.

¹³ Request, para. 8.

¹⁴ Request, para. 9.

¹⁵ Request, para. 9.

¹⁶ Public Annex to the Response, pp. 3-5.

¹⁷ Prosecution Response, para. 2. Through the Order of 27 April 2010, the Chamber admitted exhibits P 00458, P 00781, P 00970, P 01099, P 01460, P 01673, P 02230, P 02832, P 02996, P 04063, P 04103,

14. Furthermore, the Chamber observes, like the Prosecution, that Proposed Exhibits P 00458, P 00781, P 00970, P 01099, P 01460, P 01673, P 02230, P 02832, P 02996, P 04063, P 04103, P 04110, P 04251, P 04293, P 04819, P 05478, P 06825, 5D 02049, 5D 02077, 5D 02102, 5D 02139, 5D 02164, 5D 03104, 5D 04092 and 5D 04094 were previously admitted under the Order of 27 April 2010 and, hence, declares the request for admission thereof moot.

15. Elsewhere, the Chamber notes that Proposed Exhibits P00453, P 01405, P 01728, P 03118, P 03483, P 03513, P 04139, P 04163, P 05128, P 06893, P 09465, 5D 02040, 5D 02095, 5D 02097, 5D 02146, 5D 03087, 5D 04114, 5D 04154, 5D 04165, 5D 04168, 5D 04169, 5D 04173, 5D 04198, 5D 04199, 5D 04200, 5D 04201, 5D 04202, 5D 04203, 5D 04207, 5D 04209, 5D 04212, 5D 04216, V 04226, 5D 04230, 5D 04231, 5D 04233, 5D 04237, 5D 04238, 5D 04240, 5D 04242, 5D 04243, 5D 04249, 5D 04250, 5D 04258, 5D 04259 and 5D 04350 were previously admitted under the “Order to Admit Evidence Regarding Witness Zvonko Vidović” issued publicly by the Chamber on 10 May 2010 (“Order of 10 May 2010”). The Chamber therefore decides to declare the request for admission involving the Proposed Exhibits cited above to be moot.

16. The Chamber then points out that, for Proposed Exhibits P 02963 and P 05186, two English-language translations were uploaded onto *eCourt*, however the Ćorić Defence did not specify which of those two versions reads more faithfully to the originally drafted Proposed Exhibit in BCS. Therefore, the Chamber is unable to weigh the probative value, reliability and relevance of the said Proposed Exhibits and decides that it is proper to bar their admission into evidence. In this regard, the Chamber insists notably on recalling that it had previously signalled to the Ćorić Defence via the Order of 27 April 2010 that two English translations of Proposed Exhibit P 02963 were available on the *eCourt* system and had barred admission for the latter on these grounds.¹⁹

P 04110, P 04251, P 0 4293, P 04819, P 05478, P 06825, 5D 02049, 5D 02077, 5D 02102, 5D 02139, 5D 02164, 5D 03104, 5D 04092 and 5D 04094.

¹⁸ Response of the Petković Defence, paras 3 (i) and 3 (ii).

¹⁹ Order of 27 April 2010, pp. 3 and 10.

17. The Chamber subsequently observes that Proposed Exhibit P 04544 was admitted at the request of the Petković Defence under the Order of 27 April 2010, solely for the reason that it went to undermining the credibility of Witness Zvonko Vidović. The Chamber considers in this case that this Proposed Exhibit presents adequate guarantees of sufficient authenticity, reliability and relevance and decides therefore that it is proper to admit it into evidence in its entirety.

18. Upon consideration of the objection made against Proposed Exhibit 5D 03091 by the Petković Defence, the Chamber notes that the Petković Defence is stating an objection related to the interpretation provided by the Čorić Defence regarding this Proposed Exhibit. The Chamber is compelled to recall that, following established jurisprudence, the Chamber at this stage of the proceedings simply conducts an evaluation of the admissibility of the Proposed Exhibits tendered for admission and may not proceed to a conclusive determination of their probative value.²⁰ It will only do this at the close of the trial, when all prosecution and defence exhibits have been admitted into evidence. In conducting this determination, the Chamber will specifically take into account the fact that the Petković Defence is contesting the interpretation provided by the Čorić Defence concerning Proposed Exhibit 5D 03091.

19. In light of the information provided by the Čorić Defence in the Request, and the objections raised concerning several Proposed Exhibits tendered by the Prosecution in the Prosecution Response and by the Petković Defence in the Response of the Petković Defence, the Chamber hereby decides to admit the Proposed Exhibits appearing as “Admitted” in the annex attached to this decision, insofar as they display sufficient indicia of reliability, of relevance and of probative value with respect to the Indictment.

20. Finally, the Chamber bars admission to the Proposed Exhibits cited as “Not Admitted” in the annex attached to this decision, specifying in the annex hereto the grounds for inadmissibility for each of the Proposed Exhibits.

²⁰ See, e.g., especially the “*Décision portant sur la demande de la Défense Stojić d’admission d’Éléments de preuve documentaire relatifs au fonctionnement du Département de la Défense du HVO, de la HZ H-B et des structures connexes*”, rendered publicly by the Chamber on 15 July 2009, para. 39.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 (C) of the Rules,

DECLARES the Request **MOOT** as to Proposed Exhibits P 00453, P 00458, P 00781, P 00970, P 01099, P 01405, P 01460, P 01673, P 01728, P 02230, P 02832, P 02996, P 03118, P 03483, P 03513, P 04063, P 04103, P 04110, P 04139, P 04163, P 04251, P 04293, P 04819, P 05128, P 05478, P 06825, P 06893, P 09465, 5D 02040, 5D 02049, 5D 02077, 5D 02095, 5D 02097, 5D 02102, 5D 02139, 5D 02146, 5D 02164, 5D 03087, 5D 03104, 5D 04092, 5D 04094, 5D 04114, 5D 04154, 5D 04165, 5D 04168, 5D 04169, 5D 04173, 5D 04198, 5D 04199, 5D 04200, 5D 04201, 5D 04202, 5D 04203, 5D 04207, 5D 04209, 5D 04212, 5D 04216, 5D 04226, 5D 04230, 5D 04231, 5D 04233, 5D 04237, 5D 04238, 5D 04240, 5D 04242, 5D 04243, 5D 04249, 5D 04250, 5D 04258, 5D 04259 and 5D 04350 for the reasons set forth in the Annex attached to this decision,

DECIDES to admit into evidence the Proposed Exhibits marked “Admitted” in the Annex attached hereto.

AND

DENIES the Request in all other respects, by a majority, insofar as it concerns Proposed Exhibits 5D 04197, 5D 04205 and 5D 05081, for the reasons stated in the annex attached hereto.

The Presiding Judge of the Chamber attaches a partially dissenting opinion to this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twentieth-fifth day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

Proposed Exhibits	Admitted/Not Admitted/Moot
P 00453	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 00458	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 00781	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 00931	Admitted
P 00970	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 01099	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 01405	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 01460	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 01673	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 01728	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 02070	Admitted
P 02080	Admitted
P 02106	Admitted
P 02120	Admitted
P 02230	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 02412	Admitted
P 02832	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 02871	Admitted
P 02963	Not admitted (Two English translations of the Proposed Exhibit were uploaded onto eCourt. The Ćorić Defence did not specify which translation it sought for admission.)
P 02996	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 03118	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 03483	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 03513	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 04063	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 04103	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 04110	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 04139	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)

P 04163	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 04251	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 04258	Admitted
P 04293	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 04544	Admitted
P 04819	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 05128	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 05186	Not admitted (Two English-language translations of the Proposed Exhibit were uploaded onto the eCourt system. The Ćorić Defence did not specify which translation it sought to have admitted.)
P 05474	Admitted
P 05478	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 05977	Admitted
P 06727	Admitted
P 06764	Admitted
P 06825	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
P 06893	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
P 06901	Admitted
P 07027	Admitted
P 09465	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 00269	Not Admitted (the Proposed Exhibit does not display sufficient indicia of reliability and authenticity)
5D 02019	Admitted
5D 02020	Admitted
5D 02040	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 02049	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 02077	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 02090	Admitted
5D 02095	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 02097	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 02098	Admitted
5D 02102	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 02139	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 02146	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 02147	Admitted

5D 02164	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 03087	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 03091	Admitted
5D 03104	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 04092	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 04094	Moot (the Proposed Exhibit was already admitted under the Order of 27 April 2010)
5D 04114	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04154	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04165	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04168	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04169	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04173	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04174	Admitted
5D 04176	Admitted
5D 04177	Admitted
5D 04180	Admitted
5D 04196	Admitted
5D 04197	Not admitted by a majority (the Proposed Exhibit bears an unidentified signature and no other indicia of reliability and authenticity)
5D 04198	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04199	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04200	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04201	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04202	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04203	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04204	Admitted
5D 04205	Not admitted by majority (the Proposed Exhibit bears no signature, stamp or other indicia of reliability and authenticity)
5D 04207	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04208	Admitted
5D 04209	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04210	Admitted
5D 04212	Moot (the Proposed Exhibit was already admitted under the Order of

	10 May 2010)
5D 04213	Admitted
5D 04216	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04217	Admitted
5D 04226	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04229	Admitted
5D 04230	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04231	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04232	Not Admitted (the Jori} Defence did not establish a sufficient link of reliability between the Proposed Exhibit and the Indictment)
5D 04233	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04237	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04238	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04240	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04242	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04243	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04249	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04250	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04258	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04259	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04282	Admitted
5D 04324	Admitted
5D 04325	Admitted
5D 04350	Moot (the Proposed Exhibit was already admitted under the Order of 10 May 2010)
5D 04352	Admitted
5D 05068	Admitted
5D 05081	Not admitted by majority (the Proposed Exhibit bears no signature, stamp or other indicia of reliability and authenticity)

Partially Dissenting Individual Opinion of the Presiding Judge,

Judge Jean-Claude Antonetti

Document **5D 00269** was barred by the Trial Chamber on grounds that it lacks sufficient indicia of reliability and authenticity.

From my perspective, the responsibility for explicitly stating the source of this document fell to the Ćorić Defence. The fact that someone mentioned that the document originated in the Croat archives is not sufficient for purposes of deducing its authenticity. It is for this reason that I concur with barring this document.

Concerning document **5D 004197**, I have no doubt of its authenticity as this is a technical document drafted by investigating magistrate Drago Bevanda, asking the police with criminal jurisdiction to send him their reports made during the investigation opened against the individuals mentioned in this document.

Document **5D 04205** must be paired with the previous document, as this involves the same investigation. The only difference resides in the fact that this is a **handwritten document** concerning the content of an interview with the person named Vedran Bijuk.

Document **5D 05081** displays sufficient indicia in support of the conclusion that a criminal report was made on a member of the Convicts Battalion in September 1993.

As a consequence, it is my opinion that Documents 5D 04197, 5D 04205 and 5D 05081 ought to have been admitted.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

The twenty-fifth day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]