



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

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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: 23 November 2010

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON PRALJAK DEFENCE MOTION TO REOPEN ITS CASE

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Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
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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 “Slobodan Praljak’s Motion Pursuant to the 6 October 2010 Decision on the Prosecution’s Motion to Reopen its Case”, filed as a confidential document by Counsel for the Accused Slobodan Praljak (“Praljak Defence”; “Accused Praljak”; “Motion”) on 20 October 2010, with two confidential annexes A and B, of the “Corrigendum to Slobodan Praljak’s Motion Pursuant to the 6 October 2010 Decision on the Prosecution’s Motion to Reopen its Case”, filed as a confidential document by the Praljak Defence on 21 October 2010 with a confidential annex (“Corrigendum”) and of the “Supplement to Slobodan Praljak’s Motion Pursuant to the 6 October 2010 Decision on the Prosecution’s Motion to Reopen its Case”, filed as a public document by the Praljak Defence on 2 November 2010 with a confidential annex (“Supplement”), in which the Praljak Defence asks the Chamber to allow it to reopen its case in accordance with the criteria set out in the “Decision on the Prosecution’s Motion to Reopen its Case”, rendered as a public document on 6 October 2010 (“Decision of 6 October 2010”), so as to request the admission into evidence of 24 exhibits,¹ six of which are excerpts of Ratko Mladić’s Diary (“Diary”)² and to allow the Accused Praljak to testify³ (“Motion”).

II. PROCEDURAL BACKGROUND

2. In its Decision of 6 October 2010, the Chamber partially granted the motion of the Office of the Prosecutor (“Prosecution”) to reopen the case and directed the Defence teams wishing to do so, to file possible requests to reopen their respective cases in order to refute the Diary excerpts admitted into evidence by the said decision.⁴

¹ 3D 03838, 3D 03839, 3D 02215, 3D 03028, 3D 01238, 3D 02819, 3D 03843, 3D 03844, 3D 03845, 3D 03842, 3D 03841 (P 11375), 3D 03846, 3D 01310, 3D 03823, 3D 03824, 3D 03825, 3D 03836, 3D 03840, 3D 03086, 3D 03847, 3D 03837, 3D 03848, 3D 03849 and 3D 03850.

² 3D 03841 (P 11375), 3D 03842, 3D 03843, 3D 03844, 3D 03845 and 3D 03846.

³ Supplement, paras 10, 15-18 and Confidential Annex A to the Supplement.

⁴ Decision of 6 October 2010, pp. 28 and 29.

3. On 27 October 2010, the Chamber rendered as a public document the “Decision on Bruno Stojić’s Motion for Certification to Appeal the Decision on the Reopening of the Prosecution Case and Clarifying the Decision of 6 October 2010”, in which it denied the Stojić Defence motion for certification to appeal the Decision of 6 October 2010 and invited the Defence teams to supplement their possible motion to refute the evidence tendered by the Prosecution in their motions for reopening within seven days of the time that decision was issued, in accordance with the case-law criteria for reopening⁵ (“Decision of 27 October 2010”).

4. On 1 November 2010, the Chamber rendered as a public document the “Decision on Petković Defence Request for Certification to Appeal the Decision on Prosecution Motion to Reopen its Case”, in which it denied the request for certification to appeal but recalled that in the Decision of 6 October 2010, it had admitted a limited number of exhibits and that these exhibits related to statements made by the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak and Milivoj Petković, relevant to the allegations of the possible involvement of the said Accused in achieving of the objectives of the alleged joint criminal enterprise (“JCE”)⁶ (“Decision of 1 November 2010”).

5. On 8 November 2010, the Prosecution filed as a public document the “Prosecution Consolidated Response to Defence Motions to Reopen their Cases and Tender Evidence per the Trial Chamber Decision of 6 October 2010”, with a confidential annex, in which it asks the Chamber to reject at least those exhibits requested by the Praljak Defence in its Motion to which it objected, and indicates that it does not object to the *viva voce* testimony of the Accused Praljak, subject to certain conditions⁷ (“Response”).

III. ARGUMENTS OF THE PARTIES

6. In support of its Motion and Supplement, the Praljak Defence argues that once the Chamber has allowed the Prosecution to reopen its case, every defence team

⁵ Decision of 27 October 2010, pp. 9 and 10.

⁶ Decision of 1 November 2010, p. 7.

⁷ Response, paras 18 and 19.

enjoys the opportunity to respond.⁸ Furthermore, even though the title of its Motion is a motion to reopen its case pursuant to the Decision of 6 October 2010, the Praljak Defence argues that the said Motion is of a different nature than a motion for reopening based upon “fresh” evidence.⁹

7. Moreover, the Praljak Defence argues that it disagrees with the Chamber’s requirements set out in its Decision of 6 October 2010 concerning, specifically, the scope of the purpose of the motions to reopen the case likely to be filed by the Defence teams in accordance with the said decision, but informs the Chamber that it fully complies nonetheless with these requirements in the present Motion.¹⁰ In this respect, the Praljak Defence argues in the Supplement that the Motion complies with the rules, decisions and orders of the Chamber and that it is directly responsive to the material admitted into evidence by the Decision of 6 October 2010.¹¹

8. In its Motion, the Praljak Defence asks the Chamber notably to allow the admission into evidence of 24 exhibits and to allow the Accused Praljak to testify as a *viva voce* witness in order to refute the evidence admitted by the Decision of 6 October 2010.¹²

9. In support of the Supplement, the Praljak Defence argues that some of the exhibits admitted into evidence by the Decision of 6 October 2010 relate to the involvement of the Croatian authorities in the alleged JCE and that consequently, other documents relating to the actions of the Croatian authorities, in a general manner, gain fresh relevance due to the evidence admitted by the said decision and should also be admitted.¹³

10. In its Response, the Prosecution asks the Chamber to reject at least those exhibits requested for admission by the Praljak Defence to which it objected, namely

⁸ Motion, para. 3; Supplement, paras 10, 12 and 13.

⁹ Motion, para. 3.

¹⁰ Motion, para. 5.

¹¹ Supplement, paras 9, 14 and 17.

¹² Motion, paras 1, 4, 6 and 7 and Confidential Annexes A and B to the Motion; Corrigendum, paras 1-3; Supplement, paras 10, 15-18 and Confidential Annex to the Supplement. In the Supplement, the Praljak Defence withdraws Exhibits 3D 00294 and 3D 02633 from its list of exhibits tendered for admission, *see* Supplement, para. 10 and Confidential Annex to the Supplement.

¹³ Supplement, para. 11.

21 of the 24 exhibits.¹⁴ The Prosecution adds, moreover, that some of the exhibits to which it did not object are irrelevant and have minimal probative value.¹⁵

11. In this regard, the Prosecution notes that some of the exhibits requested for admission by the Praljak Defence relate to Serb-Muslim cooperation against the HVO,¹⁶ Muslim and HVO/Croat co-operation and alliances against the Serbs,¹⁷ and the military conflict between the Serbs and Croats.¹⁸ The Prosecution points out that it had never denied the existence of cooperation in this manner between the parties to the conflict and recalls, in this regard, that exhibits relating to these issues were already admitted into evidence.¹⁹ Furthermore, the Prosecution questions the probative value of the exhibits requested for admission that relate to Serb-Croat cooperation, even though it did not object to all of these exhibits.²⁰

12. Furthermore, the Prosecution argues that the exhibits tendered for admission by the Praljak Defence to disprove the existence of Serb-Croat cooperation against the Muslims and referring to HVO members as “Ustashas” are irrelevant and have minimal probative value, even though it did not object to these exhibits.²¹

13. Moreover, the Prosecution argues that by seeking *inter alia* the admission into evidence of Diary excerpts, the Praljak Defence acknowledges the authenticity and probative value of the said Diary.²²

14. The Prosecution also argues, despite not objecting on this ground, that amongst the Diary excerpts requested for admission to refute the evidence admitted by the Decision of 6 October 2010, only a few lines or paragraphs of these exhibits

¹⁴ Response, para. 19 and Confidential Annex to the Response. The Exhibits in question are: 3D 03838, 3D 03839, 3D 02215, 3D 03028, 3D 01238, 3D 02819, 3D 03844, 3D 03845, 3D 03841 (P 11375), 3D 03846, 3D 01310, 3D 03823, 3D 03824, 3D 03825, 3D 03836, 3D 03086, 3D 03847, 3D 03837, 3D 03848, 3D 03849 and 3D 03850.

¹⁵ Response, paras 11 and 16.

¹⁶ Response, para. 11. *See inter alia* 3D 03843, 3D 03844 and 3D 03846, footnote 6, p. 3.

¹⁷ Response, para. 11. *See inter alia* 3D 01310 and 3D 03838, footnote 7, p. 3.

¹⁸ Response, para. 11. *See inter alia* 3D 01238, 3D 02215, 3D 02819, 3D 03028, 3D 03086 and 3D 03839, footnote 8, p. 3.

¹⁹ Response, para. 12.

²⁰ Response, para. 13 and Confidential Annex to the Response.

²¹ Response, para. 14. *See inter alia* 3D 03845, footnote 9, p. 4.

²² Response, para. 10.

serve this purpose and that the Chamber must bear this in mind when assessing the probative value of these exhibits.²³

15. Additionally, the Prosecution objects notably to the admission into evidence of Exhibits 3D 03848 and 3D 03849 on the ground that the Chamber already ruled on the authenticity of the Diary and that the Praljak Defence should have requested, if it so wished, the admission into evidence of this expert evidence under the procedure set out in Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”).²⁴

16. Finally, the Prosecution indicates that it does not object to the *viva voce* testimony of the Accused Praljak as long as it is limited to refuting the evidence admitted by the Decision of 6 October 2010 and does not exceed two trial days for both examination-in-chief and cross-examination.²⁵

IV. APPLICABLE LAW

17. The Chamber recalls that the reopening of a party’s case, once it has finished presenting its evidence, is not provided for in the Rules, yet Tribunal case-law recognises that in exceptional circumstances the parties may be allowed to reopen their cases to present fresh evidence not in their possession previously.²⁶

18. The Appeals Chamber considered that “the primary consideration in determining an application for reopening a case to allow for the admission of fresh evidence is the question of whether, with reasonable diligence, the evidence could have been identified and presented in the case-in-chief of the party making the

²³ Response, para. 15. *See inter alia* 3D 03824 and 3D 03845, footnote 10, p. 5. Contrary to what the Prosecution argues, the Chamber notes that Exhibit 3D 03824 is not a Diary excerpt.

²⁴ Response, para. 17.

²⁵ Response, para. 18.

²⁶ *See* notably “Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses”, public, 27 November 2008, para. 18 quoting the relevant case-law in *The Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-T, “Decision on the Prosecution’s Application to Reopen its Case”, public, 1 June 2005, para. 31 (“*Hadžihasanović* Decision”) and *The Prosecution v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.5, “Decision on Motion to reopen the Prosecution Case”, public, 9 May 2008, para. 23 (“*Popović* Decision of 9 May 2008”). *See also*, *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Decision on Application for a Limited Re-Opening of the Bosnia and Kosovo Components of the Prosecution Case”, public with confidential annex, 13 December 2005, para. 12 (“*Milošević* Decision”) and *The Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, “Decision on the Prosecution’s Alternative Request to Reopen the Prosecution’s Case”, public, 19 August 1998, para. 26 (“*Čelebići* Decision”).

application”.²⁷ According to the Appeals Chamber, such an assessment depends on the factual circumstances of each case and is carried out on a case-by-case basis.²⁸

19. According to Tribunal case-law, when a Trial Chamber is satisfied of the requesting party’s due diligence, it has the power, under Rule 89 (D) of the Rules, to exclude evidence where its probative value is substantially outweighed by the need to ensure a fair trial.²⁹ The Chamber must therefore exercise its discretion as to whether to admit the new evidence by weighing its probative value and the fairness to the co-accused of admitting it so late in the proceedings.³⁰

20. The Appeals Chamber classifies “fresh evidence” as being notably: (1) evidence not in the party’s possession at the close of its case and which could not have been obtained with the exercise of reasonable diligence before the close of the case and (2) documents already in its possession whose importance was revealed only in the light of fresh evidence.³¹

V. DISCUSSION

21. The Chamber recalls that in its Decisions of 6 and 27 October 2010 it pointed out that the motions for the reopening of a case likely to be filed by the Defence teams to refute the evidence admitted by the Decision of 6 October 2010 should conform to the case-law criteria for reopening.³² In that respect, the Trial Chamber recalled in its Decision of 27 October 2010 that with regard to potential Diary excerpts not linked to what has been admitted as part of the reopening of the Prosecution case, these excerpts have lost their fresh nature when one takes into account the date when this Diary was discovered and the date when the Defence teams found out about it.³³ On

²⁷ *The Prosecutor v. Zejnir Delalić et al.*, Case No. IT-96-21-A, 20 February 2001 (“*Čelebići* Judgement”), para. 283.

²⁸ *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.5, “Decision on Vujadin Popović’s Interlocutory Appeal Against the Decision on the Prosecution’s Motion to Reopen its Case-in-Chief”, 24 September 2008, para. 10 (“*Popović* Decision of 24 September 2008”); *The Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.6, “Decision on Ivan Čermak and Mladen Markač Interlocutory Appeals Against Trial Chamber’s Decision to Reopen the Prosecution Case”, public, 1 July 2010, para. 24 (“*Gotovina* Decision of 1 July 2010”).

²⁹ See in this sense, *mutatis mutandis*, *Čelebići* Judgement, para. 283.

³⁰ *Čelebići* Judgement, para. 283; *Hadžihasanović* Decision, para. 35.

³¹ *Čelebići* Judgement, paras 282 and 283; *Popović* Decision of 24 September 2008, para. 11.

³² Decision of 6 October, p. 29; Decision of 27 October 2010, pp. 9 and 10.

³³ Decision of 27 October 2010, p. 8.

the other hand, the Chamber specified that the Diary excerpts likely to be tendered for admission by the Defence teams to refute the evidence admitted by the Decision of 6 October 2010, namely those exhibits relevant to the allegations of the possible involvement of the Accused in achieving of the objectives of the alleged JCE,³⁴ would not lose their “fresh” nature in case of possible motions to reopen a case, to the extent that it is possible to consider that their importance became apparent in light of the evidence admitted by the Decision of 6 October 2010.³⁵ Furthermore, the Chamber indicated that this would also apply to exhibits already in the possession of the Defence teams if their requests for admission had a similar foundation.³⁶ Therefore, the Chamber will consider whether the Praljak Defence Motion corresponds to the reopening criteria and if the evidence requested for admission by the Praljak Defence has a “fresh” nature from the outset.

22. In this respect, the Chamber notes that out of the 24 exhibits requested for admission by the Praljak Defence in the Motion, six are Diary excerpts,³⁷ two are documents dated 12 October 2010 requested for admission to refute the Diary’s authenticity,³⁸ and 16 are exhibits that were already in the possession of the Praljak Defence during the presentation of its case.³⁹ The Chamber notes that the Praljak Defence does not justify sufficiently or at all how the exhibits requested for admission in its Motion constitute “fresh” evidence according to case-law criteria on the reopening of a case. The Chamber notes furthermore that the Praljak Defence failed notably to recall the law applicable to the reopening of a case in its Motion. Nevertheless, the Chamber recalls that in its Decision of 27 October 2010, it pointed out that the Diary excerpts likely to be requested for admission by the Defence teams in any motions for reopening would not lose their “fresh” nature if they go towards refuting the evidence admitted on behalf of the Prosecution.⁴⁰ With respect to the Diary excerpts requested for admission by the Praljak Defence in its Motion, the

³⁴ Decision of 6 October 2010, paras 59 and 61; Decision of 1 November 2010, p. 7.

³⁵ Decision of 27 October 2010, pp. 7-9.

³⁶ Decision of 27 October 2010, p. 8.

³⁷ 3D 03841 (P 11375), 3D 03842, 3D 03843, 3D 03844, 3D 03845 and 3D 03846.

³⁸ 3D 03848 and 3D 03849.

³⁹ 3D 03838, 3D 03839, 3D 02215, 3D 03028, 3D 01238, 3D 02819, 3D 01310, 3D 03823 (ENG 3D44-0339 to 3D44-0342), 3D 03824, 3D 03825, 3D 03836, 3D 03840, 3D 03086, 3D 03847, 3D 03837 and 3D 03850.

⁴⁰ Decision of 27 October 2010, pp. 7-9.

Chamber notes that the Praljak Defence did not identify which exhibits admitted by Decision of 6 October would be refuted by Exhibits 3D 03843, 3D 03844, 3D 03845 and 3D 03846. Furthermore, the Chamber notes that the Praljak Defence argues that by the admission of these exhibits, it intends to refute the Prosecution's allegations that Slobodan Praljak incited anti-Muslim sentiments,⁴¹ the existence of cooperation between the VRS and the BH Army,⁴² the intention of the Bosnian Croats, pursuant to their meetings with Serb authorities, to commit crimes in order to achieve their goal of a Herceg-Bosnia dominated by Croats,⁴³ and the siege of Mostar.⁴⁴ The Chamber recalls that the allegations the Praljak Defence intends to refute by the admission of Exhibits 3D 03844, 3D 03845 and 3D 03846 do not come under the scope of the motions to reopen the case likely to be filed by the Defence teams, as defined specifically by the Chamber in the Decisions of 6 and 27 October 2010 and 1 November 2010.⁴⁵ With specific regard to Exhibit 3D 03845, the Chamber notes that, by way of its request for admission, the Praljak Defence intends to refute an argument put forth by the Prosecution in its "Prosecution Motion to Admit Evidence in Reopening", filed as a confidential document on 9 July 2010, the merits of which were explicitly rejected in the Decision of 6 October 2010.⁴⁶ Furthermore, the Chamber notes that Exhibit 3D 03843, by which the Praljak Defence intends to refute the Prosecution's allegations concerning the Accused Praljak's incitement of anti-Muslim sentiments, does not contain any reference to the Accused Praljak. Moreover, the Chamber notes that Exhibits 3D 03843 and 3D 03844, relating specifically to cooperation between the Muslims and the VRS in zones not covered by the Amended Indictment of 11 June 2008, and Exhibit 3D 03846, relating to the Serbian perception of the situation in the Neretva valley in October 1993, also relate to topics that fall outside of the scope of the reopening. Consequently, the Chamber deems that Exhibits 3D 03843, 3D 03844, 3D 03845 and 3D 03846 cannot qualify as "fresh" evidence and are inadmissible for the purposes of the Motion.

⁴¹ Confidential Annex A to the Supplement, p. 6.

⁴² Confidential Annex A to the Supplement, pp. 6 and 7.

⁴³ Confidential Annex A to the Supplement, pp. 7 and 8.

⁴⁴ Confidential Annex A to the Supplement, p. 12.

⁴⁵ Decision of 6 October 2010, paras 59 and 61; Decision of 27 October 2010, pp. 9 and 10; Decision of 1 November 2010, p. 7.

⁴⁶ Decision of 6 October 2010, pp. 52 and 58-60.

23. With regard to Exhibit 3D 03841/P 11375, also a Diary excerpt about a meeting of the Bosnian Serb Presidency in the presence of members of the VRS Main Staff, held on 27 September 1992 in Pale, the Chamber notes that it denied the admission into evidence of this exhibit in its Decision of 6 October 2010 on the ground that it does not mention the Accused and does not contain information relevant to the possible involvement of the Accused in achieving the objectives of the alleged JCE.⁴⁷ The Chamber deems that the Bosnian Serb perception of the territorial intentions of the Croats in September 1992 that emerges from the transcript of this meeting does not go towards refuting the remarks made by the Accused Praljak at the meeting of 5 October 1992 in Pečuj,⁴⁸ which the Chamber deemed, in its Decision of 6 October 2010, to be relevant to the possible involvement of this Accused in achieving the objectives of the alleged JCE.⁴⁹ Consequently, the Chamber deems that Exhibit 3D 03041/P 11375 cannot qualify as “fresh” evidence and is inadmissible for the purposes of the Motion.

24. With regard to Exhibit 3D 03842, another Diary excerpt requested for admission by the Praljak Defence relating to a meeting between representatives of Bosnian Serb military and civilian authorities and the MUP on 21 September 1992 in Rudo, the Chamber notes that the Prosecution does not object to its admission.⁵⁰ Nonetheless, the Chamber notes that the content of this exhibit, namely the Serbs’ perception of the international negotiations conducted under the aegis of Cyrus Vance and Lord Owen, does not go to refuting the remarks allegedly made by the Accused Praljak during a meeting in Pečuj on 5 October 1992 and mentioned in Exhibit P 11376 admitted by the Decision of 6 October 2010. The Chamber deems, therefore, that Exhibit 3D 03842 cannot qualify as “fresh” evidence and is inadmissible for the purposes of the Motion.

25. With regard to the 16 exhibits that were in the possession of the Praljak Defence during the presentation of its case, the Chamber notes that the Praljak Defence did not justify the “fresh” nature of these exhibits according to the case-law criteria for reopening. Nonetheless, the Chamber recalls that in its Decision of 27

⁴⁷ Decision of 6 October 2010, para. 60.

⁴⁸ P 11376.

⁴⁹ Decision of 6 October 2010, para. 60.

⁵⁰ Annex to the Prosecution Response, p. 2.

October 2010, it indicated that exhibits in the possession of the Defence teams requested for admission as part of their respective motions for reopening in accordance with the Decision of 6 October 2010 may qualify as being “fresh” if their importance becomes apparent in light of what was admitted on behalf of the Prosecution.⁵¹ The Chamber notes that the Prosecution raised objections to 15 of these 16 exhibits, relating notably to Serb-Muslim cooperation against the HVO, cooperation between the Muslims and the Croats/HVO against the Serbs and the military conflict between the Serbs and Croats, and argued their lack of relevance to the Motion.⁵² The Chamber notes in particular that the Praljak Defence requested the admission into evidence of excerpts of Exhibit 3D 03823 and Exhibits 3D 03838, 3D 03839, 3D 02215, 3D 03028, 3D 01238, 3D 02819, 3D 03824, 3D 3825, 3D 03826, 3D 03086 as they go to refuting the allegations about the intentions of the Bosnian Croats regarding Jajce and the cooperation between the Bosnian Croats and the VRS to the detriment of the Muslims in October 1992;⁵³ the admission into evidence of Exhibit 3D 01310, as it attests to the efforts made by the Accused Praljak to end the conflict in Slavonski Brod;⁵⁴ the admission of Exhibit 3D 03847, as it refutes the Prosecution’s allegations regarding Croatia’s intention to request the presence of UNPROFOR at Croatian borders and that the efforts made by Franjo Tudman, attested to in this exhibit, go to refuting the allegations of Slobodan Praljak’s involvement, as Tudman’s agent, in the alleged JCE;⁵⁵ the admission of Exhibit 3D 03837, as it goes to refuting the allegations about the existence of agreements on Croatia’s borders⁵⁶ and the admission of Exhibit 3D 03850, as it illustrates the emergence of fear amongst the Croats in April 1991 and allows, as such, to refute the statements allegedly made by the Accused Praljak during a meeting held on 8 July 1993 and mentioned in Exhibit P 11386 admitted by the Decision of 6 October 2010.⁵⁷ The Praljak Defence requests, finally, the admission of Exhibit 3D 03840, an undated letter from Slobodan Praljak, deputy Defence Minister of Croatia, addressed

⁵¹ Decision of 27 October 2010, p. 8.

⁵² Response, Annex to Prosecution Response.

⁵³ Confidential Annex to the Supplement, pp. 1-5, 13-15.

⁵⁴ Confidential Annex to the Supplement, p. 13. This argument is also given in support of the requests for admission of Exhibits 3D 02824, 3D 02825 and 3D 02826, Confidential Annex to the Supplement, pp. 13 and 14.

⁵⁵ Confidential Annex to the Supplement, pp. 15-17.

⁵⁶ Confidential Annex to the Supplement, p. 17.

to the Office of the President of the Federative Socialist Republic of Croatia, D. Čosić, as it goes to refuting the allegations concerning cooperation between the VRS and the Croats against the Muslims in October 1992.⁵⁸ With regard to the aforementioned 16 exhibits, the Chamber notes that in its Motion, the Praljak Defence does not refute the evidence admitted on behalf of the Prosecution in the Decision of 6 October 2010, relating to the possible involvement of the Accused in achieving the objectives of the alleged JCE. The Chamber deems that the reasons provided by the Praljak Defence in support of the requests for admission of these 16 exhibits demonstrate the wish of the Praljak Defence to refute allegations that do not fall under the scope of the reopening. The Chamber deems, therefore, that these 16 exhibits cannot consequently qualify as “fresh” evidence and are inadmissible on this ground.

26. With regard to Exhibits 3D 03848 and 3D 03849, namely the correspondence between the Praljak Defence and a Croatian graphologist and the expert report of this graphologist, both dated 12 October 2010, the Chamber notes that the Praljak Defence obtained a graphological analysis of the Diary within six days of the filing of the Decision of 6 October 2010. The Chamber notes that the Praljak Defence already objected to the authenticity of the Diary in its Response to the Prosecution’s Motion to reopen the case.⁵⁹ The Chamber notes nonetheless that the admission of new documents should be requested within the scope of the reopening of a case, and that therefore the Praljak Defence did not need to request admission of these two documents in the Response of 23 July 2010. The Chamber deems furthermore that the Praljak Defence displayed the due diligence by obtaining the two documents on 12 October 2010, six days following the Decision of 6 October 2010 and subsequently requesting their admission. In this respect, the Praljak Defence Motion meets the criteria for reopening. The Chamber notes, however, that the Prosecution argues that the Chamber already ruled on the authenticity of the Diary in its Decision of 6 October 2010 and objects to the procedural means chosen by the Praljak Defence to

⁵⁷ Confidential Annex to the Supplement, p. 21. The Chamber notes that Exhibit P 11386, a transcript of the meeting on 8 July 1993 in Njivice in the presence of Milivoj Petković, does not contain remarks by the Accused Praljak.

⁵⁸ Annex to the Supplement, pp. 14 and 15.

⁵⁹ “Prosecution Motion to Admit Evidence in Reopening”, public with public annexes 1 and 3 to 5 and confidential annex 2, 9 July 2010 (“Prosecution Motion to Reopen”) and “Jadranko Prlić’s Response to Prosecution Motion to Admit Evidence in Reopening”, public with two confidential annexes, 23 July 2010 (“Response of 23 July 2010”).

seek the admission of these two exhibits.⁶⁰ According to the Prosecution, the Praljak Defence should have requested the admission of this evidence under Rule 94 *bis* of the Rules.⁶¹

27. It is appropriate, therefore, for the Chamber to examine the adequacy of the procedural method chosen by the Praljak Defence to request admission into evidence of these two exhibits, one of them being a graphological expert report on the Diary. In this respect, the Chamber recalls that the procedure for the admission of expert reports is governed by Rule 94 *bis* of the Rules. The Chamber deems therefore that it is appropriate to deny the requests for the admission of Exhibits 3D 03848 and 3D 03849 since the admission procedure chosen by the Praljak Defence is inappropriate considering the nature of the evidence sought for admission.

28. To conclude, the Chamber turns to the Praljak Defence request regarding the *viva voce* testimony of Slobodan Praljak for the purpose of refuting the evidence admitted in the Decision of 6 October 2010.⁶² The Chamber notes that the Prosecution does not object to this request but asks the Chamber, in the event that it decides to allow the Accused Praljak's testimony, to place strict limits on time and that its content should be limited in scope to refuting the evidence admitted by the Decision of 6 October 2010.⁶³ The Chamber notes that the Praljak Defence invokes the right of the Accused Praljak to respond⁶⁴ without reasoning this part of its Motion. The Chamber notes that the request regarding the Accused Praljak's *viva voce* testimony has not been additionally reasoned in the Supplement either. The Chamber notes that the Praljak Defence merely invoked the right of the Accused Praljak to respond in its Motion and Supplement without providing facts to justify why the Accused Praljak needed to testify as a *viva voce* witness and without setting out the topics on which he wished to comment in order to refute the evidence admitted on behalf of the Prosecution. Consequently, the Chamber deems that the Praljak Defence exercised its right to respond in the Motion and in its Supplement, but did not present facts justifying why the Accused Praljak should be allowed to testify *viva voce* before the Chamber within

⁶⁰ Response, para. 17; Confidential Annex to the Response, p. 8.

⁶¹ *Ibidem*.

⁶² Motion, paras 1, 4, 6 and 7; Supplement, paras 15-18.

⁶³ Response, para. 18; Supplement, paras 15-18.

⁶⁴ Motion, paras 1, 4, 6 and 7.

the context of the reopening of his case. Moreover, the Chamber recalls that the Praljak Defence could once again exercise its right to respond in its closing brief and closing arguments. The Chamber decides, therefore, to reject the request put forth by the Praljak Defence for the Accused Praljak to testify.

29. The Chamber deems consequently, for the foregoing reasons, that the Praljak Defence has failed to meet the criteria required for a motion to reopen a case, that it did not use the proper requesting procedure for Exhibits 3D 03848 and 3D 03849, and that it is appropriate to deny admission into evidence of the 24 exhibits tendered for admission in the Motion, and the request regarding the *viva voce* testimony of the Accused Praljak as part of the reopening of his case.

VI. CONCLUSION

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 85 and 89 of the Rules,

DENIES the Motion **by a majority.**

Presiding Judge Jean-Claude Antonetti dissents with respect to paragraphs 22 to 27 and 30 of this decision and will subsequently attach a dissenting opinion to the present decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]