



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 November 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 November 2010

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON THE STOJIĆ DEFENCE REQUEST TO REOPEN ITS CASE**

**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”), seized of “Bruno Stojić’s Motion to Admit Evidence in Reopening”, filed publicly on 21 October 2010 by Counsel for the Accused Bruno Stojić (“Stojić Defence”), with two annexes and supplemented by the “Supplement to Bruno Stojić’s Motion to Admit Evidence in Reopening Dated 21 October 2010”, filed publicly on 3 November 2010 with an annex (“Supplement”), in which the Stojić Defence requests that the Chamber authorise the reopening of its case and the tendering into evidence of 66 documents (“Proposed Exhibits”) pursuant to Article 89 (C) of the Rules of Procedure and Evidence (“Rules”) with the purpose of refuting the exhibits newly tendered into evidence by the Prosecution (“Motion”).<sup>1</sup>

## II. PROCEDURAL BACKGROUND

2. On 17 May 2010, the Chamber issued a public “Order Regarding the Closure of the Presentation of the Defence Cases” (“Order of 17 May 2010”) in which the Chamber specifically recalled that the Stojić Defence closed its case on 28 April 2009.<sup>2</sup>

3. On 6 October 2010, the Chamber publicly issued the “Decision on the Prosecution’s Motion to Re-open Its Case” (“Decision of 6 October 2010”), partially granting the request of the Office of the Prosecutor (“Prosecution”) to reopen its case and requesting that the defence teams wishing to do so, should file a request to reopen their respective cases in order to refute the entries of Ratko Mladić’s Diary (“Mladić Diary”) admitted into evidence by the said Decision.<sup>3</sup>

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<sup>1</sup> Motion, paragraph 1, mentioning the request for admission of 43 Proposed Exhibits (41 entries from the Mladić Diary and two other documents relating to the previously admitted entries). The Chamber notes, however, that in Annex I of the Motion, the Stojić Defence seeks, in fact, the admission of 43 entries of the Mladić Diary and two other documents, i.e. a total of 45 documents; paragraph 1 of the Supplement, mentioning the request for the admission of 21 Proposed Exhibits with the aim of refuting exhibit P 11376 already admitted by the Chamber.

<sup>2</sup> Order of 17 May 2010, p. 2.

<sup>3</sup> Decision of 6 October 2010, pp. 28 and 29.

4. On 27 October 2010, the Chamber publicly issued the “Decision on Bruno Stojić’s Motion for Certification to Appeal the Decision on the Re-opening of the Prosecution Case and Clarifying the Decision of 6 October 2010” in which it rejected the Stojić Defence motion for certification to appeal the Decision of 6 October 2010 and invited the Defence teams, if appropriate, to supplement their motion by refuting the evidence tendered by the Prosecution in their motions for reopening, in accordance with case-law criteria for re-opening, and this within seven days of the time the Decision was issued<sup>4</sup> (“Decision of 27 October 2010”). Following this Decision, the Stojić Defence filed the Supplement on 3 November 2010.

5. On 2 November 2010, in its publicly filed “Decision on Prosecution Motion For an Extension of Time to File a Combined Reply to the Requests of Prlić, Stojić, Praljak and Petković Defences to Reopen Their Cases” (“Decision of 2 November 2010”), the Chamber authorised the Prosecution to file a combined reply to the requests for reopening filed by the Defence teams, by 8 November 2010 at the very latest.<sup>5</sup>

6. On 8 November 2010, the Prosecution publicly filed the “Prosecution Consolidated Response to Defence Motions To Reopen Their Cases and Tender Evidence per the Trial Chamber Decision Of 6 October 2010” with confidential annexes, in which it specifically requested that the Chamber partially reject the Stojić Defence Motion (“Response”).

7. On 11 November 2010, the Stojić Defence publicly filed “Bruno Stojić’s Request for Leave to Reply to the Prosecution Consolidated Response to Defence Motions to Reopen Their Cases and Tender Evidence Per Trial Chamber Decision of 6 October 2010 & Bruno Stojić’s Reply to the Consolidated Response” (“Request to Reply and Reply”).

### III. ARGUMENTS OF THE PARTIES

8. The Chamber recalls that Rule 126 *bis* of the Rules authorises the parties to file a reply, subject to prior authorisation of the relevant Chamber, within seven days of the filing of the response. The Chamber also recalls its Decision of 28 April 2006,

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<sup>4</sup> Decision of 27 October 2010, pp. 9 and 10.

according to which replies will not be accepted by the Chamber except in exceptional circumstances, which need to be explained by the requesting party.<sup>6</sup> The Chamber considers that, in the Request to Reply and Reply, the Stojić Defence limited itself to replying to the objections, formulated by the Prosecution in its Response, against the interpretation of the relevance of the Proposed Exhibits, without explaining, in support of its request, what it is that makes the circumstances sufficiently compelling for the Chamber to authorise the filing of a reply. The Chamber therefore does not deem it appropriate to grant the Request to Reply and rejects the Reply.

9. In support of the Motion, the Stojić Defence requests of the Chamber permission to resume the presentation of its case by admitting the Proposed Exhibits<sup>7</sup> some of which are from the Mladić Diary.<sup>8</sup>

10. The Stojić Defence contends that all the Proposed Exhibits are “fresh” in the sense of the jurisprudence applicable to the reopening of a case.<sup>9</sup> Also, it posits that it has shown “due diligence” to present the admission of the Proposed Exhibits at this stage of the proceedings. Since this concerns, more specifically, Proposed Exhibits 2D 03089 to 2D 03134 and 2D 03141, entries from the Mladić Diary, it argues that they directly relate to the entries admitted by the Decision of 6 October 2010.<sup>10</sup> With respect to Proposed Exhibits 2D 03136 to 2D 03140 from the Mladić Diary, the Stojić Defence also posits that they refer to Viktor Andreev, thus bearing on the credibility and reliability of several exhibits tendered by the Prosecution during its case-in-chief.<sup>11</sup> It contends that the admission of these Exhibits was requested with all due diligence, insofar as, in its Decision of 12 October 2010, the Chamber rejected the request for the admission of Proposed Exhibits 2D 03136 to 2D 0140.<sup>12</sup> The Stojić

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<sup>5</sup> Decision of 2 November 2010, p. 5.

<sup>6</sup> “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings”, public, 28 April 2006 (“Decision of 28 April 2006”), p. 9, para. 9.

<sup>7</sup> See Annex I and the Annex to the Supplement.

<sup>8</sup> In this sense, see Annex I.

<sup>9</sup> Motion, paras 6 and 27; Supplement, paras 5 and 12.

<sup>10</sup> Motion, para. 7.

<sup>11</sup> Motion, paras 8 and 9. The Chamber notes that in paragraph 8 of its Motion, the Stojić Defence refers to Exhibits 2D 03136 to 2D 03140, while in paragraph 9 it refers to exhibits 2D 03136 to 2D 03141. Taking into account Annex I to the Motion, the Chamber considers that it means Exhibits 2D 03136 to 2D 03140.

<sup>12</sup> Motion, para 9.

Defence contends that it had no other choice but to request only now that they be tendered into evidence.<sup>13</sup>

11. The Stojić Defence also contends that it obtained Exhibit 2D 03142, a document relating to the release of Žarko Tole, mentioned in Exhibit P 11376, admitted by the Decision of 6 October 2010, with all due diligence since 14 October 2010.<sup>14</sup> It also notes that Exhibit 2D 01534 is also “fresh” for, even if it had been in its possession during the presentation of its case, the importance of this exhibit was only discovered following the admission of Exhibits P 11376, P 11377 and P 11380 by the Decision of 6 October 2010.<sup>15</sup>

12. On the issue of the relevance of the Proposed Exhibits, the Stojić Defence holds that they will refute the exhibits recently admitted within the context of the reopening of the Prosecution’s case, i.e. Exhibits P 11376, P 11377, P 11380, P 11388 and P 11389.<sup>16</sup> In this connection, the Stojić Defence notes that the exhibits were admitted because the remarks allegedly made by the Accused Prlić, Stojić, Praljak and Petković during several meetings and reported in these exhibits were “relevant when viewed in the light of the allegations of the possible participation of these Accused in achieving the purposes of the alleged JCE.”<sup>17</sup> The Stojić Defence contends that the Proposed Exhibits are directly linked to the admitted entries because they show, contrary to the allegations of the Prosecution,<sup>18</sup> on the one hand, that there was no co-operation between the Bosnian Serbs and Croats, that they did not agree on a division of Bosnia and Herzegovina and that, on the contrary, they were in conflict in Bosnia and Herzegovina during the period cited in the Amended Indictment of 11 June 2008 (“Indictment”)<sup>19</sup> and, on the other, that the Bosnian Muslims and Croats co-operated in a continuous and systematic manner, which will allow for the joint criminal enterprise against the Muslims in Bosnia to be refuted.<sup>20</sup> Finally, the Stojić Defence affirms that, in order to obtain a full picture of the events, certain of the Proposed

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<sup>13</sup> Motion, paras 8 and 9, mentioning the “Decision on Jadranko Prlić’s Motions on Evidence Associated with Viktor Andreev and General Bo Pellnas”, public, 12 October 2010.

<sup>14</sup> Motion, para. 10.

<sup>15</sup> Motion, para. 11.

<sup>16</sup> Motion, para. 13 and Supplement, paras. 7 to 11.

<sup>17</sup> Motion, para. 19, citing the Decision of 6 October 2010, para. 61.

<sup>18</sup> Motion, paras 22–25.

<sup>19</sup> Motion, para. 24.

<sup>20</sup> Motion, para. 23; Supplement, paras 10-12 concerning Proposed Exhibits 2D 01541 to 2D 01560.

Exhibits show the existence of military cooperation between the Serbs and the BH Army in the period between May 1993 and August 1994.<sup>21</sup>

13. In the Response, the Prosecution asked the Chamber to reject the admission of the Proposed Exhibits requested for admission by the Stojić Defence, for which it had formulated objections.<sup>22</sup> The Prosecution opposes their admission on the grounds of their weakness or lack of relevance for the case, the absence of any connection with the evidence admitted by the Decision of 6 October 2010, of the fact that the Proposed Exhibits in no way refutes the evidence admitted by the Decision of 6 October 2010, or because of the late submission of the request for the admission of certain Proposed Exhibits.<sup>23</sup>

14. Furthermore, the Prosecution adds that certain Proposed Exhibits, to which it does not object, nevertheless lack relevance and have weak probative value. Without opposing their admission, it leaves it to the Chamber to exercise its discretionary powers in according their status.<sup>24</sup> In that respect, the Prosecution contends that a number of Proposed Exhibits the Stojić Defence has requested for admission pertain to the co-operation of Serbs and Muslims against the HVO,<sup>25</sup> the co-operation of Muslims and the HVO/Croats against the Serbs<sup>26</sup> and the military conflict between the Serbs and the Croats.<sup>27</sup> The Prosecution emphasizes that it had never denied the existence of co-operation between the conflicting parties.<sup>28</sup> Moreover, even though it had not formulated any objections against it, the Prosecution wonders about the probative value of the evidence requested for admission concerning the co-operation between the Serbs and the Croats.<sup>29</sup>

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<sup>21</sup> Motion, para. 24; Confidential Annex to the Response.

<sup>22</sup> Response, paras 11-14, 16, 19 and the Confidential Annex to the Response. The Proposed Exhibits are the following: 2D 03089, 2D 03090, 2D 03099, 2D 03107, 2D 03109, 2D 03137, 2D 03138, 2D 03128, 2D 03113, 2D 03129, 2D 03124, 2D 03132, 2D 03133, 2D 03125, 2D 03121, 2D 03115, 2D 03123, 2D 03131, 2D 01541, 2D 01542, 2D 01543, 2D 01544, 2D 01545, 2D 01546, 2D 01547, 2D 01548, 2D 01549, 2D 01550, 2D 01551, 2D 01552, 2D 01553, 2D 01554, 2D 01555, 2D 01556, 2D 01557, 2D 01558, 2D 01559, 2D 0160 and 2D 01561.

<sup>23</sup> Response, para. 15 and Confidential Annex to the Response.

<sup>24</sup> Response, paras 11, 15 and 16.

<sup>25</sup> Response, para. 11. See also Proposed Exhibits 2D 03112, 2D 03126 and 2D 03128.

<sup>26</sup> Response, para. 11. See also Proposed Exhibits 2D 03089, 2D 03091, 2D 03102, 2D 03105, 2D 03107, 2D 03109, 2D 03111, 2D 03113, 2D 03115, 2D 03116.

<sup>27</sup> Response, para. 11. See also Proposed Exhibits 2D 03092, 2D 03095, 2D 03096, 2D 03110, 2D 03112, 2D 03142, 2D 03114.

<sup>28</sup> Response, para. 12.

<sup>29</sup> Response, para. 13 and Confidential Annex to the Response.

#### IV. APPLICABLE LAW

##### *a) Case-law criteria for the reopening of a party's case*

15. The Rules do not provide for the opening of a party's case once it has been closed, but jurisprudence recognizes that in exceptional circumstances the parties may be authorised to reopen their case in order to present fresh evidence which they previously did not have access to.<sup>30</sup>

16. 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 application."<sup>31</sup> According to the Appeals Chamber, this analysis depends on the factual circumstances specific to every case, and is therefore done on a case-to-case basis.<sup>32</sup>

17. The Chamber also recalls that the Appeals Chamber qualifies as "fresh evidence" not only evidence which was not in the possession of a party at the conclusion of its case and which by the exercise of all diligence could not have been obtained by the party by the close of its case, but also evidence it had in its possession, but the importance of which was revealed only in the light of fresh evidence.<sup>33</sup> Furthermore, the Chamber indicated that the same should apply to exhibits

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<sup>30</sup> See, in particular, the "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", public, 27 November 2008, para. 18, citing case law relevant for this matter; *The Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-T, "Decision on the Prosecution's Application to Re-open Its Case", public, 1 June 2005, para. 31, ("Hadžihasanović Decision") and *The Prosecutor 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"). Also, see *The Prosecutor v. Slobodan Milošević*, IT-02-54-T, "Decision on Application For a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution", 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").

<sup>31</sup> *The Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, 20 February 2001 ("Čelebići Judgment"), para. 283.

<sup>32</sup> *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").

<sup>33</sup> Decision of 6 October 2010, para. 34., citing the Čelebići Judgment, paras. 282 and 283.

already in the possession of the Defence teams if their request for admission was built on similar foundations.<sup>34</sup>

18. According to the Tribunal's jurisprudence, when a Trial Chamber is convinced of the requesting party's diligence, it has the power, pursuant to Rule 89 (D) of the Rules, to refuse the reopening of the case if the probative value of the proposed evidence is substantially outweighed by the need to ensure a fair trial.<sup>35</sup> The Trial Chamber therefore must exercise its discretion in whether to authorise the presentation of these new exhibits or not, by balancing their probative value against the injustice that might be inflicted on the co-accused if the exhibits were to be admitted so late in the proceedings.<sup>36</sup>

*b) Defence teams' requests for reopening*

19. The Chamber recalls that the requests for reopening by the Defence teams, in particular that of the Stojić Defence, were submitted within the context of their right to respond to the exhibits admitted pursuant to the Decision of 6 October 2010, which partially granted the request for the reopening of the Prosecution's case.<sup>37</sup> The Chamber also recalls that its Decision of 6 October 2010 partially granted the Prosecution's request to reopen its case by admitting eight exhibits, of which four from the Mladić Diary<sup>38</sup> and that, on the other hand, it decided that the possible requests for reopening filed by the Defence teams could not constitute general requests for re-opening based on entries from the Mladić Diary, but that, if based on the Mladić Diary, they had to be limited to refuting the entries admitted by the Decision of 6 October 2010.<sup>39</sup> The Chamber also recalled this in the Decision of 27 October 2010,<sup>40</sup> specifying also that, with regard to any potential entries from the Mladić Diary that are in no way connected with what has been admitted as part of the

<sup>34</sup> Decision of 27 October 2010, p. 8.

<sup>35</sup> Čelebići Judgment, para. 283.

<sup>36</sup> See, in this sense, *mutatis mutandis*, the Čelebići Judgment, para. 283 and the Hadžihasanović Decision, para. 35.

<sup>37</sup> Decision of 27 October 2010, pp. 8 and 9, citing *The Prosecutor v. Slobodan Milošević*, IT-02-54-T, "Decision on Application For a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution", public, with confidential annex, 13 December 2005 ("Milošević Decision"), para. 35.

<sup>38</sup> Decision of 6 October 2010, paras 62 and 63 and p. 28.

<sup>39</sup> Decision of 6 October 2010, para. 64 and p. 29.

<sup>40</sup> Decision of 6 October 2010, para. 64 and p. 29; Decision of 27 October 2010, p. 5.

reopening of the Prosecution case, these entries have lost their fresh nature when one takes into account the date when the Diary was discovered and the date when the Defence teams found out about it.<sup>41</sup>

20. The Chamber also recalls that it has already admitted “that the Defence teams can put forward ‘fresh evidence’ as part of a motion for reopening in response to the reopening of the Prosecution case and that the “fresh evidence” can come from the Mladić Diary, as long as it is directly linked to what was admitted on behalf of the Prosecution (otherwise it would not be of a “fresh” nature) or any other relevant and probative evidence whose importance was revealed in the light of fresh evidence tendered by the Prosecution.”<sup>42</sup>

## V. DISCUSSION

21. The Chamber will now examine if the Stojić Defence Motion meets the case-law requirements for the reopening of a case. Only if these criteria are met can the Chamber be called to state its views on the request for admission of the Proposed Exhibits.

22. The Chamber recalls that, in its Decision of 6 October 2010, it admitted exhibits P 11376, P 11377, P 11380, P 11386, P 11388, P 11389, P 11391 and P 11392.<sup>43</sup> In this connection, the Chamber notes that it had “thus admitted only a small quantity of evidence in which it pointed out statements made by the Accused Prlić, the Accused Stojić, the Accused Praljak and the Accused Petković which it deemed relevant in light of the allegations made concerning the possible involvement of each of the said Accused in furtherance of the purposes of the alleged JCE”.<sup>44</sup> The Chamber also recalls that, with regard, more specifically, to the Accused Stojić, it held that the statements made by him and recounted in entries P 11376 and P 11380 were relevant when viewed in the light the allegations of his possible participation in achieving the purposes of the alleged joint criminal enterprise (“JCE”).<sup>45</sup> Conversely, the Chamber has notably rejected the proposed evidence regarding the nature of the

<sup>41</sup> Decision of 27 October 2010, p. 8.

<sup>42</sup> Decision of 6 October 2010, para. 34; Decision of 27 October 2010, p. 9.

<sup>43</sup> Decision of 6 October 2010, para. 64 and p. 29, and Decision of 27 October, p. 5.

<sup>44</sup> “Decision on Petković Defence Request for Certification to Appeal the Decision on Prosecution Motion to Reopen Its Case”, public, 1 November 2010 (“Decision of 1 November 2010”), p. 7.

<sup>45</sup> Decision of 6 October 2010, para. 61 and footnote 140.

relationship between the Bosnian Serbs and the Bosnian Croats as irrelevant in light of the allegations that the Accused participated in the implementation of the purposes of the JCE.<sup>46</sup>

23. Firstly, the Chamber notes (1) that 43 Proposed Exhibits are entries from the Mladić Diary, not 41, as stated in the Motion,<sup>47</sup> and that these entries were disclosed by the Prosecution to the Defence as of 11 June 2010;<sup>48</sup> (2) that Exhibit 2D 01534 was in the possession of the Stojić Defence during the presentation of its case; (3) that Exhibit 2D 03142 was obtained by the Stojić Defence after the presentation of its case on 14 October 2010, and (4) that 21 exhibits (2D 01541–2D 01561) mentioned in the Supplement, in spite of the lack of clear explanation in the body of the Motion, seem to have most probably been obtained on 7 May 2009<sup>49</sup>, that is to say, also after the end of the presentation of the Stojić Defence case, which concluded on 28 April 2009.<sup>50</sup>

24. Concerning the 43 Proposed Exhibits, entries from the Mladić Diary, the Chamber notes that the Stojić Defence has not always identified for each of the Proposed Exhibits mentioned in Annex I the numbers of the exhibits admitted by the Decision of 6 October 2010 that the exhibits tended to refute and, more specifically, that the Stojić Defence failed to reveal in which manner these entries might refute the statements made by the Accused Stojić, contained in the entries of the Mladić Diary admitted against him.

25. The Chamber proceeded to analyse the 43 Proposed Exhibits in order to identify whether they were of “fresh nature” from the point of view of the Tribunal’s jurisprudence relevant in this matter and, taking into consideration the decisions of the Chamber, in order to identify whether they are directly linked to the statements of the Accused Stojić in the exhibits admitted by the Decision of 6 October 2010.<sup>51</sup>

26. Thus, having first analysed the arguments of the Stojić Defence regarding Proposed Exhibits 2D 03136 to 2D 03140, connected, according to the Stojić Defence, with Viktor Andreev, the Chamber could only conclude that the exhibits, as

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<sup>46</sup> Decision of 6 October 2010, paras 60 and 62 and Decision of 1 November 2010, p. 7.

<sup>47</sup> Motion, para. 1 and Annex I.

<sup>48</sup> See also the Decision of 6 October 2010, para. 64.

<sup>49</sup> Supplement, para. 6 and Annex to the Supplement; see also Exhibit 2D 01561.

<sup>50</sup> Order of 17 May 2010, p. 2.

contended by the Stojić Defence,<sup>52</sup> do not aim to refute the exhibits tendered as part of the reopening of the Prosecution case. As specifically defined by the Chamber in its Decisions of 6 and 27 October 2010,<sup>53</sup> the entries from the Mladić Diary not intended to refute the recently tendered exhibits cannot be qualified as “fresh” evidence and are therefore inadmissible at this stage of the proceedings. For that reason, the Motion is similar in their view to a general request for reopening of the Stojić Defence case based on entries from the Mladić Diary, which cannot be accepted because it is late.<sup>54</sup>

27. Concerning other Proposed Exhibits, i.e. the Mladić Diary entries listed in Annex I to the Request,<sup>55</sup> the Chamber holds that the argument of the Stojić Defence, according to which these Proposed Exhibits are relevant, have probative value and refute the previously admitted entries from the Mladić Diary because they contradict the assertions of the Prosecution contained in the motion for reopening, is of little relevance for the case in point.<sup>56</sup> In fact, the important question is to know if, in view of the conclusions that the Chamber adopted in the Decision of 6 October 2010, the proposed evidence is “fresh” insofar as it refutes the previously admitted entries and, in particular, the statements made by the Accused Stojić personally.<sup>57</sup> The Chamber notes that the Proposed Exhibits from the Mladić Diary, that go to refuting the co-operation between the Serbs and the Croats in Bosnia aimed at achieving the objectives of the JCE against the Muslims<sup>58</sup>, in no way concern the statements or behaviour of the Accused Stojić. In the same sense, the Chamber holds that the statements or behaviour of other members of the alleged JCE, such as those mentioned in entries 2D 03134 and 2D 03141, could not be taken to directly refute the statements made by the Accused Stojić, either. In fact, the Chamber notes that the Proposed Exhibits provide no direct link between the other members of the JCE and the Accused Stojić, or the exhibits admitted by the Decision of 6 October 2010. Consequently, the Chamber believes that they do not fulfil the criteria of freshness

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<sup>51</sup> Decision of 6 October 2010, pp. 59 and 61; Decision of 27 October 2010, pp. 9 and 10; Decision of 1 November 2010, p. 7.

<sup>52</sup> Motion, paras. 8, 9 and 26 and Annex I (c).

<sup>53</sup> Decision of 6 October 2010, pp. 59 and 61 and Decision of 27 October 2010, pp. 9 and 10.

<sup>54</sup> Decision of 6 October 2010, para. 64 and p. 29; Decision of 27 October 2010, pp. 5 and 8.

<sup>55</sup> Annex I, pp. 13-31.

<sup>56</sup> Motion, paras 13-26. Regarding this, see “Prosecution Motion to Admit Evidence in Reopening, filed confidentially on 9 July 2010.

<sup>57</sup> Decision of 6 October 2010, pp. 58, 59, 61 and 62; Decision of 27 October 2010, pp. 9 and 10; Decision of 1 November 2010, p. 7.

<sup>58</sup> Motion, paras 23-25, Annex I (a), (b), (c) and (d).

and are therefore inadmissible within the context of a request for reopening at this stage of the proceedings.

28. Concerning Proposed Exhibit 2D 01534, which was in the possession of the Stojić Defence during the presentation of its case and Proposed Exhibit 2D 03142 obtained by the Stojić Defence after the presentation of its case on 14 October 2010, the Chamber considers that the argument of the Stojić Defence, according to which these documents go to refuting the close co-operation between the Serbs and Croats of Bosnia, is irrelevant for the case in hand. More specifically, the Chamber recalls that, although Exhibit 2D 03142 deals with the release of “Žarko Tole”, which was also mentioned in the exhibit admitted as P 11376, it was not admitted because of this event. It was admitted because of the statements made by the Accused Stojić that were given in it. Consequently, Proposed Exhibits 2D 01534 and 2D 03142 are not invested of “freshness” insofar as they pertain to the cooperation between the Serbs and the Croats of Bosnia and do not deal with the responsibility of the Accused at all, in particular that of the Accused Stojić, within the context of the alleged Joint Criminal Enterprise. Thus, Proposed Exhibits 2D 01534 and 2D 03142 are inadmissible at this stage in the proceedings.

29. Finally, concerning Proposed Exhibits 2D 01541 to 2D 01561, mentioned in the Supplement and obtained probably on 7 May 2009,<sup>59</sup> that is to say, after the presentation of the Stojić Defence Case,<sup>60</sup> the Chamber notes that the Stojić Defence failed, with regard to the criteria for reopening, notably that of diligence, to reveal that it was unable to identify and present the exhibits during its case-in-chief.<sup>61</sup> Moreover, the Chamber cannot subscribe to an argument according to which the importance of these Proposed Exhibits become apparent in the Decision of 6 October 2010, insofar as the 21 Proposed Exhibits concern topics which are not relevant for the responsibility of the Accused within the context of the JCE. In fact, the Proposed Exhibits go to refuting the existence of co-operation between the Serbs and the Croats and prove the existence of co-operation between the Muslims and the Croats. The Chamber can therefore only note that the Proposed Exhibits cannot refute the statements of the Accused Stojić given in Exhibit P 11376. Consequently, the

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<sup>59</sup> Supplement, para. 6 and Annex to the Supplement; see also Exhibit 2D 01561.

<sup>60</sup> See the Order of 17 May 2010, p. 2, specifying that the Stojić Defence case concluded on 28 April 2009.

Chamber holds that the 21 Proposed Exhibits mentioned in the Supplement and its joined Annex cannot be qualified as “fresh” and are therefore inadmissible.

30. For the foregoing reasons, the Chamber holds that the Stojić Defence did not fulfil the criteria required for the reopening of a case and that it is proper to reject the admission of 66 Proposed Exhibits requested for admission by the Motion within the context of the reopening of the case.

## **VI. CONCLUSION**

**FOR THE FOREGOING REASONS,**

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

**REJECTS** the Motion,

**The Presiding Judge Jean-Claude Antonetti attaches a dissenting opinion to this decision.**

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

/signed/

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Jean-Claude Antonetti  
Presiding Judge

Done this twenty-fifth day of November 2010

At The Hague

The Netherlands

**[Seal of the Tribunal]**

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<sup>61</sup> Čelebići Judgment, para. 283.