



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: 14 December 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: 14 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION AMENDING DECISION ON PETKOVIĆ DEFENCE MOTION
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 Zoran Ivanišević 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”),

PROPRIO MOTU

NOTING the “Petković Defence Notice with Regard to Document 4D 02508 Admitted into Evidence in Petković Defence Reopening”, filed as a public document with a confidential Annex by Counsel for the Accused Milivoj Petković (“Petković Defence”; “Accused Petković”) on 29 November 2010 (“Notice”),

NOTING “Milivoj Petković’s Motion to Admit Evidence in Reopening”, filed as a public document by the Petković Defence on 20 October 2010, with a public and a confidential Annex attached, in which the Petković Defence sought admission of 20 documents, including Exhibit 4D 02508, within the reopening of its case (“Motion of 20 October 2010”),

NOTING the “Decision on Petković Defence Motion to Reopen the Case”, rendered as a public document on 23 November 2010 (“Decision of 23 November 2010”),

CONSIDERING that by the Decision of 23 November 2010, the Chamber admitted into evidence the three exhibits sought for admission by the Petković Defence, including Exhibit 4D 02508, on the ground that it “reports the statements of General Morillon informing General Mladić of the fact that President Tudman agreed to meet with the Accused Petković in connection with the peace talks”,¹

CONSIDERING that in the Notice, the Petković Defence (1) wishes to draw the Chamber’s attention to the fact that its motion for the admission of Exhibit 4D 02508 concerned solely the entry from Ratko Mladić’s Diary (“Mladić Diary”) related to a meeting of the Main Staff of the Bosnian Serb Army (“VRS”) held on 17 November 1992,² and not to the entry corresponding to the meeting of 19 November 1992, as the Decision of 23 November 2010 suggests,³ (2) argues that contrary to what the

¹ Decision of 23 November 2010, para. 20.

² Notice, paras 3 and 7.

³ Notice, para. 4, referring to paragraph 20 of the Decision of 23 November 2010, and 5.

Chamber notes in paragraph 20 of the Decision of 23 November 2010, Exhibit 4D 02508 does not refer to the statements of General Morillon informing General Mladić of the fact that President Tudman agreed that Petković would meet him to negotiate a peace process⁴ and (3) informs the Chamber that it understands that in the Decision of 23 November 2010, Exhibit 4D 02508 was admitted only as it concerns the meeting of the VRS Main Staff held on 17 November 1992,⁵

CONSIDERING that the Chamber understands, in light of the Notice, that the Petković Defence intended to seek the admission of only those pages in Exhibit 4D 02508 that concern the meeting held on 17 November 1992 and not those relating to the meeting held on 19 November 1992,⁶

CONSIDERING, however, that the Chamber notes that it was misled by the Motion of 20 October 2010 as the Petković Defence did not indicate clearly the excerpts of the exhibit it intended to tender for admission in the first column of Annex I to the said Motion, which contained the exhibit number, but instead indicated this only in the column corresponding to the description of the exhibit,

CONSIDERING that the Chamber deems it appropriate at present to reconsider the excerpt of Exhibit 4D 02508 sought for admission by the Petković Defence in light of the details the latter provided in the Notice, seeing as the Chamber considered the said exhibit on the basis of an excerpt that concerns the meeting held on 19 November 1992, which was not sought for admission by the Petković Defence,

CONSIDERING that for this purpose, the Chamber recalls the criteria for reopening a party's case after its case-in-chief by way of a request for admission of new evidence as applied in the decision rendered by the Chamber on 6 October 2010 concerning the reopening of the Prosecution's case⁷ and in the Decision of 23 November 2010,⁸

⁴ Notice, para. 6, referring to the Decision of 23 November 2010, para. 20.

⁵ Notice, para. 7.

⁶ See Notice, footnote 3. See also, in this sense, Annex I to the Motion of 20 October 2010, p. 4.

⁷ "Decision on the Prosecution's Motion to Reopen its Case", public, 6 October 2010, paras 31 to 34 ("Decision of 6 October 2010").

⁸ Decision of 23 November 2010, paras 12 to 15. See also "Decision on Petković Defence Motion for Reconsideration or, in the Alternative, for Certification to Appeal the Decision on the Petković Defence Motion to Reopen its Case", public, 7 December 2010, p. 4.

CONSIDERING that the Chamber also recalls the Decision rendered on 27 October 2010, in which it recalled that any motion for reopening must respect the case-law criteria for reopening,⁹

CONSIDERING that in this case, the excerpt of Exhibit 4D 02508 requested for admission by the Petković Defence mentions a meeting held on 17 November 1992 at which different organs of the VRS Main Staff were present, during which the representative of the Intelligence Organ mentioned the fact that the enemy was preparing a general mobilisation and that the Ustasha were preparing an operation in the Neretva valley and in Žepa, Srebrenica and Cazinska Krajina,¹⁰ and during which the representative of the Operations Organ indicated that the Muslims and Croats would likely launch an offensive,¹¹

CONSIDERING that in the Decision of 6 October 2010 the Chamber explained that it would admit the excerpts of the Mladić Diary sought for admission by the Prosecution if they directly related to the alleged participation of some of the Accused in the joint criminal enterprise (“JCE”), and specified, referring particularly to the Accused Petković, that Exhibits P 11380 and P 11386 sought for admission by the Prosecution were relevant as they described the statements made by the Accused during the meetings, and that they were relevant in respect to the alleged participation of the said Accused in furthering the objectives of the JCE,¹²

CONSIDERING that in the Decision of 27 October 2010, it also specified that the Defence teams could, in connection with a possible motion to reopen their case, seek admission of Mladić Diary excerpts, provided that they are directly related to what was admitted on behalf of the Prosecution as otherwise, they would not have a “fresh” aspect,¹³

CONSIDERING that the Chamber notes that the excerpt of Exhibit 4D 02508 sought for admission by the Petković Defence does not mention any statements or actions of

⁹ “Decision on Bruno Stojić Motion for Certification to Appeal the Decision on the Reopening of the Prosecution Case and Clarifying the Decision of 6 October 2010”, public, 27 October 2010 (“Decision of 27 October 2010”), p. 9.

¹⁰ Exhibit 4D 02508, p. 1.

¹¹ Exhibit 4D 02508, p. 2.

¹² Decision of 6 October 2010, paras 58, 59 and 61. *See also* Decision of 23 November 2010, para. 17.

¹³ Decision of 27 October 2010, p. 9 and more specifically, footnote 42. *See also* Decision of 23 November 2010, para. 17.

the Accused Petković himself and deems, consequently, that it has no direct link to the evidence admitted by the Decision of 6 October 2010 and does not, therefore, meet the criteria of a fresh aspect,

CONSIDERING, consequently, that the Chamber notes that Exhibit 4D 02508, as sought for admission by the Petković Defence, is inadmissible as part of a motion for reopening,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DECIDES to deny the admission into evidence of Exhibit 4D 02508 **and**

ORDERS that the reference to Exhibit 4D 02508 be removed from the disposition of the Decision of 23 November 2010,

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

Presiding Judge Antonetti attaches a separate opinion to the present Decision.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourteenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

Separate Opinion of Presiding Judge Jean-Claude Antonetti

I agree fully with the disposition of the Decision. However, I disagree with the reasoning followed by the Chamber to come to a conclusion to reject this exhibit.

As I already stated, I was in favour of rejecting all of the exhibits contained in the Mladić notebooks due to the lateness of the Prosecution's motion regarding these notebooks. These notebooks should, during the first search, have been the subject of a handwriting expert report commissioned by the Office of the Prosecution and an inquiry, not only by the Popović Chamber but by all the Chambers likely to be concerned.

From a technical point of view, **Document 4D 02508** comprises two days: 17 November 1992 and 19 November 1992. In order to prevent any errors, the Petković Defence should have assigned a specific number to each day, which was not done.

The important fact in the first document (of 17 November 1992) is the reference that **"There most probably will be a new offensive by the Muslims and Croats."**

Nonetheless, there is nothing new here that is not contained in the numerous exhibits already admitted that relate to cooperation between the Croats and Muslims.

 /signed/

Presiding Judge
Jean-Claude Antonetti

Done this fourteenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]