



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: 15 November 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Order of: 15 November 2007

THE PROSECUTOR

v.

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

PUBLIC

**ORDER TO ADMIT EVIDENCE REGARDING WITNESS KLAUS JOHANN
NISSEN**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

CONSIDERING that during the hearings of 25 and 26 June 2007, the Office of the Prosecutor (“Prosecution”) requested the admission of 28 pieces of evidence¹ while Counsel for the Accused Prlić (“Prlić Defence”), Counsel for the Accused Praljak (“Praljak Defence”), Counsel for the Accused Petković (“Petković Defence”) and Counsel for the Accused Pušić (“Pušić Defence”) requested the admission of 16 pieces of evidence,² 24 pieces of evidence,³ 3 pieces of evidence,⁴ and 1⁵ piece of evidence, respectively, related to the testimony of Klaus Johann Nissen (“Proposed Exhibits”)⁶ who appeared on 25, 26 and 27 June 2007,

CONSIDERING that the Chamber has examined the objections raised by the Prosecution against the admission of the Proposed Exhibits,⁷

CONSIDERING that the Prosecution objects *inter alia* that during his testimony, Witness Nissen showed that he had no knowledge whatsoever of Exhibits 1D 01594, 1D 01596, 1D 01597, 1D 01598, 1D 01601, 1D 01605, 1D 01606, 3D 01013, IC 00615, 3D 01050, IC 00616 and 3D 00988,⁸

CONSIDERING furthermore that the Prosecution notes, in respect of two of these exhibits, namely Exhibits 1D 01605 and 1D 01606, that not only is the information attesting to their authenticity lacking, but also these exhibits give an account of events which fall outside the scope of the Indictment,⁹

CONSIDERING that for Exhibits IC 00615 and IC 00616, which are videos, the Prosecution also believes that there is no information attesting to their authenticity and that these videos were shown in court without sound,¹⁰

¹ IC 00617.

² IC 00618.

³ IC 00619.

⁴ IC 00620.

⁵ IC 00621.

⁶ Transcript in French (T(F)), p. 20670.

⁷ IC 00623.

⁸ IC 00623.

⁹ IC 00623.

¹⁰ IC 00623.

CONSIDERING finally that the Prosecution notes that Exhibit 3D 01014 was not discussed by the witness,¹¹

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its Decision of 13 July 2006 on the admission of evidence (“Decision of 13 July 2006”),

CONSIDERING that the Chamber finds that Exhibits P 02619, P 09603, 1D 01281 and 1D 01338 have already been admitted and that, as a result, it need not rule again on their admission,

CONSIDERING that with regard to the Prosecution objections regarding Exhibits 3D 01013 and 3D 01014, the Chamber notes that they were presented jointly with Exhibit 3D 01001 in respect of which the Prosecution raised no objection,

CONSIDERING that these three exhibits were discussed in a general commentary by the witness in court¹² and each one bears sufficient indicia of relevance, probative value and reliability and that it is thus appropriate to admit them,

CONSIDERING that the Chamber decides to admit into evidence the documents indicated “Admitted” in the Annex attached to this decision since they were put to Witness Klaus Johann Nissen and bear sufficient indicia of relevance, probative value, and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits indicated “Not Admitted” in the Annex attached to this decision since they do not satisfy the requirements of the Decision of 13 July 2006,

¹¹ IC 00623.

¹² T(F), pp. 20598-20603.

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
P 02557	Prosecution	Admitted under seal
P 02619	Prosecution	Already admitted on 5 October 2007
P 02643	Prosecution	Admitted under seal
P 02658	Prosecution	Admitted under seal
P 02807	Prosecution	Admitted under seal
P 02947	Prosecution	Admitted under seal
P 03069	Prosecution	Admitted under seal
P 03162	Prosecution	Admitted under seal
P 03175	Prosecution	Admitted under seal
P 03196	Prosecution	Admitted under seal
P 03221	Prosecution	Admitted under seal
P 03223	Prosecution	Admitted under seal
P 03278	Prosecution	Admitted under seal
P 03298	Prosecution and Praljak Defence	Admitted under seal
P 03346	Prosecution	Admitted under seal
P 03361	Prosecution	Admitted under seal
P 03410	Prosecution	Admitted under seal
P 03427	Prosecution	Admitted under seal
P 03453	Prosecution	Admitted under seal
P 03470	Prosecution	Admitted under seal
P 03471	Prosecution	Admitted under seal
P 03494	Prosecution and Praljak Defence	Admitted under seal
P 03511	Prosecution	Admitted under seal
P 03554	Prosecution and Praljak Defence	Admitted under seal
P 03611	Prosecution	Admitted under seal
P 03640	Prosecution	Admitted under seal
P 03674	Prosecution	Admitted under seal
P 03710	Prosecution	Admitted under seal
1D 01281	Prlić Defence	Already admitted on 30 August 2007
1D 01336	Prlić Defence	Admitted
1D 01338	Prlić Defence	Already admitted on 30 August 2007
1D 01594 ¹³	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).

¹³ T(F) p. 20544:

Q. Were you aware that Dr. Prlić had sent this letter in order to arrange a meeting and had in fact proposed various issues for discussion? Were you aware of that?

A. I cannot remember that letter.

Q. Okay. All right. Suffice it to say on the April the 18th meeting that you attended or witnesses, you - you were not involved in arranging that meeting in any fashion. You were just new and you just went along as an observer more or less; correct?

A. In that case I wasn't involved at the beginning of this period.

Q. All right. Now, the next document.

1D 01595 ¹⁴	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01596 ¹⁵	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01597 ¹⁶	Prlić Defence	Not admitted (Reason: witness unable

¹⁴ Unidentifiable document and *cf* T(F) pp. 20544 and 20545:

Q. Now, the next document, 1D 01595. And this is about minutes from a meeting in Medjugorje in May 18, 1993, and this is between the delegation of the Republic of Croatia, and it lists all the other individuals that were involved in the meeting. I don't want to waste too much time on that, but if we go to paragraph number 3, it's numbered, it says: "The president of the Transitional Government of the RBiH, the Republic of Bosnia and Herzegovina, shall be Jadranko Prlić. In agreement with the Muslim side, he shall recommend a balanced government of eight ministerial portfolios of which three will remain without appointment. In case an agreement is impossible to reach he shall consult with the co-chairmen of the peace conference." It goes on to say: "Dr. Haris Silajdžić shall remain as Minister of Foreign Affairs and the deputy Minister of Foreign Affairs shall be a Croatian with equal rights as Minister Silajdžić." And then at the very bottom it talks about the -- we have the organisation for province Mostar, province Travnik, and the next page province Zenica. Sir, were you aware in light of your position, your location, the information that you were receiving, were you aware that Dr. Jadranko Prlic was proposed as the president of the transitional government of RBiH pursuant to the Vance-Owen Peace Plan and the implementation documents that we've just seen? Were you aware of that? It's a yes or no.

A. Yes.

Q. Good. Now, incidentally, do you know whether you or others in your mission consulted with Dr. Prlic in relation to his new position to see how he would go about in implementing or carrying out his task as president of the transitional government? Do you recall?

A. No.

Q. Okay. Now, we go to the next document (...)

¹⁵ T(F) p. 20546:

Q. May 21, 1993. This is a letter, again by Dr. Jadranko Prlić. We can see it's addressed to Mate Boban and Alija Izetbegović. I'll just read a couple of things. The first paragraph it states: "Pursuant to the agreement reached in Medjugorje on May 18, 1993, regarding the implementation of the Vance-Owen Plan in Bosnia and Herzegovina, I write to you in my capacity as the president of the transitional government of RBiH and request that as representatives of the Croatian and Muslim people, you partake in the consultation for the election of a transitional government." And then you can see from the very next sentence it talks about each side indicating who they wish to appoint to various positions. Now, were you -- and there's a deadline on the 3rd, or he wishes an a response by May 24th. Were you aware of Mr. Prlić's efforts with Mate Boban and Alija Izetbegović to begin the implementation process? Were you aware of this?

A. I don't know this letter from a different perspective, I know that the Muslim side was hesitating the give the names to complete the list.

Q. Right. And we're going to get there. I'm glad you mentioned that, because as I understand your testimony when my colleague Ms. Nožica was questioning you, you had indicated -- or it might have been the Prosecutor, that the Muslims were hesitant in the implementation of the Vance-Owen Peace Plan. In English, we would say they were dragging their feet. One might even say that they really had no intention of carrying -- carrying on in good faith; would that be correct?

A. Yes.

Q. Okay. If we look at the next document (...)

¹⁶ T(F) p. 20547:

Q. Here this is a letter to the co-chairmen of the conference on former Yugoslavia, Mr. Owen and Mr. Stoltenberg. "Report on the undertaken activities of the president of the Transitional Central

		to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01598 ¹⁷	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01599 ¹⁸	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01600 ¹⁹	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01601 ²⁰	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this

Government." And here we can see that he's giving them notice that he has begun the process. Were you aware of this? This basically --

A. I have not learned about the various -- the individual steps taken.

Q. Okay. Now, the next document (...)

¹⁷ T(F) p. 20548:

Q. So were you aware again that here was Dr. Jadranko Prlić writing to the Sarajevo government pursuant to the Vance-Owen Peace Plan, of his intentions to go forward as was expected of him; were you aware of that?

A. No.

Q. We turn to the next document (...)

¹⁸ T(F) p. 20548:

Q. This time it's addressed to the Ministry of Foreign Affairs of the Republic of Bosnia and Herzegovina, attention Dr. Haris Silajdžić. And here from the very first paragraph, in the middle of it says: "In accordance with this agreement, Dr. Jadranko Prlić is elected as president of the government, and you as the Minister of Foreign Affairs. In accordance with that, it would necessary that you inform -- that you inform of these facts the government, i.e., the ministries of foreign affairs of all the states in which the Republic of Bosnia-Herzegovina has established diplomatic relations." And then we see that Dr. Jadranko Prlić presents a short curriculum vitae, and at the very end we see the last sentence which says -- or last paragraph which says: "The government of the United States of America, Federal Republic of Germany and the European Community should also be informed that the ambassadors of Croatian nationality will be appointed soon." Were you aware of this, sir, you being with the UN mission at the time, were you aware of this?

A. I don't know anything about such a letter, but I know that I'd seen in overviews what nationalities the relative ambassadors should have.

Q. Okay. We can go to the next document (...)

¹⁹ T(F) p. 20550:

Q. And this is dated the 27th of May, 1993. Were you aware of -- of President Izetbegović's communication back to Mr. Jadranko Prlić -- Dr. Jadranko Prlić concerning his earlier letter to him? Were you aware of this?

A. No, I didn't know about this, but I imagine that I had read some sort of summary of this later, but not at that particular time.

		document).
1D 01602 ²¹	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01605 ²²	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
1D 01606 ²³	Prlić Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
P 02490	Prlić Defence	Admitted under seal
P 02509	Prlić Defence	Admitted
P 09603	Praljak Defence	Already admitted on 15 June 2006
P 08425	Praljak Defence	Admitted under seal
3D 01015	Praljak Defence	Admitted
3D 01016	Praljak Defence	Admitted
3D 01013	Praljak Defence	Admitted

²⁰ T(F) pp. 20550-20552:

Q. The next document is very quick. 1D 01601, again signed by Dr. Jadranko Prlić as president of the government, dated June 1, 1993, in Mostar, and here he is giving his greetings. "The president of the transitional central government of the RBiH, Dr. Jadranko Prlić, has on the occasion of the Muslim religious holiday Kurban Bajram expressed his best wishes to all the clerical dignitaries and the Islam congregation ... " and it goes on giving his particular greetings. Were you aware of this gesture by Dr. Jadranko Prlić, back in June 1, 1993, in his capacity as president of the government, of the interim government?(...) Thank you. And again I just read it out. It's dated June 1, 1993. These are greetings from Dr. Jadranko Prlić as president of the government, if we look at the signature down there. Were you aware of this?

A. No.

²¹ T(F) pp. 20553-20554:

Q. So were you aware of this, that Dr. Jadranko Prlić, consistent with or in accordance with President Izetbegović's wishes, went ahead and made this proposal?

A. No.

JUDGE TRECHSEL: May I intervene? Witness, if you look at this, Mr. Prlić says that he wants to have proposals by the 10th of June, because until the 3rd of -- three days before the 3rd he has to propose a government. Is that something you can understand? Can you explain to me what that meant in practical terms?

THE WITNESS: Well, can I say first of all, Your Honour, that I don't know all of these documents because these were far above the level I was at the time, and I only know things of a more verbal nature

²² T(F) p. 20571:

Q. But anyway, were you aware of this order?

A. No. And during my whole time I never saw anything like it, not anything even approximately similar to that.

²³ T(F) p. 20573:

Q. Tell me, sir, in light of what was shown to you by the Prosecutor in document P 03361 where you indicated that you were fully aware and where it says in here that Alagić had said that no prisoners were to be taken alive, were you made aware of this?

A. So such conversations, things like that happened, rumours, yes, that did exist. But I never heard anything concrete or seen anything or got any reports about that. But I can only say from my part, what kind of observations I made, what I heard about the Mujahedin, but only for -- in a very small area.

3D 01014	Praljak Defence	Admitted
3D 01001	Praljak Defence	Admitted
3D 01006	Praljak Defence	Admitted
3D 01007	Praljak Defence	Admitted
3D 01008	Praljak Defence	Admitted
3D 01009	Praljak Defence	Admitted
3D 01010	Praljak Defence	Admitted
3D 01023	Praljak Defence	Admitted
3D 00916, pp. 3D 25-0168, -0174, -0178, -0179, -0180, -0181	Praljak Defence	Admitted
IC 00612	Praljak Defence	Admitted
IC 00613	Praljak Defence	Admitted
IC 00614	Praljak Defence	Admitted
IC 00615 ²⁴	Praljak Defence	Not admitted (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
3D 01050 Chapter 8: 01:14:09-01:16:05 Chapter 10 : 54:37-56:46	Praljak Defence	Not admitted: Transcription of Exhibit IC00615 (Reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
IC 00616 ²⁵	Praljak Defence	Not admitted (Reason: witness unable

²⁴ T(F), pp. 20619-20620:

You do have a transcript accompanying this video in your folder, but we can't hear the sound for some reason that I am unaware of.

THE ACCUSED PRALJAK: [Interpretation] Q. That's fine. We can stop the video. Colonel, my question is this: You were, after all, in an area where there was firing. In Mostar, there are a lot of residential buildings, and the area is densely populated. If you're among those buildings and you're trying to track down the exact location of a sniper, would the sound of a resounding shot be so powerful that somebody might, for all you know, be firing from a building no more than 20 metres away from you and yet, you are still unable to track down the source of the fire, especially since there was a lot of din and a lot of different sources of fire going on for days? In your experience, would it not be exceedingly difficult to discover the exact location of a sniper in the middle of a town like this where there's a lot of firing going on all the time? Would that not be an exceptionally thankless task because of all the shooting that was going on and because of the echo resounding all over the place all the time? Would it not be virtually impossible to define the position of a single sniper? Would your experience not suggest that, sir?

A. I think impacts in the proximity would be heard as a loud bang and you could see where they had impacted. It's very difficult to say where the shot is coming from.

Q. Thank you very much for your answer.

²⁵ T(F), pp. 20626-20627:

That's right, but it is 3D 00988, the transcript of that footage. For some reason the video doesn't seem to be working. There's no volume, no sound.

THE ACCUSED PRALJAK: [Interpretation]: Q. Can you see the column of civilians in the background passing by (...)?

WITNESS: [Interpretation] Now I have the picture.

ACCUSED PRALJAK: [Interpretation] Please fast forward.

(Showing of video cassette)

ACCUSED PRALJAK: [Interpretation] Sir, can you see that this is a Serb officer and that the people from Travnik are escaping across Mount Vlasić, that is say, territory controlled by Republika Srpska?

		to provide the Chamber with information about the authenticity, relevance and probative value of this document).
3D 00988 Chapter 1 06:50-07:43	Praljak Defence	Not admitted: Transcription of Exhibit IC00616 witness unable to provide the Chamber with information about the authenticity, relevance and probative value of this document).
4D 00621	Petković Defence	Admitted
4D 00622	Petković Defence	Admitted
P 02740	Petković Defence	Admitted under seal
P 02547	Pušić Defence	Admitted under seal

My question to you is this: Do you know that in this evacuation from Travnik that the Red Cross took part as well as UNPROFOR and the UNHCR? Are you aware of that? Do you have any knowledge about that, based on the reports that you received?

A. No, I can't remember that.