



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: 9 October 2008
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 Hans Holthuis

Order of: 9 October 2008

THE PROSECUTOR

v.

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

PUBLIC

**ORDER ON ADMISSION OF EVIDENCE RELATING TO WITNESS ZORAN
PERKOVIĆ**

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 Counsel for the Accused Prlić ("Prlić Defence") has requested the admission of 52 exhibits,¹ while Counsel for the Accused Stojić ("Stojić Defence") and the Office of the Prosecutor ("Prosecution") have requested the admission of 13² and 11³ exhibits, respectively, related to the testimony of Witness Zoran Perković ("Proposed Exhibits") who appeared from 1 to 4 September 2008,

CONSIDERING that the Chamber heard the objections to some of the Proposed Exhibits⁴ formulated by the Prosecution,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its Decision on Admission of Evidence of 13 July 2006 ("Decision of 13 July 2006"), as well as the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Decision of 24 April 2008"),⁵

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits indicated "Admitted" in the Annex attached to this Decision since they were put to Witness Zoran Perković at the hearing and bear sufficient indicia of relevance, reliability and probative value,

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 are not consistent with the instructions established in the Decisions of 13 July 2006 and of 24 April 2008, for the reasons set out in the Annex attached to this Decision,

¹ IC 00838.

² IC 00839.

³ IC 00840.

⁴ IC 00841.

⁵ Guideline 8 on the Admission of Documentary Evidence through a Witness.

FOR THE FOREGOING REASONS,

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

PARTIALLY GRANTS the requests of the Prlić Defence, the Stojić Defence and the Prosecution,

DECIDES to admit into evidence the Proposed Exhibits indicated "Admitted" in the Annex attached to this Decision,

DENIES by a majority Exhibits 1D 00317, 1D 00811 and P 01032, Presiding Judge Antonetti dissenting,

DENIES in all other respects the requests for admission by the Prlić Defence, the Stojić Defence and the Prosecution for the reasons set out in the Annex attached to this Decision, **AND**

DECLARES MOOT the requests for admission by the Prlić Defence, the Stojić Defence and the Prosecution with regard to Exhibits 1D 00001, 1D 00015, 1D 01609, 1D 01666, 1D 01669, 1D 01672, 1D 01813, 1D 01873, 1D 02011 and 2D 00594 for the reasons set out in the Annex attached to this Decision.

The Presiding Judge attaches a dissenting opinion to this Order.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this ninth day of October 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit number	Party proposing the admission of Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
1D 00001	Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 00014	Prlić Defence	Admitted
1D 00015	Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 00016	Prlić Defence	Admitted
1D 00065	Prlić Defence	Admitted
1D 00129	Prlić Defence	Admitted
1D 00132	Prlić Defence	Admitted
1D 00134	Prlić Defence	Admitted
1D 00155	Prlić Defence	Admitted
1D 00156	Prlić Defence	Admitted
1D 00190	Prlić Defence	Admitted
1D 00193	Prlić Defence	Admitted
1D 00196	Prosecution	Admitted
1D 00269	Prlić Defence	Admitted
1D 00296	Stojić Defence	Admitted
1D 00298	Stojić Defence	Admitted
1D 00317	Prlić Defence	Not admitted by a majority (Reason: the Witness could not comment on the reliability, relevance or probative value of the exhibit.)
1D 00615	Prlić Defence	Admitted
1D 00795	Prlić Defence	Admitted
1D 00796	Prlić Defence	Admitted
1D 00802	Prlić Defence	Admitted
1D 00805	Prlić Defence	Admitted
1D 00808	Prlić Defence	Admitted
1D 00810	Prlić Defence	Admitted
1D 00811	Prlić Defence	Not admitted by a majority (Reason: the Witness could not comment on the reliability, relevance or probative value of the exhibit.)
1D 00812	Prlić Defence	Admitted
1D 00822	Prlić Defence	Admitted
1D 00825	Prlić Defence	Admitted
1D 00867	Prlić Defence	Admitted
1D 00869	Prlić Defence	Admitted

1D 00897	Prlić Defence	Partially admitted (English version filed under number 1D 28-0410)
1D 00899	Prlić Defence	Not admitted (Exhibit is identical to the exhibit already admitted under number P 00206 in the "Decision on the Prosecution Motion for Admission of Documentary Evidence" of 11 December 2007)
1D 01115	Prlić Defence	Admitted
1D 01118	Prlić Defence	Admitted
1D 01157	Prlić Defence	Admitted
1D 01170	Prlić Defence	Admitted
1D 01172	Prlić Defence	Admitted
1D 01181	Prlić Defence	Admitted
1D 01210	Prlić Defence	Admitted
1D 01212	Prlić Defence	Admitted
1D 01275	Stojić Defence and Prlić Defence	Admitted
1D 01362	Prlić Defence	Admitted
1D 01369	Prlić Defence	Admitted
1D 01385	Prlić Defence	Admitted
1D 01392	Prlić Defence	Admitted
1D 01609	Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 01611	Prosecution and Prlić Defence	Admitted
1D 01614	Prlić Defence	Admitted
1D 01642	Prlić Defence	Admitted
1D 01666	Prosecution	Moot (Reason: already admitted on 1 September 2008)
1D 01668	Stojić Defence and Prlić Defence	Admitted
1D 01669	Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 01672	Stojić Defence and Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 01778	Prosecution and Prlić Defence	Admitted
1D 01813	Prlić Defence	Moot (Reason: already admitted on 1 September 2008)
1D 01873	Prlić Defence	Moot (Reason: already admitted on 6 October 2008)

1D 02011	Prosecution	Moot (Reason: already admitted on 1 September 2008)
1D 02018	Prosecution	Admitted
2D 00537	Stojić Defence	Admitted
2D 00540	Stojić Defence	Admitted
2D 00541	Stojić Defence	Admitted
2D 00594	Prosecution	Moot (Reason: already admitted on 15 January 2008)
2D 00595	Stojić Defence	Admitted
2D 01214	Stojić Defence	Admitted
2D 01217	Stojić Defence	Not admitted (Reason: Exhibit was not put to the Witness at the hearing.)
2D 01230	Stojić Defence	Admitted
2D 01416	Stojić Defence	Admitted
P 00019	Prosecution	Admitted
P 01032	Prosecution	Not admitted by a majority (Reason: the document is a transcript of the part of the video shown at the hearing of 4 September 2008. The Prosecution did not specify the numbers of the pages corresponding to the part of the video shown at the hearing.)
P 01579	Prosecution	Admitted
P 04626	Prosecution	Admitted

**DISSENTING OPINION OF JUDGE JEAN-CLAUDE ANTONETTI,
PRESIDING JUDGE OF THE TRIAL CHAMBER, TO THE ORDER ON THE
ADMISSION OF EVIDENCE RELATING TO ZORAN PERKOVIĆ**

The Trial Chamber admitted unanimously certain documents presented by the **Prlić** Defence during the appearance of Witness **Zoran Perković**.

Similarly, it unanimously rejected the request for admission of documents for technical reasons (documents not put to the witness ...).

On the other hand, the majority of Judges decided not to admit documents **1D 00317**, **1D 00811** and **P 01032**.

For reasons already set out in the decision of 6 October 2008 on the admission of exhibits relating to Witness Martin Ragus, I would also like to express the same position regarding these exhibits for the following reasons:

Witness Zoran Perković worked at the Livno Municipality between May and June 1992. In 1993, he became President of the Regulations Commission for the Croatian Community of Herceg-Bosna, Croatian Defence Council,⁶ Commission for Legislation of the HVO/HB, responsible for the revision and harmonisation of the legal instruments, which were being considered for adoption by the executive power of the HVO with regard to their conformity with the laws of BH.

His testimony could be useful for an understanding of certain facts set out in the Indictment. In this context, it seems necessary to me to be especially well informed about the question of the three authorities that were simultaneously in force in the former Yugoslavia:

- (a) The federal authorities
- (b) The state authorities (Socialist Republic of Bosnia and Herzegovina)
- (c) The municipal authorities

The Defence alleges, it seems, that when the authorities (a) and (b) disappeared, the municipal authorities *de facto* replaced the two other authorities at the Sarajevo seat.

⁶ Witness Zoran Perković, 1 September 2008, T(F), p. 31622.

In this context, all the documents presented by the Defence in this respect should be closely examined:

- document 1D 00317 is a decision to requisition and allocate goods for the defence needs of Livno municipality;
- document 1D 00811 is a decision establishing the organisation of the Croatian Defence Counsel of the municipality of Livno and the responsibilities allocated to this Counsel.

These two documents seemed to me at first glance useful for an understanding of the Case, since they concern the exercise of municipal authority in towns.

Similarly, as for the Prosecution's argument regarding the joint criminal enterprise, the Prosecution has supplied Exhibit P 01032, which is a video of the official proclamation of the Republic of Herceg-Bosna, during the cross-examination by asking the following questions: "Could you identify the persons who were seated at the front table?"⁷ "Which anthem was sung?"⁸ "What was the flag that was hanging behind the table?"⁹

The Witness replied as follows:

"Mate Boban, Perica Jukić, Jadranko Prlić and Srećko Vučina."¹⁰

"We heard the national anthem of the Croats of Bosnia and Herzegovina called "*Lijepa Naša Domovina*", "Our Beautiful Homeland".¹¹

"The flag of the Croatian Community of Herceg-Bosna."¹²

It seems that the document is relevant and that it could show a certain probative value in support of the Prosecution's argument.

I would like to reiterate a fundamental point: the final assessment of a document with regard to its relevance and probative value can only be made at the **end of proceedings** and by comparing the said document with other documents and, in particular, those that are currently unknown to the Judges of the Trial Chamber and will be presented in the coming months by other Defence Counsels.

⁷ Witness Zoran Perković, 4 September 2008, T(F) , p. 32007.

⁸ Witness Zoran Perković, 4 September 2008, T(F) , p. 32009.

⁹ Witness Zoran Perković, 4 September 2008, T(F) , p. 32009.

¹⁰ Witness Zoran Perković, 4 September 2008, T(F) , p. 32009.

¹¹ Witness Zoran Perković, 4 September 2008, T(F) , p. 32009.

¹² Witness Zoran Perković, 4 September 2008, T(F) , p. 32009.

Denying a document in the course of proceedings that may at first glance seem to a Judge relevant and having probative value, may cause a number of problems later for the parties (Prosecution and Defence):

- a motion to reopen proceedings;

- additional motions to admit documents at the end of the presentation of evidence within the scope of the Chamber's Guideline 9;

- intervention by the Chamber pursuant to Rule 98 of the Rules to order the production of additional evidence;

- the reintroduction of the denied document in the Appeal stage, if this document is deemed necessary.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this ninth day of October 2008
The Hague
The Netherlands

[Seal of the Tribunal]