



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: 29 January 2009
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

Acting Registrar: Mr John Hocking

Order of: 29 January 2009

THE PROSECUTOR

v.

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

PUBLIC

ORDER ADMITTING EVIDENCE REGARDING WITNESS ZDRAVKO BATINIĆ

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 Čorić
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”),

NOTING the request for the admission of 46 exhibits, presented by Counsel for the Accused Prlić (“Prlić Defence”);¹ the request for the admission of four exhibits, presented by Counsel for the Accused Stojić (“Stojić Defence”);² the request for the admission of two exhibits, presented by Counsel for the Accused Praljak (“Praljak Defence”);³ the request for the admission of two exhibits, presented by Counsel for the Accused Petković (“Petković Defence”),⁴ and the request for the admission of 14 exhibits, presented by the Office of the Prosecutor (“Prosecution”),⁵ each related to the testimony of Zdravko Batinić (“Proposed Exhibits”) who appeared from 10 to 13 November 2008,

NOTING the objections raised by the Prlić Defence against some of the Proposed Exhibits of the Prosecution,⁶ and the objections raised by the Prosecution against some of the Proposed Exhibits of the Prlić Defence,⁷

NOTING the oral decision rendered by the Chamber at the hearing of 10 November 2008, in which the Chamber granted the Prlić Defence leave to add four exhibits, included among the Proposed Exhibits of the Prlić Defence, to its list of exhibits filed pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List”),⁸

NOTING the Order Requesting Additional Observations from the Parties, dated 16 December 2008 (“Order of 16 December 2008”), in which the Chamber invited the Defence teams to raise any additional objections in particular to the Proposed Exhibits of the Prosecution in this case (“Additional Objections”) on the basis of the Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence

¹ IC 00881.

² IC 00882.

³ IC 00883. The Chamber notes that the Praljak Defence filed two IC lists, namely lists IC 00883 and IC 00888, and that these two lists are identical.

⁴ IC 00884.

⁵ IC 00885.

⁶ IC 00886.

⁷ IC 00887.

Witnesses, dated 27 November 2008 (“Decision of 27 November 2008”), and invited the Prosecution to respond to any Additional Objections,⁹

NOTING the observations presented by the Prosecution concerning the Order of 16 December 2008, in which it essentially argues that it put prosecution evidence to the defence witnesses in court in accordance with the decisions and practices followed by the Chamber prior to 27 November 2008 and that it is no longer able to present these exhibits to them differently, or to take into account different or additional factors to present them,¹⁰

CONSIDERING as a preliminary matter that the Chamber notes that the Defence teams did not raise any Additional Objections on the basis of the Decision of 27 November 2008 to challenge the Proposed Exhibits of the Prosecution,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria defined in the Decision on the Admission of Evidence of 13 July 2006 (“Decision of 13 July 2006”), and in the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 (“Decision of 24 April 2008”),¹¹

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 Zdravko Batinić in court 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, because they fail to satisfy the requirements set out in the Decisions of 13 July 2006 and 24 April 2008, for the reasons set out in the Annex attached to this decision,

⁸ Transcript of 10 November 2008, pp. 34276-34278. By its Oral Decision of 10 November 2008, the Chamber authorized the addition of Exhibits 1D 02961, 1D 03104, 1D 03105 and 1D 03106 to the 65 *ter* List of the Prlić Defence.

⁹ Order of 16 December 2008, p. 3.

¹⁰ Prosecution Observations Concerning the Trial Chamber’s 16 December 2008 Order Requesting Additional Observations, 8 January 2009, p. 2, paras. 4 and 6.

¹¹ Guideline 8 relating to the admission of documentary evidence through a witness.

FOR THESE REASONS,

IN ACCORDANCE WITH Rules 54 and 89 of the Rules of Procedure and Evidence,

GRANTS the requests for admission of the Stojić Defence and the Prosecution,

PARTIALLY GRANTS the requests for admission of the Prlić, Praljak and Petković Defences,

ADMITS into evidence the Proposed Exhibits indicated “admitted” in the annex attached to this decision,

DENIES by a majority, the Prlić Defence request in respect of Exhibit 1D 02443, for the reasons set out in the Annex

DENIES the Prlić Defence request in respect of Exhibit 1D 02961, for the reasons set out in the Annex

DENIES in part the Praljak Defence request in respect of Exhibit 3D 03250, for the reasons set out in the Annex, **AND**

DENIES the Petković Defence request in respect of Exhibit 4D 01235, for the reasons set out in the Annex.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of January 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted /Marked for Identification (MFI)
1D 00207	Prlić Defence	Admitted
1D 00410	Prlić Defence	Admitted
1D 00477	Prlić Defence	Admitted
1D 00485	Prlić Defence	Admitted
1D 00947	Prlić Defence	Admitted
1D 01682	Prlić Defence	Admitted
1D 01683	Prlić Defence	Admitted
1D 01684	Prlić Defence	Admitted
1D 01685	Prlić Defence	Admitted
1D 01686	Prlić Defence	Admitted
1D 01687	Prlić Defence	Admitted
1D 01688	Prlić Defence	Admitted
1D 01690	Prlić Defence	Admitted
1D 01691	Prlić Defence	Admitted
1D 01692	Prlić Defence	Admitted
1D 01693	Prlić Defence	Admitted
1D 01694	Prlić Defence	Admitted
1D 01695	Prlić Defence	Admitted
1D 01696	Prlić Defence/ Prosecution	Admitted
1D 01698	Prlić Defence	Admitted
1D 01699	Prlić Defence/ Prosecution	Admitted
1D 01783	Prlić Defence	Admitted
1D 01784	Prlić Defence	Admitted
1D 01785	Prlić Defence	Admitted
1D 01786	Prlić Defence	Admitted
1D 01787	Prlić Defence	Admitted
1D 01789	Prlić Defence/ Prosecution	Admitted
1D 01791	Prlić Defence	Admitted
1D 01792	Prlić Defence	Admitted
1D 01801	Prlić Defence	Admitted
1D 01809	Prlić Defence	Admitted
1D 02443	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance or probative value of the exhibit)
1D 02445	Prlić Defence	Admitted
1D 02579	Prlić Defence	Admitted
1D 02580	Prlić Defence	Admitted
1D 02699	Prlić Defence	Admitted
1D 02700	Prlić Defence/ Prosecution	Admitted
1D 02701	Prlić Defence	Admitted
1D 02782	Prlić Defence	Admitted

1D 02783	Prlić Defence	Admitted
1D 02798	Prlić Defence	Admitted
1D 02961	Prlić Defence	Not admitted (reason: the Prlić Defence did not provide the page and/or paragraph numbers of the excerpt of Exhibit 1D 02961)
1D 03104	Prlić Defence	Admitted
1D 03105	Prlić Defence	Admitted
1D 03106	Prlić Defence	Admitted
IC 00878	Prlić Defence	Admitted
P 01102	Stojić Defence / Prosecution	Admitted
2D 00219	Stojić Defence	Admitted
2D 01427	Stojić Defence	Admitted
2D 00207	Stojić Defence	Admitted
3D 00464	Praljak Defence	Admitted
3D 03250 (pages in English in e-court: pages 1 to 13 and page 18)	Praljak Defence	Admitted in part (Admitted: pages 1 to 12 and 18 in English in e-court; Not admitted: page 13, on the ground that the photograph was not put to the witness)
P 00633	Petković Defence	Admitted
4D 01235	Petković Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance or probative value of the exhibit)
P 00134 (pages 99-101 in English in e-court)	Prosecution	Admitted (pages 99-101 in English in e-court)
P 10621	Prosecution	Admitted
P 10662	Prosecution	Admitted
P 10663	Prosecution	Admitted
1D 00208	Prosecution	Admitted
1D 02789	Prosecution	Admitted
1D 02792	Prosecution	Admitted
1D 02800	Prosecution	Admitted
3D 00511	Prosecution	Admitted