



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: 17 March 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: 17 March 2009

THE PROSECUTOR

v.

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

PUBLIC

ORDER ADMITTING EVIDENCE REGARDING WITNESS 2D-AB

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 to admit 17 exhibits presented by Counsel for the Accused Stojić (“Stojić Defence”)¹ and the request to admit 8 exhibits presented by the Office of the Prosecutor (“Prosecution”)², both related to the testimony of Witness 2D-AB (“Proposed Exhibits”) who appeared on 2 and 3 March 2009;

NOTING the objections formulated by the Stojić Defence against the admission of the Prosecution Proposed Exhibits and in particular of exhibit P 05489 which the Stojić Defence challenges cannot be admitted as a Prosecution exhibit;³

NOTING the Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses of 27 November 2008 (“Decision of 27 November 2008”);

NOTING the Decision on the Interlocutory Appeal Against the Trial Chamber’s Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses, rendered by the Appeals Chamber on 26 February 2009, wherein it confirms the Decision of 27 November 2008;

CONSIDERING that, in connection with Proposed Exhibit P 05489, the Chamber firstly notes that it is a “new document” as laid out in the Decision of 27 November 2008, namely that even though it was on the Prosecution exhibit list presented under Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), it was not admitted during the presentation of the Prosecution case;⁴

CONSIDERING that, with regard to this Proposed Exhibit, the Prosecution has failed to explain, in keeping with the Decision of 27 November 2008, why it did not request it to be admitted during the presentation of its case, nor what the exceptional

¹ IC 00937.

² IC 00938.

³ IC 00942.

⁴ Decision of 27 November 2008, paras. 4, 13 and 20.

circumstances are justifying the Prosecution's request for admission after the close of its case;⁵

CONSIDERING that, in the absence of such explanations, the Chamber cannot assess the admissibility of Exhibit P 05489 to the extent that it might affect the guilt of one or more of the accused;

CONSIDERING, nevertheless, that the Chamber can analyse the admissibility of this Proposed Exhibit to the extent that its aim is simply to test either the witness's credibility or to refresh his memory;⁶

CONSIDERING that the Chamber has examined every Proposed Exhibit on the basis of criteria of admissibility as defined in the Decision on Admission of Evidence rendered by the Chamber on 13 July 2006 ("Decision of 13 July 2006") and the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Decision of 24 April 2008");⁷

CONSIDERING that the Chamber notes that page 20 of the English text of Proposed Exhibit P 03355 in the eCourt system has already been admitted by the Chamber⁸ and, consequently, that the request is moot regarding this page;

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits indicated "admitted" in the Annex attached to this Decision as they were put in court to Witness 2D-AB and present 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 to this Decision as they do not conform to the instructions laid out in the Decisions of 13 July 2006 and 24 April 2008 for the reasons given in the Annex attached to this Decision;

⁵ Decision of 27 November 2008, para. 20.

⁶ Decision of 27 November 2008, para. 24.

⁷ Guideline 8 on the Admission of Documentary Evidence through a Witness.

⁸ Order Admitting Evidence Related to Witness Stipo Buljan, 10 March 2009.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

PARTIALLY GRANTS the requests for admission of the Stojić Defence and the Prosecution;

DECIDES to admit Proposed Exhibit P 05489 only as a test of the Witness's credibility;

DECIDES to admit into evidence the other Proposed Exhibits indicated "admitted" in the Annex attached to this Decision;

FINDS PARTIALLY MOOT the request by the Stojić Defence regarding Proposed Exhibit P 03355 for the reasons stated in the Annex attached to this Decision;

AND,

DENIES in all the other respects the requests for the admission of Proposed Exhibits by the Stojić Defence and the Prosecution for the reasons stated in the Annex attached to this Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of March 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) |
|-----------------------|---|---|
| 2D 00751 | Stojić Defence | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| 2D 00754 | Stojić Defence | Admitted |
| 2D 00913 | Stojić Defence | Admitted |
| 2D 00914 | Stojić Defence | Admitted |
| 2D 00916 | Stojić Defence | Not admitted (Reason: the document was not presented to the Witness in court) |
| 2D 00917 | Stojić Defence | Admitted |
| 2D 00918 | Stojić Defence | Admitted |
| 2D 00919 | Stojić Defence | Admitted |
| 2D 00920 | Stojić Defence | Admitted |
| 2D 00922 | Stojić Defence | Admitted |
| 2D 02019 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| 2D 02020 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| 2D 02021 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| 2D 02022 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| 2D 02023 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| 2D 02024 | Stojić Defence | Not admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> List) |
| P 03355 | Stojić Defence | Partially moot (Reason: page 20 already admitted in the Order of 10 March 2009) Not admitted in all other respects (the document has more than 30 pages and the Stojić Defence has not specified the pages it requests for admission in keeping with Guideline 8 of the Decision of 24 April 2008) |

| | | |
|---------|-------------|---|
| P 05489 | Prosecution | Admitted (this document is admitted only to test the credibility of Witness 2A-AB) |
| P 05507 | Prosecution | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| P 5508 | Prosecution | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| P 05511 | Prosecution | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| P 05512 | Prosecution | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| P 05514 | Prosecution | Not admitted (Reason: the Witness has not commented on the reliability, relevance and probative value of the exhibit) |
| P 06924 | Prosecution | Admitted |
| P 06933 | Prosecution | Not admitted (Reason: the document was not presented to the Witness in court) |