



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: 10 February 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

Order of: 10 February 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS BOŽO PERIĆ

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”),

NOTING the request to admit 7 exhibits filed by Counsel for the Accused Petković (“Petković Defence”),¹ the request to admit 5 exhibits filed by Counsel for the Accused Stojić (“Stojić Defence”),² the request to admit 9 exhibits filed by Counsel for the Accused Praljak (“Praljak Defence”),³ and the request to admit 4 exhibits filed by the Office of the Prosecutor (“Prosecution”),⁴ all relating to the testimony of Božo Perić (“Proposed Exhibit(s)”) who appeared on 8 and 9 December 2009,

NOTING the objections raised by the Petković Defence against 3 of the Prosecution’s Proposed Exhibits,⁵ the objection raised by the Stojić Defence against one of the Prosecution’s Proposed Exhibits,⁶ the objections raised by the Prosecution against 2 of the Petković Defence’s Proposed Exhibits,⁷ and the Reply filed by the Petković Defence in response to the objections raised by the Prosecution,⁸

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 publicly by the Appeals Chamber on 26 February 2009, by which it upheld the Decision of 27 November 2008,

¹ “Milivoj Petković’s Request for Admission of Exhibits Tendered through Witness Božo Perić”, 14 December 2009.

² “Bruno Stojić’s Filing of the List of Documents Tendered through Witness Božo Perić on 8 December 2009”, 11 December 2009.

³ “Slobodan Praljak’s Request for Admission of Exhibits Tendered through Witness Božo Perić”, 11 December 2009.

⁴ “Prosecution’s Filing of ‘IC List’ of Exhibits Tendered for Admission in Connection with the Witness Božo Perić”, 14 December 2009 (“Prosecution’s Request”)

⁵ “Milivoj Petković’s Objection to the OTP List of Exhibits Tendered through Witness Božo Perić”, 15 December 2009 (“Petković Defence Objections”)

⁶ “Bruno Stojić’s Objections to Prosecution’s Request for Admission of Exhibits through Witness Božo Perić”, 15 December 2009 (“Stojić Defence Objection”).

⁷ “Prosecution Objections to Petković IC List of Documents Tendered Concerning the Witness Božo Perić”, 16 December 2009.

CONSIDERING that with regard to Proposed Exhibits P 11138, P 11139 and P 11146 requested for admission by the Prosecution, the Chamber notes that these are "new documents" pursuant to the Decision of 27 November 2008,

CONSIDERING that without specifying precisely why they are requesting their admission (whether as a Prosecution exhibit or as an exhibit seeking solely to call into question the witness's credibility), the Prosecution submits that these 3 Proposed Exhibits should be admitted as they will be relevant to the location of Arif Pašalić on 9 May 1993;⁹ that for exceptional reasons, it argues notably that 1) the subject of these Proposed Exhibits was only raised recently through the testimony of Witness Filipović and that, consequently, it was unable to present the said Proposed Exhibits earlier, and 2) that the Defence focus on the subject of the Proposed Exhibits enhanced their significance, which could not have been reasonably anticipated by the Prosecution during its case-in-chief,¹⁰

CONSIDERING that the Petković Defence objects to the admission of these 3 Proposed Exhibits, notably on the ground that the Prosecution has not demonstrated the exceptional circumstances that could justify the admission of these new documents pursuant to the Decision of 27 November 2008,¹¹

CONSIDERING that the Stojić Defence also objects to the admission of Proposed Exhibit P 11146 on the ground that the witness could not comment on its reliability, relevance and probative value,¹²

CONSIDERING that the grounds given by the Prosecution in support of its request for admission of Proposed Exhibits P 11138, P 11139 and P 11146 do not enable the Chamber to determine precisely why they are being requested for admission; that to the extent that these Proposed Exhibits contain Prosecution material, the Chamber considers it appropriate to examine them as "mixed documents" pursuant to the Decision of 27 November 2008,

⁸ "Milivoj Petković's Response to Prosecution Objection to Petković IC List for Witness Božo Perić", 16 December 2009 ("Reply").

⁹ Prosecution Request, pp. 4-6.

¹⁰ Prosecution Request, pp. 4-6.

¹¹ Petković Defence Objections, pp. 4-5.

¹² Stojić Defence Objection, p. 3.

CONSIDERING that regarding the issue of “mixed documents”, the Chamber recalls that the Appeals Chamber specified in its Decision of 26 February 2009 that the Trial Chamber has the power to decide for what purpose the “mixed documents” that it decides to admit into evidence will be used,¹³

CONSIDERING that the Chamber notes that in this case, the Prosecution has explained the reasons why it only presented them after the close of its case, but has not explained when it obtained the 3 Proposed Exhibits P 11138, P 11139, P11146, or by what means it obtained Proposed Exhibits P 11138 and P 11139, nor when it disclosed the latter 2 Proposed Exhibits, P 11138 and P11139 to the Defence,¹⁴

CONSIDERING that the Chamber deems that the Prosecution does not present sufficient exceptional circumstances to justify the admission of the Prosecution’s 3 Proposed Exhibits at this stage in the proceedings,

CONSIDERING that the Chamber deems that it was able to hear the Defence on this issue, and decides with respect to all the documents presented by the parties, to admit the Proposed Exhibits into evidence solely insofar as they go too calling into question the credibility of Božo Perić’s testimony,

CONSIDERING, furthermore, that the Prosecution objects to the admission of Proposed Exhibits 4D 01056 and 4D 01058 sought for admission by the Petković Defence, notably on the ground that these Exhibits are governed by Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”), and refer in that respect to the Decision rendered by the Chamber on 14 December 2009 on the admission of evidence through Witness Milan Gorjanc (“Decision of 14 December 2009”),¹⁵

CONSIDERING, however, that the Chamber notes that, in light of their form and content, Proposed Exhibits 4D 01056 and 4D 01058 correspond to official notes from a government service and not to a statement obtained in accordance with Rule 92 *bis*

¹³ Decision of 26 February 2009, para. 29.

¹⁴ Prosecution Request, pp. 4-6.

¹⁵ Prosecution’s Objections, p. 3.

of the Rules, and that, as pointed out by the Petković Defence in its Reply, similar official notes were already admitted into evidence through other witnesses,¹⁶

CONSIDERING that this case is therefore different from the case considered in the Decision of 14 December 2009,

CONSIDERING, consequently, that the Chamber deems that the request for the admission of Proposed Exhibits 4D 01056 and 4D 01058 should be examined within the context of the testimony of Božo Perić, and denies the Prosecution's objection on this point,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its Decision on the admission of evidence, rendered by the Chamber on 13 July 2006, and in the Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered by the Chamber on 24 April 2008,¹⁷

CONSIDERING that the Chamber decides to admit into evidence the exhibits marked "Admitted" in the Annex attached to this Decision as they were put to Witness Božo Perić and present sufficient indicia of relevance, probative value and reliability,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

GRANTS the requests of the Petković Defence, Stojić Defence and Praljak Defence,

PARTIALLY GRANTS the Prosecution's request,

¹⁶ See as an example P 04547 admitted by the Oral Decision of 6 February 2007, T(F), pp. 13566-13567 (Witness DA).

¹⁷ Guideline 8 on the Admission of Documentary Evidence through a Witness.

Annex

Exhibit number (preferably in numerical order)	Party requesting admission of exhibit	Admitted/Not admitted/Marked for identification (MFI)
P 00638	Stojić Defence	Admitted
P 11138 under seal	Prosecution	Admitted insofar as it goes to refuting the credibility of the witness
P 11139 under seal	Prosecution	Admitted insofar as it goes to refuting the credibility of the witness
P 11146	Prosecution	Admitted insofar as it goes to refuting the credibility of the witness
2D 03070	Stojić Defence	Admitted
2D 03071	Stojić Defence	Admitted
2D 03072	Stojić Defence	Admitted
2D 03073	Stojić Defence	Admitted
3D 03793	Praljak Defence	Admitted
3D 03794	Praljak Defence	Admitted
4D 00324	Petković Defence	Admitted
4D 01056	Petković Defence	Admitted
4D 01058	Petković Defence	Admitted
4D 01217	Petković Defence	Admitted
4D 01600	Petković Defence	Admitted
IC 01146	Petković Defence	Admitted
IC 01147	Petković Defence	Admitted
IC 01148	Praljak Defence	Admitted
IC 01149	Praljak Defence	Admitted
IC 01150	Praljak Defence	Admitted
IC 01151	Praljak Defence	Admitted
IC 01152	Praljak Defence	Admitted
IC 01153	Praljak Defence	Admitted
IC 01154	Praljak Defence	Admitted
IC 01155	Prosecution	Admitted