



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: 18 March 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: 18 March 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS RADMILO JASAK

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 for the admission of 18 Exhibits presented by Counsel for the Accused Petković (“Petković Defence”),¹ the request for the admission of six 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 and the request for the admission of 10 Exhibits presented by the Office of the Prosecutor (“Prosecution”) (⁴ “Proposed Exhibit(s)”), relating to the testimony of Witness Radmilo Jasak (“Witness”) who appeared from 18 to 27 January 2010,

NOTING the objections formulated by the Stojić Defence against one Proposed Exhibit presented by the Petković Defence⁵ and four Proposed Exhibits presented by the Prosecution,⁶ the objections formulated by the Praljak Defence against one Proposed Exhibit presented by the Stojić Defence and one Proposed Exhibit presented by the Prosecution,⁷ the objection formulated by the Petković Defence against one Proposed Exhibit presented by the Prosecution,⁸ and the objections formulated by the Prosecution against two Proposed Exhibits presented by the Petković Defence and against one Proposed Exhibit presented by the Stojić Defence,⁹

¹ “Milivoj Petković’s Request for Admission of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 1 February 2010.

² “Bruno Stojić’s Filing of List of Documents Tendered through Witness Radmilo Jasak on 21 and 25 January 2010”, filed publicly on 1 February 2010.

³ “Slobodan Praljak’s Request for Admission of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 1 February 2010.

⁴ “Prosecution Filing of ‘IC List’ of Exhibits Tendered for Admission in Connection with Witness Radmilo Jasak”, filed publicly on 1 February 2010.

⁵ “Bruno Stojić’s Objections to Milivoj Petković’s Request for Admission of Exhibits through Witness Radmilo Jasak”, filed publicly on 2 February 2010.

⁶ “Bruno Stojić’s Objections to Prosecution’s Request for Admission of Exhibits through Witness Radmilo Jasak”, filed publicly on 2 February 2010.

⁷ “Slobodan Praljak’s Response to the Prosecution and Stojić Defence Motions for Admission of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 2 February 2010.

⁸ “Milivoj Petković’s Objection to the OTP List of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 2 February 2010.

⁹ “Prosecution Response to (1) Milivoj Petković’s Request for Admission of Exhibits Tendered through Witness Radmilo Jasak, and (2) Bruno Stojić’s Filing of List of Documents Tendered through Witness Radmilo Jasak on 21 and 25 January 2010”, filed publicly on 2 February 2010.

NOTING the Stojić Defence response to the objections formulated by the Prosecution,¹⁰ and the responses of the Petković Defence to the objections formulated by the Stojić Defence¹¹ and by the Prosecution,¹²

NOTING the “Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses”, rendered publicly by the Chamber on 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 (“Decision of 26 February 2009”) in which it confirmed the Decision of 27 November 2008 and stated that it is a matter for the Trial Chamber to determine to what purpose the “mixed documents” that it decides to admit into evidence will be used,¹³

CONSIDERING, first of all, that the Chamber notes that the Proposed Exhibits presented by the Petković Defence bearing reference numbers 4D 00433, 4D 01524, 4D 01586, 4D 01611 and 4D 01700, the Proposed Exhibits presented by the Stojić Defence bearing reference numbers 3D 02591 and P 02002 and the Proposed Exhibit presented by the Prosecution bearing reference number P 00195 were already admitted by the Chamber;¹⁴ that the requests from the Petković Defence, Stojić Defence and the Prosecution are, therefore, moot, in this respect,

CONSIDERING that the Chamber notes that the Prosecution puts forward that it presented Proposed Exhibit P 10926 with the purpose of casting doubt on the Witness’s credibility and that, consequently, it requests that it be admitted for this reason only,

¹⁰ “Bruno Stojić’s Response to the Objections of the Prosecution to the Stojić List of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 3 February 2010.

¹¹ “Milivoj Petković’s Response to Bruno Stojić’s Objections to Petković IC List for Witness Radmilo Jasak”, filed publicly on 3 February 2010.

¹² “Milivoj Petković’s Response to the Prosecution’s Objections to the Petković IC List for Witness Radmilo Jasak”, filed publicly on 3 February 2010.

¹³ Decision of 26 February 2009, para. 29.

¹⁴ “Order to Admit Evidence Regarding Witness 4D-AB”, 14 January 2010 (“Order of 14 January 2010”) for Exhibit bearing reference number 4D 00433; “Order to Admit Evidence Relating to the Testimony of Slobodan Praljak”, 15 February 2010 (“Order of 15 February 2010”) for the Proposed Exhibits bearing reference numbers 4D 01524, 4D 01586, 4D 01611, 4D 01700, 3D 02591 and P 02002; “Order Admitting Evidence Related to Witness Dragan Jurić”, 15 May 2009 (“Order of 15 May 2009”) for Proposed Exhibit bearing reference number P 00195.

CONSIDERING with regard to Proposed Exhibits P 01747, P 02938, P 02946 and P 02962, the Chamber notes that the Prosecution seeks their admission as “mixed documents” within the meaning of the Decision of 27 November 2008,

CONSIDERING that the Stojić Defence objects to their admission on the ground that the Prosecution has not demonstrated the existence of exceptional circumstances that would justify the admission of these new documents in accordance with the Decision of 27 November 2008,¹⁵

CONSIDERING that the Chamber cannot accept the Prosecution’s argument according to which Proposed Exhibits P 01747, P 02938, P 02946 and P 02692 could not have been presented during its case in chief since it was not aware of all the specific aspects of the Defence case, was not able to anticipate the Witness’s testimony and all the documents that would be relevant to it;¹⁶ this cannot justify their admission as Prosecution evidence at this stage of the proceedings,

CONSIDERING that the Chamber holds that insofar as the Prosecution has not demonstrated sufficiently exceptional circumstances that would justify the admission of the said Proposed Exhibits as Prosecution evidence, they may, consequently, only be admitted for the purpose of challenging the Witness’s credibility,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in the “Decision on the Admission of Evidence”, rendered publicly by the Chamber on 13 July 2006 (“Decision of 13 July 2006”), and in the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered publicly by the Chamber on 24 April 2008 (“Decision of 24 April 2008”),¹⁷

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

¹⁵ “Bruno Stojić’s Objections to Prosecution Request for Admission of Exhibits Tendered through Witness Radmilo Jasak”, filed publicly on 2 February 2010.

¹⁶ “Prosecution Filing of ‘IC List’ of Exhibits Tendered for Admission in Connection with Witness Radmilo Jasak”, filed publicly on 1 February 2010.

¹⁷ Guideline No. 8 regarding the admission of documentary evidence by way of a witness.

CONSIDERING, more particularly, that the Chamber decides to admit Proposed Exhibits P 10926, P 01747, P 02946 and P 02962 solely in that they tend to challenge the Witness's credibility,

CONSIDERING that the Chamber notes with regard to Proposed Exhibit P 02938 that it could be admissible solely in that it went to challenging the Witness's credibility, that the Witness did not comment on its relevance, reliability and probative value, and decides, therefore, not to admit it into evidence,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits indicated as "Not admitted" in the Annex attached to this decision since they are not in accordance with the instructions set forth in the Decisions of 13 July 2006 and 24 April 2008,

FOR THE FOREGOING REASONS,

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

GRANTS the request of the Praljak Defence,

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

DISMISSES AS MOOT the Petković Defence request with regard to the Proposed Exhibits bearing reference numbers 4D 00433, 4D 01524, 4D 01586, 4D 01611 and 4D 01700; the Stojić Defence request with regard to the Proposed Exhibits bearing reference numbers 3D 02591 and P 02002 and the Prosecution request with regard to the Proposed Exhibit bearing reference number P 00195,

DECIDES that it is appropriate to admit into evidence the Proposed Exhibits bearing reference numbers P 01747 (in part: pages 1, 3, 4 and 8), P 02946 (in part: page 1), P 02962 and P 10926, solely in that they go to challenging the credibility of Witness Radmilo Jasak,

DECIDES that it is appropriate to admit into evidence the Exhibits indicated as “Admitted” in the Annex attached to this decision, **AND**

DENIES, by a majority, in all other respects the requests, for the reasons stated in the Annex attached to this Decision.

The Presiding Judge of the Chamber 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 eighteenth day of March 2010

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)
4D 00 075	Petković Defence	Admitted.
4D 00 090	Petković Defence	Admitted.
4D 004 33	Petković Defence	Moot (Already admitted by way of the Order of 14 January 2010).
4D 004 80	Petković Defence	Admitted.
4D 0 1223	Petković Defence	Admitted.
4D 0 1224	Petković Defence	Admitted.
4D 01303	Petković Defence	Not admitted by a majority (The document is not on the Petković Defence 65 <i>ter</i> List and the Defence did not explain during the hearing or in its request which subject and questions commented on during the cross-examination this document relates to, and did thus not justify why it was unable to put it previously on its 65 <i>ter</i> List).
4D 0 1524	Petković Defence	Moot (Already admitted by way of the Order of 15 February 2010).
4D 0 1586	Petković Defence	Moot (Already admitted by way of the Order of 15 February 2010).
4D 0 1611	Petković Defence	Moot (Already admitted by way of the Order of 15 February 2010).
4D 0 1633	Petković Defence	Admitted.
4D 0 1634	Petković Defence	Admitted.
4D 01 639	Petković Defence	Admitted.
4D 01 700	Petković Defence	Moot (Already admitted by way of the Order of 15 February 2010).
P 00401	Petković Defence	Admitted.
P 0 3030	Petković Defence	Admitted.
P 03805	Petković Defence	Not admitted by a majority (The Witness did not comment on the reliability, relevance and probative value of the document).
IC 01167	Petković Defence	Admitted.
2D 0 0257	Stojić Defence	Not admitted by a majority (The Witness did not comment on the reliability, relevance and probative value of the document).
2D 0306 1	Stojić Defence	Admitted.
2D 03075	Stojić Defence	Admitted.
2D 03076	Stojić Defence	Not admitted by a majority (The document does not bear sufficient indicia of reliability in itself and the

		Witness did not comment on its authenticity).
3D 02591	Stojić Defence	Moot (Already admitted by way of the Order of 15 February 2010).
P 02002	Stojić Defence	Moot (Already admitted by way of the Order of 15 February 2010).
IC 01165	Praljak Defence	Admitted.
IC 01166	Praljak Defence	Admitted.
P 00 195	Prosecution	Moot (Already admitted by way of the Order of 15 May 2009).
P 01 747 (only ecourt pages 1, 3, 4 and 8)	Prosecution	Admitted in part and solely in that it goes to challenging Witness Radmilo Jasak's credibility (only ecourt pages 1, 3, 4 and 8).
P 02 919	Prosecution	Admitted.
P 02 934	Prosecution	Admitted.
P 0 2938	Prosecution	Not admitted by a majority (The Witness was unable to comment on the reliability, probative value and relevance of the document).
P 0 2946 (only ecourt page 1)	Prosecution	Admitted in part and solely in that it goes to challenging Witness Radmilo Jasak's credibility (only ecourt page 1 is admitted).
P 02962	Prosecution	Admitted solely in that it goes to challenging Witness Radmilo Jasak's credibility.
P 10926	Prosecution	Admitted solely in that it goes to challenging Witness Radmilo Jasak's credibility.
P 11191	Prosecution	Admitted.
P 11192	Prosecution	Admitted.

**DISSENTING OPINION OF PRESIDING JUDGE, JEAN-CLAUDE
ANTONETTI**

The rejection by the majority of the Chamber of several documents put to Witness Radmilo JASAK forces me **once again** to issue a **dissenting opinion** since the motivation of the majority is not satisfactory and is completely **contrary** to what happened during the hearing, the questions asked and the responses given.

I will take the five documents in turn to explain my position on these documents which come from different sources (the Prosecution and the Defence).

Document 2D 00257

This document was presented and, in part, read to the Witness.

The attorney asked the Witness the following question: "Does this document show that the BH Army already in 1992, because we see the letter dated October, when there was joint combat going on, the BH Army fighting together with the HVO against the Serb Army, that they were preparing plans like this against the HVO? Does this document show that? And looking at the documents from that period or from later on, can you confirm that there were, indeed, such plans in existence?"

The Witness replies as follows: "Well, from this document we can see that the plans did exist already at that time."

In these circumstances how can the majority claim that the Witness did not comment on the reliability, relevance and probative value of this document? Even though the Witness indicated that he knew that the author of the document was Zejnil DELALIĆ and that this document demonstrated that since October 1991, the BH Army had been able to plan military operations!

Document 4D 01303

This is a military police report on activities during the first week of June 1993.

This report indicates that on 31 May 1993, the military police received an order to take control of Mostar town, in cooperation with the local police, on account of the precarious situation resulting from the looting of apartments during the night.

This document establishes that three HVO members were arrested for having committed an offence against the War Hospital in Mostar.

This report serves to demonstrate that investigations were carried out following a rape.

In addition, it appears that 11 HVO members were arrested in Čitluk territory.

How can it be said that the Defence did not explain to which subject the document relates when it would be obvious to even a first-year law student that the report deals with offences committed during the first week of the month of June and that the HVO conducted investigations and carried out arrests notably regarding the issue of the apartments!

That it was not on the 65 *ter* List is not in itself a decisive factor which would favour rejecting the document, and the Trial Chamber, in the interests of justice, can rectify this omission.

Document P 03805

This is an official UNPROFOR document on military activities.

This document contains the following phrase: “Petković signalled that HVO would continue to scrutinize humanitarian aid convoys”.

How can it be said that the Witness did not comment on the reliability and probative value even though the issue of humanitarian aid convoys was brought up by the Prosecution and the Accused Petković testified on this issue?

Document 2D 03076

This is a schedule from 21:43 to 23:15 authenticated by the signature of the Accused Praljak.

Document P 02938

This document was put to the Witness and is entitled: “Reply to the PROTEST of the 4th Corps”.

The Prosecutor asked the Witness if it was not a reference to the fact that the HVO had dealings with the common enemy.

This is an important detail in support of the Prosecution’s argument. How can the majority say that the Witness did not comment on the reliability, probative value and

relevance when the Witness did talk about the contents of this document which comes from the Accused Milivoj Petković.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this eighteenth day of March 2010

At The Hague

The Netherlands

[Seal of the Tribunal]