



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: 7 September 2007
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

Decision of: 7 September 2007

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON LIST OF EXHIBITS

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 Peter Murphy 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”);

SEIZED of the “Prosecution Motion to Add Exhibits to Its Exhibit List (Witness E)” and its annex, dated 3 September 2007 and filed partly confidentially by the Office of the Prosecutor (“Prosecution”) on 4 September 2007 (“Motion”), in which the Prosecution requests the leave of the Chamber to add twenty-seven documents (“Proposed Exhibits”) to the list of exhibits established pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) and filed on 19 January 2006 (“65 *ter* List”), as these twenty-seven documents concern the testimony of a witness (“Witness”) who is expected to appear before the Chamber on 10, 11, 12 and 13 September 2007,

NOTING “The Accused Praljak and Petković’s Response to Prosecution’s Motion to Add Exhibits to Its Exhibit List (Witness E)” filed confidentially by Counsel for the Accused Praljak (“Praljak Defence”) and Petković (“Petković Defence”) on 5 September 2007 (“Praljak and Petković Response”), in which the Praljak Defence and Petković Defence object to the addition of documents P 10178, P 10185, P 10188, P 10200, P 10165, and P 10163 to the 65 *ter* List,

NOTING “Bruno Stojić, Valentin Ćorić and Berislav Pušić Response to Prosecution Motion to Add Exhibits to Its Exhibit List (Witness E)” filed confidentially by Counsel for the Accused Stojić (“Stojić Defence”), Ćorić (“Ćorić Defence”), and Pušić (“Pušić Defence”) on 5 September 2007 (“Stojić, Ćorić and Pušić Response”) in which the Stojić, Ćorić and Pušić Defences oppose the Motion,

CONSIDERING that in support of the Motion, the Prosecution submits that the Proposed Exhibits directly relate to the exhibits contained in the 65 *ter* List relating to the testimony of the Witness,¹

CONSIDERING that in support of the Motion the Prosecution submits that on 1 June 2007 it obtained from the Witness a series of documents containing approximately

¹ Motion, paras. 1 and 2.

6,000 pages which it disclosed in its entirety to the Defence on 16 July 2007; that subsequently, on 10 August 2007, it disclosed to the Defence a list of fifty-nine documents selected from among those 6,000 pages and that, in the end, it only retained twenty-seven documents from among the 6,000 pages, and the present Motion requests the Chamber to add these twenty-seven documents to the 65 *ter* List,²

CONSIDERING that the Prosecution submits that as a result it was not in a position to include the Proposed Exhibits in the 65 *ter* List it filed on 19 January 2006,³

CONSIDERING that the Prosecution further submits that the Proposed Exhibits are relevant in respect of paragraphs 11, 12, 017h, 017j, 017-5a, 017-5f, 017-5h, 017-5i, 017-5j, 017-5m, 017-6a, 017-6e, 039c, 039d, 119, 122, 127, 132, 146, 147, 150, 151, 197, 202, 224, 225, and 232 of the Amended Indictment of 16 November 2005 (“Indictment”),⁴

CONSIDERING that the Prosecution also submits that the addition of the Proposed Exhibits to the 65 *ter* List will not cause prejudice to the Defence because of the fact that all of the Proposed Exhibits have already been disclosed to it,⁵

CONSIDERING that in support of the Praljak and Petković Response, the Praljak and Petković Defences submit that documents P 10178, P 10185 and P 10188 already appear on the 65 *ter* List under different numbers,⁶

CONSIDERING that the Praljak and Petković Defences further submit that information similar to that contained in documents P 10200 and P 10165 can be found in documents P 06031 and P 03229, which already appear on the 65 *ter* List,⁷

CONSIDERING that the Praljak and Petković Defences finally submit that the Prosecution became aware of document P 10163 several years ago, since this document was purportedly discussed in 1994 during an interview between the

² Motion, paras. 2 and 3.

³ Motion, paras. 1 and 5.

⁴ Motion, para. 1.

⁵ Motion, para. 6.

⁶ Praljak and Petković Response, paras. 4-6

⁷ Praljak and Petković Response, paras. 7 and 8.

Prosecution and the Witness, and that right then it was purportedly stated that the document had to be photocopied at the end of the interview,⁸

CONSIDERING that in support of the Stojić, Ćorić and Pušić Response, the Stojić, Ćorić and Pušić Defences submit that the Accused do not have sufficient time to prepare their defence,⁹

CONSIDERING that the Stojić, Ćorić and Pušić Defences further submit that the authenticity of the Proposed Exhibits is debatable, in particular because the Prosecution refused to disclose in the Motion the exact provenance of the documents obtained through the Witness,¹⁰

CONSIDERING that the Stojić, Ćorić and Pušić Defences submit that the Defence already faced a heavy workload characterised by numerous motions recently filed by the Prosecution at the time of service of the documents in July,¹¹

CONSIDERING that according to the Stojić, Ćorić and Pušić Defences, the Prosecution fails to demonstrate sufficiently how the Proposed Exhibits are essential to its case and are relevant and have substantial probative value, and that the Prosecution, having custody of them for nearly three and a half months, should have disclosed them to the Defence earlier,¹²

CONSIDERING that according to the Stojić, Ćorić and Pušić Defences, the Prosecution lacked diligence by becoming aware of the existence of these documents belatedly and by consequently presenting the Proposed Exhibits belatedly,¹³

CONSIDERING that in order to grant a request to add exhibits to the 65 *ter* List, the Chamber must ensure that the rights of the Defence are respected by making sure that any additional exhibits are disclosed sufficiently in advance and will not inhibit the Defence in the preparation of its defence,¹⁴

⁸ Praľjak and Petković Response, para. 9.

⁹ Stojić, Ćorić and Pušić Response, pp. 3-5.

¹⁰ Stojić, Ćorić and Pušić Response p. 4.

¹¹ Stojić, Ćorić and Pušić Response, p. 4.

¹² Stojić, Ćorić and Pušić Response, p. 5.

¹³ Stojić, Ćorić and Pušić Response, pp. 5-7.

¹⁴ See for example, *The Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution's Motion to Amend Its Rule 65 *ter* Exhibit List, 15 December 2005 ("Martić Decision"), p. 3; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to

CONSIDERING that the Chamber may take into account other factors which argue in favour or against the request to add exhibits to the list, such as the existence of a relationship with the Indictment or any other valid reason which might justify the amendment of the exhibits list,¹⁵

CONSIDERING, furthermore, that pursuant to Rule 89(C) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value,

CONSIDERING that documents P 10178 and P 10188 presented in the Motion resemble respectively documents P 04263 and P 04404 which already appear on the 65 *ter* List, although they are not identical,

CONSIDERING that the Chamber believes that the discussion of the Proposed Exhibits in court through the Witness will inform the Chamber about their relevance, probative value and authenticity,

CONSIDERING that the Chamber finds that documents P 10185, presented in the Motion, and P 04297, which already appears on the 65 *ter* List, seem to be identical,

CONSIDERING that the Chamber deems it appropriate not to add document P 10185 to the 65 *ter* List since having two identical documents on the 65 *ter* List under different numbers can only cause confusion,

CONSIDERING that the Chamber notes, as claimed by the Defence, that documents P 10200 and P 10156 presented in the Motion contain information closely related or identical to that contained respectively in documents P 06031 and P 03229 which already appear on the 65 *ter* List, but that it will be in a better position to verify that claim after these documents have been presented in court through the Witness,

CONSIDERING that, as the Praljak and Petković Defences submit, the Chamber finds that the Prosecution has failed to justify the request for the tardy addition of

Amend the Rule 65 *ter* Exhibit List", 6 December 2006 ("Popović Decision"), p. 7; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, Decision on the Prosecution Motion to Amend Its Rule 65 *ter* Exhibit List, 21 December 2006 ("Milošević Decision"), p. 2.

¹⁵ See for example, Popović Decision, p. 8; *The Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Prosecution's Application for Leave to Vary Its Exhibit List Filed Pursuant to Rule 65 *ter* (E) (iii), 14 February 2005, p. 3 ("Halilović Decision"); Milošević Decision, p. 2.

document P 10163 to the 65 *ter* List and that, as such, the Chamber decides not to grant the Motion in respect of it,

CONSIDERING that the Chamber finds that the twenty-seven Proposed Exhibits were disclosed to the Defence, as of 16 July 2007,¹⁶

CONSIDERING that the Chamber consequently believes that the tardy addition of the twenty-seven Proposed Exhibits to the 65 *ter* List does not infringe upon the rights of the Accused as provided under Article 21 of the Statute of the Tribunal, and in particular upon the right under Article 21 (4) (b) to have adequate time and facilities for the preparation of their defence, as the Proposed Exhibits have been available to the Defence since July 2007,

CONSIDERING that since the burden of proof rests on the Prosecution, it is up to the Prosecution to demonstrate in court the authenticity of the Proposed Exhibits presented through the Witness, that the Defence will have the opportunity to test them during cross-examinations, and that the Chamber will take into account the arguments of the parties in this respect when it assesses the relevance and probative value of these documents in order to decide, as necessary, to admit them into evidence,

CONSIDERING that the Chamber finds moreover that these Proposed Exhibits are in keeping with the allegations set forth by the Prosecution through documents already contained in the 65 *ter* List dealing with paragraphs 11, 12, 017h, 017j, 017-5a, 017-5f, 017-5h, 017-5i, 017-5j, 017-5m, 017-6a, 017-6e, 039c, 039d, 119, 122, 127, 132, 146, 147, 150, 151, 197, 202, 224, 225, and 232 of the Indictment,

CONSIDERING furthermore that the Chamber finds that the Prosecution had to deal with certain difficulties, in particular significant translation delays, in order to select the twenty-seven Proposed Exhibits; that the Chamber recognises the effort made by the Prosecution in making that selection from among the large number of documents available to it at the time,

¹⁶ The Chamber notes nonetheless that the Prosecution states that it disclosed the documents on 16 July 2007, however the Stojić, Ćorić and Pušić Defences state that they received them on 17 July 2007.

CONSIDERING, finally, that the Chamber finds that the Proposed Exhibits are relevant and have some probative value, and considers that it is in the interests of justice to add them to the 65 *ter* List,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89(C) of the Rules,

PARTIALLY GRANTS the Motion,

DENIES the request to admit documents P 10163 and P 10185 to the 65 *ter* List,

AUTHORISES the addition of the Proposed Exhibits to the 65 *ter* List.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this seventh day of September 2007

At The Hague

The Netherlands

[Seal of the Tribunal]