



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 FILIP FILIPOVIĆ

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 30 exhibits presented by Counsel for the Accused Petković (“Petković Defence”),¹ the request to admit six exhibits presented by Counsel for the Accused Stojić (“Stojić Defence”),² the request to admit four exhibits presented by Counsel for the Accused Praljak (“Prosecutor’s Defence”) (“Indictment”),³ (“Proposed Exhibit(s)”), related to the testimony of Witness Filip Filipović (“Witness”) who appeared before the Chamber on 2 through 7 December 2009,

NOTING the objections raised by the Stojić Defence against the admission of the 3 Proposed Exhibits from the Prosecution,⁴ the objections raised by the Petković Defence against the admission of 12 Proposed Exhibits from the Prosecution,⁵ and the objection raised by the Prosecution against 1 Proposed Exhibit from the Praljak Defence,⁶

NOTING the response of the Stojić Defence to the objection raised by the Petković Defence against 1 Proposed Exhibit from the Prosecution,⁷ and the response of the Petković Defence to the objection raised by the Prosecution against 1 Proposed Exhibit from the Praljak Defence,⁸

NOTING the “Prosecution Submission Concerning English Version of Exhibit P 11123”, filed publicly by the Prosecution on 15 December 2009 (“Notice on Exhibit P 11123”), wherein the Prosecution informed the Chamber that the English translation of Proposed Exhibit P 11123, introduced and commented on in BCS by Milivoj

¹ “Milivoj Petković’s Request for Admission of Exhibits Tendered through Witness Filip Filipović”, filed publicly on 10 December 2009.

² IC 01144.

³ “Prosecution Filing of ‘IC List’ of Exhibits Tendered for Admission in Connection with Witness Filip Filipović”, filed publicly on 10 December 2009 (“Notice of the Prosecution”).

⁴ “Bruno Stojić’s Objections to the Prosecution’s Request for Admission of Exhibits through Witness Filip Filipović”, filed publicly on 11 December 2009 (“Objections of the Stojić Defence”).

⁵ “Milivoj Petković’s Objection to the OTP List of Exhibits Tendered through Witness Filip Filipović”, filed publicly on 11 December 2009 (“Objections of the Petković Defence”).

⁶ “Prosecution Opposition to Praljak IC List Concerning the Witness Filipović”, filed publicly on 10 December 2009.

⁷ “Bruno Stojić’s Response to the Objections of the Petković Defence to the Prosecution’s List of Exhibits Tendered through Filip Filipović”, filed publicly on 14 December 2009.

Petković during his testimony in the Case of *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T (“Blaškić Case”),⁹ does not correspond to the original in BCS and also that the version in BCS, the language used by Milivoj Petković to comment upon the Proposed Exhibit tendered in the *Blaškić* Case, might be considered the only authoritative version,¹⁰

NOTING the “Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses” issued 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” issued publicly by the Appeals Chamber on 26 February 2009 (“Decision of 26 February 2009”), in which the Appeals Chamber upheld the Decision of 27 November 2008 and affirmed that it is a matter for the Trial Chamber to decide the purposes for which the “mixed documents” admitted into evidence will be used,¹¹

CONSIDERING that, as a preliminary consideration, the Chamber observes, on the one hand, that Proposed Exhibit P 11123 is virtually identical to Exhibit 4D 00618, admitted by the Chamber on 19 November 2009;¹² that, in fact these two documents are the duplicates of a single document from the testimony of Milivoj Petković in the *Blaškić* Case;¹³ that, despite this, the English and BCS versions of Exhibit 4D 00618 and of Proposed Exhibit P 11123 do not agree,

CONSIDERING that the Chamber shares the view of the Prosecution,¹⁴ the Stojić Defence,¹⁵ and the Petković Defence¹⁶, when they observe that the BCS version of Proposed Exhibit P11123 is more authoritative than its English translation, due to the

⁸ “Milivoj Petković’s Response to the Prosecution Opposition to Praljak IC List for Witness Filip Filipović”, filed publicly on 14 December 2009.

⁹ *Blaškić* Case, Transcript in French (T(F)), p. 22439-22481, 23-24 June 1999.

¹⁰ Notice on Exhibit P 11123, para. 1-3.

¹¹ Decision of 26 February 2009, para. 29.

¹² Order on Admission of Evidence Regarding Witness Dragan Čurčić, issued publicly, 19 November 2009.

¹³ Notice on Exhibit P 11123, para. 2.

¹⁴ Notice on Exhibit P 11123, para. 3.

¹⁵ Objections of the Stojić Defence, p. 2.

¹⁶ Objections of the Petković Defence, p. 2.

fact that during his testimony in the *Blaškić* Case, Milivoj Petković commented on the BCS and not the English version of the document,¹⁷

CONSIDERING that the Chamber, as a result, asks the Prosecution to upload a new English translation of Proposed Exhibit P 11123 onto the eCourt system that is faithful to the original version in BCS, and likewise asks the Petković Defence to upload a new English translation of Exhibit 4D 00618 onto the eCourt system that is faithful to the original version in BCS,

CONSIDERING that the Chamber observes, moreover, that Proposed Exhibits 4D 01205, 4D 01611, 4D 01700 and P 02078 have already been admitted by the Chamber¹⁸ and that the request for admission involving them is thus moot,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the criteria of admissibility defined in the “Decision on the Admission of Evidence”, issued publicly by the Chamber on 13 July 2006 (“Decision of 13 July 2006”), and also in the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, issued publicly by the Chamber on 24 April 2008 (“Decision of 24 April 2008”),¹⁹

CONSIDERING that the Chamber notes that the Prosecution is requesting that Proposed Exhibit P11131 be admitted on grounds that it goes to challenging the credibility of Witness Filip Filipović,

CONSIDERING that the Petković Defence specifically opposes the admission of Proposed Exhibits P 11118,²⁰ P 11128, P11129,²¹ P 11131, P11138 and P 11139 on the grounds that the Prosecution has not shown exceptional circumstances sufficient

¹⁷ *Blaškić* Case, T(F), p. 22439-22481, 23-24 June 1999.

¹⁸ Regarding Proposed Exhibit P 02078, see “Order to Admit Evidence Regarding Witness Herbert Okun”, public document, 12 June 2007; regarding Proposed Exhibits 4D 01205, 4D 01611 and 4D 01700, see “Order to Admit Evidence Relating to the Testimony of Slobodan Praljak”, public document, 15 February 2010.

¹⁹ Guideline 8: The Admission of Documentary Evidence through a Witness.

²⁰ Nevertheless, the Petković Defence does not oppose the admission of Proposed Exhibit P 01118, if done solely for purposes of challenging the credibility of the witness, Objections of the Petković Defence, pp. 1-2.

²¹ Nevertheless, the Petković Defence does not oppose the admission of Proposed Exhibit P 01118, if done solely for purposes of challenging the credibility of the witness, Objections of the Petković Defence, p 2.

to justify admitting these new documents within the meaning of the Decision of 27 November 2008,²²

CONSIDERING that the Chamber emphasises that the Prosecution requests the admission of Proposed Exhibit P 11118 for two reasons, that is, as an exhibit suitable for challenging the credibility of Witness Filip Filipović but simultaneously, as inculpatory evidence, and it is therefore appropriate to analyse it as a “mixed document” within the meaning of the Decision of 27 November 2008,

CONSIDERING that the Chamber observes regarding Proposed Exhibits P 11128, P 11129, P 11138 and P 11139 that the Prosecution has not clearly identified to what purpose it sought the admission of these exhibits and it is for that reason appropriate that they be analysed as “mixed documents” within the meaning of the Decision of 27 November 2008,

CONSIDERING that the Chamber observes that the Prosecution has not followed the procedure established by the Chamber for requesting the admission of “mixed documents”, in that, with regard to Proposed Exhibits P 11118, P 11128, P 11129, P 11138 and P11139, the Prosecution has not explained precisely when and precisely how it obtained these documents, nor precisely when it disclosed them to the Defence and why it only presented them after it ended its examination-in-chief.

CONSIDERING that the Chamber cannot accept the argument of the Prosecution whereby Proposed Exhibits P 11118, P 11128, P 11129, P 11138 and P 11139 are related to the testimony of the Witness, which could only justify their admission as inculpatory evidence at this stage of the proceedings,²³

CONSIDERING that the Chamber observes that, to the extent the Prosecution has not argued exceptional circumstances justifying the admission of said Proposed Exhibits as inculpatory evidence, they may not then be admitted solely with a view to challenging the credibility of the Witness,

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked as “Admitted” in the Annex attached to this Decision, as they were presented to the Witness and display sufficient indicia of relevance, probative value and reliability,

²² Objections of the Petković Defence, pp. 2-3.

CONSIDERING more particularly that the Chamber decides to admit into evidence the Proposed Exhibits P 11118, P 11128, P 11131, P 11138 and P 11139 only insofar as they go to challenging the credibility of the Witness,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked as “Not Admitted” in the Annex attached to this Decision as they are not consistent with the instructions handed down in the Decisions of 13 July 2006 and of 24 April 2008,

²³ Notice of the Prosecution, pp. 2-5.

FOR THE FOREGOING REASONS,

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

GRANTS the request of the Stojić Defence,

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

DECIDES that there is cause to admit Proposed Exhibits P 11118, P 11128, P 11129, P 11131, P 11138 under seal and P 11139 under seal, but only insofar as they go to challenging the credibility of Witness Filip Filipović,

DECIDES that there is cause to admit the Proposed Exhibits marked as “Admitted” in the Annex attached to this decision,

DECLARES MOOT the request of the Petković Defence concerning the Proposed Exhibits bearing identification numbers 4D 01205, 4D 01611, 4D 01700, as well as the request of the Prosecution concerning the Proposed Exhibit bearing identification number P 02078,

DENIES by a majority in all other respects the requests of the Petković Defence, the Praljak Defence and the Prosecution, for the reasons set forth in the Annex attached to this decision.

AND

INSTRUCTS the Prosecution and the Petković Defence to upload onto the eCourt system new English versions of Exhibits P 11123 and 4D 00618 that are faithful to their original BCS versions.

The President 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/Moot
4D 00389	Petković Defence	Admitted
4D 00455	Petković Defence	Admitted
4D 00594	Petković Defence	Admitted
4D 00597	Petković Defence	Admitted
4D 00830	Petković Defence/Prosecution	Admitted
4D 00895	Petković Defence	Admitted
4D 00896	Petković Defence	Admitted
4D 00897	Petković Defence	Admitted
4D 01079	Petković Defence	Admitted
4D 01106	Petković Defence	Admitted
4D 01179	Petković Defence	Admitted
4D 01198	Petković Defence	Admitted
4D 01200	Petković Defence	Not admitted. (Grounds: The Chamber observes that the Petković Defence, acting through Witness Filip Filipović, has not demonstrated a sufficiently relevant link between the document and the Indictment.)
4D 01205	Petković Defence	Moot. The document was already admitted under the Order to Admit Evidence Relating to the Testimony of Slobodan Praljak on 15 February 2010.
4D 01206	Petković Defence	Admitted
4D 01207	Petković Defence	Admitted
4D 01210	Petrović Defence	Admitted
4D 01514	Petković Defence	Admitted
4D 01518	Petković Defence	Admitted
4D 01611	Petković Defence/Praljak	Moot. The document was already admitted under the Order to Admit Evidence Relating to the Testimony of Slobodan Praljak on 15 February 2010.
4D 01700	Petković Defence	Moot. The document was already admitted under the Order to Admit Evidence Relating to the Testimony of Slobodan Praljak of 15 February 2010.
4D 02016	Petković Defence	Admitted
P 00554	Petković Defence	Admitted
P 00658	Petković Defence	Admitted
P 01200	Petković Defence	Admitted
P 02195	Petković Defence	Admitted
P 02825	Petković Defence	Admitted
IC 01137	Petković Defence	Admitted
IC 01138	Petković Defence	Admitted

IC 01139	Petković Defence	Admitted
2D 01486	Stojić Defence	Admitted
2D 03066	Stojić Defence	Admitted
2D 03067	Stojić Defence	Admitted
2D 03068	Stojić Defence	Admitted
2D 03069	Stojić Defence	Admitted
P 01349	Stojić Defence	Admitted
1D 03151	Praljak Defence	Not admitted. (Grounds: Praljak Defence did not specify the eCourt pages of the document sought to be admitted.)
3D 01731	Praljak Defence	Admitted
3D 03792	Praljak Defence	Admitted
P 01933	Prosecution	Admitted
P 02078	Prosecution	Moot. (Grounds: exhibit already admitted under Order to Admit Evidence Regarding Witness Herbert Okun on 12 June 2007.)
P 10007	Prosecution	Not admitted. (Grounds: the excerpt of the transcript of testimony is not admissible outside of the procedure under Rule 92 <i>bis</i> of the Rules. Moreover, the Chamber, by virtue of the Decision on the Admission into Evidence of Slobodan Praljak's Evidence in the Case of Naletilić and Martinović, issued on 5 September 2007, decided to reject <i>in toto</i> the request for admission of the testimony pursuant to Rule 92 <i>bis</i> of the Rules.)
P 10028	Prosecution	Not admitted. (Grounds: the excerpt of the transcript of testimony is not admissible outside of the procedure under Rule 92 <i>bis</i> of the Rules. Moreover, the Chamber, by virtue of the Decision on Prosecution Motion for the Admission into Evidence of Milivoj Petković Given in Other Cases Before the Tribunal (given in the Blaškić Case), issued on 17 October 2007, decided to reject <i>in toto</i> the request for admission of the testimony pursuant to Rule 92 <i>bis</i> of the Rules.)
P 11118	Prosecution	Admitted only insofar as it goes to challenging the credibility of Witness Filip Filipović.
P 11123	Prosecution	Admitted
P 11128	Prosecution	Admitted only insofar as it goes to

		challenging the credibility of Witness Filip Filipović.
P 11129	Prosecution	Admitted only insofar as it goes to challenging the credibility of Witness Filip Filipović.
P 11131	Prosecution	Admitted only insofar as it goes to challenging the credibility of Witness Filip Filipović.
P 11138 under seal	Prosecution	Admitted under seal only insofar as it goes to challenging the credibility of Witness Filip Filipović.
P 11139 under seal	Prosecution	Admitted under seal only insofar as it goes to challenging the credibility of Witness Filip Filipović.
IC 01141	Prosecution	Not admitted. (Grounds: the excerpt from the transcript of testimony is not admissible outside of the procedure under Rule 92 <i>bis</i> of the Rules. Moreover, the Chamber, by virtue of the Decision on Prosecution Motion for the Admission into Evidence of Milivoj Petković Given in Other Cases Before the Tribunal (given in the Blaškić Case), issued on 17 October 2007, decided to reject <i>in toto</i> the request for admission of the transcript testimony pursuant to Rule 92 <i>bis</i> of the Rules.)
IC 01142	Prosecution	Not admitted. (Grounds: the excerpt from the transcript of testimony is not admissible outside of the procedure under Rule 92 <i>bis</i> of the Rules. Moreover, the Chamber, by virtue of the Decision on Prosecution Motion for the Admission into Evidence of Milivoj Petković Given in Other Cases Before the Tribunal (given in the Blaškić Case), issued on 17 October 2007, decided to reject <i>in toto</i> the request for admission of the transcript testimony pursuant to Rule 92 <i>bis</i> of the Rules.)
IC 01143	Prosecution	Not admitted. (Grounds: the excerpt from the transcript of testimony is not admissible outside of the procedure under Rule 92 <i>bis</i> of the Rules. Moreover, the Chamber, by virtue of the Decision on Prosecution Motion for the Admission into Evidence of

		Milivoj Petković Given in Other Cases Before the Tribunal (given in the Blaškić Case), issued on 17 October 2007, decided to reject <i>in toto</i> the request for admission of the transcript testimony pursuant to Rule 92 <i>bis</i> of the Rules.)
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Dissenting Opinion of Presiding Judge Jean-Claude Antonetti

I dissent with regard to documents **4D 01200, 1D 03151, IC 01141, IC 00142, IC 01143.**

These documents should be admitted, pursuant to the **Rules** and in **the interests of Justice.**

Document 4D 01200

This document was presented to the witness and commented upon at length (p. 47562 of the record).

This is a document issued by UNPROFOR in November 1993, relating to the *Mujahidin* of Central Bosnia.

Numerous witnesses pointed to the role of the *Mujahidin* in the unfolding of the conflict.

Under such conditions then, how can one be of the view that there is no relevant link between this document and the Indictment?

I cannot adhere to the prevailing view of the Chamber on the subject, because this refusal amounts to excluding from future deliberations a key element for understanding what occurred, particularly insofar as the actual causes of the conflict are concerned.

Document 1D 03151

This is a document dated as of 20 July 1987, addressing regulations applicable to the brigades of the JNA.

To the extent that the primary actors in the conflict are former officers of the JNA and that the military regulations in the Republics of the Former Yugoslavia were largely inspired by these Yugoslav regulations, it is within the interests of Justice to admit this document in its entirety in order to provide a gauge for comparison.

Documents IC 001141, IC 01142 and IC 01143

These are documents proceeding from the **Indictment** that involve portions of the testimony of the Accused **Petković** in the **Blaškić** proceedings.

Indisputably, the contents of these statements are relevant in relation to the case at hand.

The argument stating that this excerpt or transcript is not admissible outside of Rule 92 *bis* is not an acceptable one, for, in the language of Rule 89 (C): the Chamber “may admit any relevant evidence” which it deems to have probative value.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this eighteenth day of March 2010

At The Hague

Netherlands

[Seal of the Tribunal]