



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: 22 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: 22 March 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS VINKO MARIĆ

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 32 Exhibits presented by Counsel for the Accused Milivoj Petković (“Petković Defence”)¹ and the request for the admission of five Exhibits presented by the Office of the Prosecutor (“Prosecution”)² regarding the testimony of Vinko Marić (“Proposed Exhibit(s)”) who appeared from 11 to 14 January 2010,

NOTING the oral decision rendered by the Chamber on 11 January 2010 by way of which the Chamber authorised the Petković Defence to add Proposed Exhibits 4D 02020, 4D 02021 and 4D 02022 to its exhibit list as set forth under Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) filed on 31 March 2008 (65 *ter* List”),³

NOTING the objections formulated by the Petković Defence against two Proposed Exhibits presented by the Prosecution,⁴ the objection formulated by Counsel for the Accused Bruno Stojić (“Stojić Defence”) against one Proposed Exhibit presented by the Prosecution,⁵ the objections formulated by the Prosecution against three Proposed Exhibits presented by the Petković Defence,⁶

NOTING the oral decision rendered by the Chamber on 19 January 2010 by way of which it granted the parties an extension of time until 21 January 2010 within which to file their replies,⁷

NOTING the Petković Defence reply to the objections formulated by the Prosecution against three Proposed Exhibits presented by the Petković Defence,⁸ the Prosecution reply to the objections formulated by the Stojić Defence against one Proposed Exhibit presented by the Prosecution⁹ and, finally, the Prosecution reply to the objections

¹ IC 01157.

² IC 01158.

³ Oral Decision of 11 January 2009, Transcript of Hearing in French (“T (F)”), pp. 48077 and 48078.

⁴ IC 01159.

⁵ IC 01160.

⁶ IC 01161.

⁷ Oral Decision of 19 January 2010, T (F), p. 48605.

⁸ IC 01162.

⁹ IC 01163.

formulated by the Petković Defence against two Proposed Exhibits presented by the Prosecution,¹⁰

NOTING the “Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses”, rendered publicly 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,

NOTING the “Order Clarifying Decision of 27 November 2008”, rendered publicly by the Chamber on 12 January 2010 (“Order of 12 January 2010”),

CONSIDERING that, *in limine*, the Chamber notes that the Proposed Exhibits 4D 00793 and 4D 01715 were already admitted by way of the “Order To Admit Evidence Regarding Witness Božo Pavlović” rendered publicly by the Chamber on 19 January 2010 (“Order of 19 January 2010”), and that the requests for the admission of these two Proposed Exhibits are, therefore, moot,

CONSIDERING, finally, that the Chamber notes that the reasons put forward by the Prosecution in support of its request to admit Proposed Exhibits P 05361 and P 03899 do not allow the Chamber to determine precisely the purpose for which it seeks their admission;¹¹ that the Petković Defence opposes the admission into evidence of Proposed Exhibit P 05361¹² and the Stojić Defence opposes the admission into evidence of Proposed Exhibit P 03899;¹³ and that since these Proposed Exhibits are likely to contain inculpatory evidence, the Chamber finds that it is appropriate to consider these Proposed Exhibits as “mixed documents” within the meaning of the Decision of 27 November 2008,

¹⁰IC 01164.

¹¹ IC 01158, pp. 3 and 4; IC 01164, p. 1; IC 01163, pp. 1 and 2.

¹² IC 01159, pp. 1 and 2.

¹³ IC 01160, pp. 1 and 2.

CONSIDERING that on the issue of “mixed documents”, the Chamber recalls that the Appeals Chamber specified in its Decision of 26 February 2009 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,¹⁴

CONSIDERING that the Chamber notes that, in the case in point, the Prosecution explains its reason for having presented the evidence only after the close of its case, yet gives no explanation as to when it obtained the two Proposed Exhibits P 05361 and P 03899, nor how it obtained the said Proposed Exhibits, nor when it disclosed them to the Defence,¹⁵

CONSIDERING that the Chamber finds, consequently, that the Prosecution does not present sufficiently exceptional circumstances that would justify the consideration of these two Proposed Exhibits as inculpatory evidence; that it will consider the admissibility of these two Proposed Exhibits solely on the basis that they go to casting doubt on the credibility of Vinko Marić’s testimony,

CONSIDERING, furthermore, that the Prosecution seeks the admission of Proposed Exhibit P 11162 by specifying notably that: 1) it obtained this document from Croatian archives on 8 December 2000; 2) it disclosed the said Exhibit to the Defence by way of the electronic disclosure system (“EDS”) “a long time ago” and disclosed this Exhibit to the Defence again on 12 January 2010 before the Prosecution cross-examination of Witness Vinko Marić; 3) this Exhibit was not presented previously since the relevance of the artillery orders sent by the General Staff to Vinko Marić was only revealed with the disclosure of additional information to the 65 *ter* summary of Vinko Marić by the Petković Defence; 4) this Proposed Exhibit is relevant in that it demonstrates that the HVO were preparing for combat in Mostar on 9 May 1993 insofar as six days before that date, the Accused Petković and the Chief of Artillery of the General Staff Marko Stojčić sent an urgent request concerning the number of weapons and ammunition to certain operational areas, including that of the South-East and finally, 5) Witness Vinko Marić authenticated the said Proposed Exhibit and confirmed that he was one of the persons to whom the order was sent,¹⁶

¹⁴ Decision of 26 February 2009, para. 29.

¹⁵ IC 01158, p. 4; IC 01164, pp. 1 and 2; IC 01163, pp. 1 and 2.

¹⁶ IC 01158, p. 1; IC 01164, pp. 3 and 4.

CONSIDERING that the Petković Defence opposes the admission of the Proposed Exhibit P 11162 notably on the grounds that: 1) the Prosecution did not respect the requirements of the Chamber with regard to “new document” within the meaning of the Decision of 27 November 2008; 2) the English translation of Proposed Exhibit P 11162 does not correspond to the BCS original and 3) the Prosecution misinterprets the Proposed Exhibit,¹⁷

CONSIDERING that the Chamber notes once more that the Prosecution has not clearly specified the purposes for which it seeks the admission of this Proposed Exhibit,

CONSIDERING that in order to facilitate the work of both the Chamber and the parties, the Chamber invites the parties from this moment on to mention clearly in their written submissions whether they seek the admission of a “new document” within the meaning of the Decision of 27 November 2008 in order to test the credibility of the witness and/or as inculpatory evidence.

CONSIDERING that in light of the information provided by the Prosecution in its request for the admission of Proposed Exhibit P 11162, and the fact that the latter is likely to contain inculpatory evidence, the Chamber considers that it is appropriate to consider this document as a “mixed document”,

CONSIDERING that the Chamber notes that the Prosecution has been in possession of this evidence since 2000 and that it disclosed it to the Defence on 12 January 2010; that, contrary to that put forward by the Prosecution, providing the Defence with this evidence by way of the EDS system is not a valid way of disclosing evidence within the meaning of Rules 66 and 68 of the Rules, insofar as the EDS system is, first and foremost, a tool designed to facilitate the electronic research of relevant documents in possession of the Prosecution; that, consequently, the Chamber cannot consider that this evidence was disclosed to the Defence in accordance with Rules 66 and 68 of the Rules,

CONSIDERING that since the Prosecution has been in possession of this evidence since the beginning of the case and that it claims that it is relevant with regard to the HVO preparations for combat in Mostar on 9 May 1993, a subject that has been

¹⁷ IC 01159, pp. 2-5.

brought up repeatedly by Prosecution witnesses, the Chamber finds that it should have requested the admission of this evidence during the presentation of its case,

CONSIDERING that the Chamber, therefore, is not satisfied with the reasons submitted by the Prosecution to justify why it had not presented this evidence during the presentation of its case; that, consequently, the explanations given by the Prosecution on this point cannot be considered as “exceptional reasons in the interests of justice” that would justify the consideration of Proposed Exhibit P 11162 as inculpatory evidence at this stage of the proceedings; that the Chamber will, therefore, examine the admissibility of this Proposed Exhibit solely in that it goes to casting doubt on the credibility of Witness Vinko Marić,

CONSIDERING, finally, that the Petković Defence requests the admission of two Proposed Exhibits P 01928 and P 06491 and indicates that they are not on its 65 *ter* List and that they were presented during its re-examination of Witness Vinko Marić,¹⁸

CONSIDERING that the Prosecution does not oppose the admission of these two Proposed Exhibits,¹⁹

CONSIDERING that the Chamber finds, as does the Petković Defence, that the two Proposed Exhibits P 01928 and P 06491 are not on the Petković Defence 65 *ter* List and that the said Exhibits were used during the re-examination of Witness Vinko Marić by the Petković Defence,²⁰

CONSIDERING that the Chamber does not take issue with the prospect that the party presenting a witness requests the admission of documents which are not on its 65 *ter* List and that it presented during its re-examination of the witness, provided that these documents were presented in order to respond to a new subject dealt with for the first time during the cross-examination,²¹

CONSIDERING, however, that the Petković Defence has given no explanation, neither during the hearing nor in its request for admission, as to which new subject dealt with during the cross-examination the Proposed Exhibits P 01928 and P 06491

¹⁸ IC 01157, pp. 15 and 16.

¹⁹ IC 01161.

²⁰ Hearing of 14 January 2010, T (F) pp. 48406 and 48414.

²¹ “Order To Admit Evidence Regarding Witness Radmilo Jasak”, public, 18 March 2010.

relate, and, as such, has not justified the fact that the Proposed Exhibits are not on its 65 *ter* List,

CONSIDERING, consequently, that the Chamber dismisses the Petković Defence request for admission with regard to the Proposed Exhibits P 01928 and P 06491,

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 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 2008,²²

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

CONSIDERING, however, that the Chamber decides to admit into evidence the Proposed Exhibits P 03899, P 05361 and P 11162 solely in that they go to challenging the credibility of Witness Vinko Marić,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

DISMISSES AS MOOT the Petković Defence request with regard to the Proposed Exhibits 4D 00793 and 4D 01715,

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

DECIDES that it is appropriate to admit into evidence the Proposed Exhibits P 03899, P 05361 and P 11162 solely in that they go to challenging the credibility of Witness Vinko Marić, **AND**

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

AND,

DENIES BY A MAJORITY and in all other respects the requests for the admission of the Proposed Exhibits of the Petković Defence and the Prosecution, for the reasons stated in the Annex attached to this Order,

The Presiding Judge 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 twenty-second day of March 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

²² Guideline No. 8 regarding the admission of documentary evidence by way of a witness.

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
4D 00488	Petković Defence	Admitted.
4D 00615	Petković Defence	Admitted.
4D 00616	Petković Defence	Admitted.
4D 00741	Petković Defence	Admitted.
4D 00754	Petković Defence	Admitted.
4D 00778	Petković Defence	Admitted.
4D 00786	Petković Defence	Admitted.
4D 00793	Petković Defence	Moot (Reason: already admitted by way of the Order of 19 January 2010).
4D 01180	Petković Defence	Admitted.
4D 01225	Petković Defence	Admitted.
4D 01404	Petković Defence	Admitted.
4D 01534	Petković Defence	Admitted.
4D 01547	Petković Defence	Admitted.
4D 01625	Petković Defence	Admitted.
4D 01628	Petković Defence	Admitted.
4D 01629	Petković Defence	Admitted.
4D 01675	Petković Defence	Admitted.
4D 01676	Petković Defence	Admitted.
4D 01680	Petković Defence	Admitted.
4D 01681	Petković Defence	Admitted.
4D 01702	Petković Defence	Admitted.
4D 01715	Petković Defence	Moot (Reason: already admitted by way of the Order of 19 January 2010).
4D 01719	Petković Defence	Admitted.
4D 01722	Petković Defence	Admitted.
4D 02020	Petković Defence	Admitted.
4D 02021	Petković Defence	Admitted.
4D 02022	Petković Defence	Admitted.
P 02712	Petković Defence	Admitted.
P 04743	Petković Defence	Admitted.
P 01928	Petković Defence	Not admitted (The document is not on the Petković Defence 65 <i>ter</i> List and the latter did not explain during the hearing or in its request as to which new subject dealt with during the cross-examination this document relates, and, as such, did not justify why it was unable to put it previously on its 65 <i>ter</i> List).
P 06491	Petković Defence	Not admitted (The document is not on the Petković Defence 65 <i>ter</i> List and the latter did not explain during

		the hearing or in its request as to which new subject dealt with during the cross-examination this document relates, and, as such, did not justify why it was unable to put it previously on its 65 <i>ter</i> List).
P 11162	Prosecution	Admitted solely in that it goes to challenging the credibility of Witness Vinko Marić.
P 01998	Prosecution and Petković Defence	Admitted.
P 02209	Prosecution	Admitted.
P 03899	Prosecution	Admitted solely in that it goes to challenging the credibility of Witness Vinko Marić.
P 05361	Prosecution	Admitted solely in that it goes to challenging the credibility of Witness Vinko Marić.

