



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: 20 November 2008
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: 20 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PRLIĆ DEFENCE MOTION TO ADD EXHIBITS TO
ITS 65 *TER* EXHIBIT LIST**

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”),

SEIZED of Jadranko Prlić’s Motion to Add Exhibits to the Rule 65 *ter* Exhibit List, filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 30 October 2008 (“Motion”) in which the Prlić Defence requests leave of the Chamber to add 51 exhibits (“Proposed Exhibits”¹) to its exhibit list filed pursuant to Rule 65 *ter* of the Rules of Procedure and Elements (“65 *ter* List”),

CONSIDERING that the other Parties did not file a response to the Motion,

CONSIDERING that the Prlić Defence maintains that it received the Proposed Exhibits in Croatian from Witness Neven Tomić during the proofing phase preceding his first appearance before the Chamber on 27 October 2008,²

CONSIDERING that on 26 October 2008, the Prlić Defence filed a letter with additional information regarding the appearance of Witness Neven Tomić in which it mentioned one of the Proposed Exhibits³ translated into English and briefly described its contents,⁴

CONSIDERING that the Prlić Defence notes in the Motion that on 26 October 2008, it provided the Parties with the English translation of one of the Proposed Exhibits,⁵

CONSIDERING that the Prlić Defence maintains that it submitted the other 50 Proposed Elements for translation by CLSS and it anticipates their translation by 22 December 2008,⁶

¹ 1D 03044, 1D 03045, 1D 03047, 1D 03048, 1D 03049, 1D 03052, 1D 03053, 1D 03054, 1D 03055, 1D 03056, 1D 03057, 1D 03058, 1D 03059, 1D 03060, 1D 03061, 1D 03062, 1D 03063, 1D 03064, 1D 03065, 1D 03066, 1D 03067, 1D 03068, 1D 03069, 1D 03070, 1D 03071, 1D 03072, 1D 03073, 1D 03074, 1D 03075, 1D 03076, 1D 03077, 1D 03078, 1D 03079, 1D 03080, 1D 03081, 1D 03082, 1D 03083, 1D 03084, 1D 03085, 1D 03086, 1D 03087, 1D 03088, 1D 03089, 1D 03090, 1D 03091, 1D 03092, 1D 03093, 1D 03094, 1D 03095, 1D 03096, 1D 03097.

² Motion, p. 1, para. 1.

³ The document mentioned is 1D 03072.

⁴ Motion, p. 1, para. 2.

⁵ Motion, p. 1, para. 2. The document mentioned is 1D 03072.

⁶ Motion, p. 1, para. 2.

CONSIDERING that the Prlić Defence claims that the Proposed Exhibits have considerable probative value and are relevant for the Accused Prlić's Defence case,⁷

CONSIDERING that the Prlić Defence argues that the Proposed Exhibits relate to:

- (1) the payment and financial system in the Federation of Bosnia and Herzegovina,
- (2) the custom and tax services in the Federation of Bosnia and Herzegovina,
- (3) the Special Purpose Council,
- (4) the collection of money for the defence of Mostar,
- (5) the difficulties in the transport of goods through the Federation of Bosnia and Herzegovina,
- (6) the measures relating to the implementation of the Washington and Dayton Agreement, and
- (7) the usage of Bosnian dinars,⁸

CONSIDERING that the Prlić Defence maintains that the Proposed Exhibits go against the existence of a joint criminal enterprise as alleged by the Prosecution,⁹

CONSIDERING first that the Chamber recalls that in order to grant a request to add exhibits to the 65 *ter* List, these exhibits must be disclosed to the Parties sufficiently in advance in order to give them time to respond,

CONSIDERING that the Chamber also recalls the Decision Adopting Guidelines for the Presentation of Defence Evidence rendered on 24 April 2008 and in particular guideline 8 stipulating that in order for the Chamber to grant a request to add exhibits to the 65 *ter* List, the Parties concerned must file the request to add the exhibit or exhibits to the 65 *ter* (G) list prior to the appearance of the witness through whom it will present the exhibits, providing reasons why the exhibit or exhibits are essential to

⁷ Motion, p. 2, para. 4.

⁸ Motion, p. 2, para. 4.

⁹ Motion, p. 2, para. 4.

the case and reasons why it was/they were not on the list filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that the Chamber would recall to the Parties that they are not to upload documents to the *ecourt* system that are not on their 65 *ter* List and should in future provide the original document and its translation on CD-ROM in support of any requests to add exhibits to their 65 *ter* List,

CONSIDERING in principal that when there is a request to add exhibits to a 65 *ter* List, the Chamber always makes a *prima facie* examination of the reliability, relevance and probative value of the documents presented to it,

CONSIDERING that the Chamber notes that as of today, only one of the Proposed Elements has been translated into one of the Tribunal’s official languages¹⁰ and it is thus unable to make a *prima facie* examination of all of the Proposed Exhibits,

CONSIDERING furthermore that the Proposed Exhibits, for want of an English translation, could not be presented during the appearance of Witness Neven Tomić, which took place from 27 October to 18 November 2008,

CONSIDERING that the Chamber notes that the Motion was formulated orally on 27 October 2008, i.e. the first day that Witness Neven Tomić appeared, and then in writing on 30 October 2008,

CONSIDERING that the Motion was thus made more than six months after the 65 *ter* List was filed on 31 March 2008,

CONSIDERING that the Chamber finds that the Prlić Defence has not sufficiently justified the reasons why the Proposed Exhibits are not already on the 65 *ter* List,

CONSIDERING indeed that the Prlić Defence merely indicated to the Chamber that it received the Proposed Exhibits during the proofing of Witness Neven Tomić when he arrived in The Hague, without explaining why it was unable to obtain them before this proofing,

¹⁰ 1D 03072.

CONSIDERING furthermore that the Prlić Defence did not explain how the Witness obtained the Proposed Exhibits and did not inform the Chamber of their origin,

CONSIDERING that with regard to the importance of the Proposed Exhibits as alleged by the Prlić Defence, the Chamber is surprised that the latter only learned about them during the proofing phase of the Witness, a short time before his first appearance on 27 October 2008,

CONSIDERING that the Chamber notes in this case that the Prlić Defence mentions no specific reason in support of its Motion even though it was made on 30 October 2008, i.e. more than six months after it filed its *65 ter* List on 31 March 2008,

CONSIDERING consequently that the Chamber finds the Motion out of time.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules

DENIES the Motion

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twentieth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]