



International Criminal 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: 21 January 2009
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

Acting Registrar: Mr John Hocking

Order of: 21 January 2009

THE PROSECUTOR

v.

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

PUBLIC

ORDER ADMITTING EVIDENCE REGARDING WITNESS NEVEN TOMIĆ

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 Čorić
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 admission of 136 exhibits presented by Counsel for the Accused Prlić ("Prlić Defence");¹ the request for admission of five exhibits presented by Counsel for the Accused Stojić ("Stojić Defence");² the request for admission of two exhibits presented by Counsel for the Accused Praljak ("Praljak Defence");³ the request for admission of one exhibit filed by Counsel for the Accused Petković ("Petković Defence");⁴ and the request for admission of 37 exhibits presented by the Office of the Prosecutor ("Prosecution"),⁵ all relating to the testimony of Neven Tomić ("Proposed Exhibits"), who appeared between 27 and 30 October 2008, and also on 3, 4, 17 and 18 November 2008,

NOTING the objections raised by the Prlić Defence to the admission of some of the Proposed Exhibits from the Prosecution⁶ and those raised by the Prosecution to the admission of some of the Proposed Exhibits from the Prlić Defence⁷ and from the Praljak Defence,⁸

NOTING the Order Requesting Additional Observations from the Parties ("Order of 16 December 2008"), in which the Chamber invited the Defence teams to present any additional objections to the Proposed Exhibits from the Prosecution in this case ("Additional Objections") on the basis of the Decision on Presentation of Documents by the Prosecution in Cross-examination of Defence Witnesses of 27 November 2008 ("Decision of 27 November 2008") and invited the Prosecution to respond to any Additional Objections,⁹

NOTING the observations presented by the Prosecution concerning the Order of 16 December 2008, in which it submits, in effect, that it put the Prosecution exhibits to

¹ IC 00889.

² IC 00890.

³ IC 00891.

⁴ IC 00892.

⁵ IC 00893.

⁶ IC 00894.

⁷ IC 00895.

⁸ IC 00896.

Defence witnesses in court in accordance with the decisions and with practices followed by the Chamber prior to 27 November 2008, and that it is no longer able to present the exhibits to them in a different way or to take into account different or additional factors in order to present them,¹⁰

CONSIDERING that the Chamber first finds that the Defence teams have not presented Additional Objections on the basis of the Decision of 27 November 2008 to challenge the Proposed Exhibits from the Prosecution,

CONSIDERING also that the Chamber notes that eight Proposed Exhibits from the Prlić Defence¹¹ are not on the Prlić Defence's list of exhibits under Rule 65 *ter* of the Rules of Procedure and Evidence ("65 *ter* List"; "Rules"); that of the eight Proposed Exhibits, seven were included in a request to add exhibits by the Prlić Defence during the hearing of 18 November 2008 ("Request to Add to the 65 *ter* List"),¹²

CONSIDERING that it is therefore for the Chamber to rule on this point in the present order,

CONSIDERING that in this regard the Chamber reminds the Prlić Defence again that in principle, in order to grant a request to add exhibits to the 65 *ter* List, these exhibits must be disclosed to the parties well enough in advance, in view of their presentation to a witness in court, so as not to hinder the preparation of their cross-examination,

CONSIDERING, moreover, that pursuant to Guideline 8 of the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Decision of 24 April 2008"), the Party intending to put to a witness an exhibit that is not on the 65 *ter* List, must seek the Chamber's permission in a written motion, it must provide the reasons why the exhibit is essential to the case and reasons why it does not appear on the said List,¹³

⁹ Order of 16 December 2008, p. 3.

¹⁰ Prosecution Observations Concerning the Trial Chamber's 16 December 2008 Order Requesting Additional Observations, 8 January 2009, p. 2, paras. 4 and 6.

¹¹ 1D 03114, 1D 03115, 1D 03122, 1D 03125, 1D 03126, 1D 03132, 1D 03133, 1D 03134.

¹² Exhibits 1D 03114, 1D 03115, 1D 03122, 1D 03125, 1D 03126, 1D 03133, 1D 03134; French transcript, hearing of 18 November 2008, p. 34839.

¹³ Decision of 24 April 2008, p. 8, para 26.

CONSIDERING, nevertheless, that despite the Prlić Defence's lack of diligence, since none of the parties have alleged any prejudice and the exhibits in question are *prima facie* relevant, reliable and have probative value, the Chamber decides that Exhibits 1D 03114, 1D 03115, 1D 03122, 1D 03125, 1D 03126, 1D 03133 and 1D 03134 put to Witness Neven Tomić in court may be added to the 65 *ter* List of the Prlić Defence,

CONSIDERING that there was no request to add Exhibit 1D 03132 to the 65 *ter* List and that the Chamber, therefore, need not rule on this matter,

CONSIDERING that with regard to the requests for the admission of Proposed Exhibits, the Chamber finds that Exhibits 1D 00909, 1D 01669, 1D 01954, 1D 02132, P 00412, P 00447, P 00735, P 01579 and P 10290 have already been admitted, as indicated in the annex attached to the present order ("Attached Annex") and, consequently, the request for their admission is moot,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits based on the criteria of admissibility defined in the Decision on the Admission of Evidence rendered by the Chamber on 13 July 2006 ("Decision of 13 July 2006") as well as the Decision of 24 April 2008,¹⁴

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked "admitted" in the Attached Annex since they were put to Witness Neven Tomić in court and present sufficient indicia of relevance, reliability and probative value,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked "not admitted" in the Attached Annex since they do not conform to the instructions laid down in the Decisions of 13 July 2006 and 24 April 2008, for the reasons set out in the Annex,

CONSIDERING, finally, that the Chamber wishes to remind the parties that they must make a more careful selection of requests for admission from the IC lists, by not seeking the admission of exhibits that have not been put to a witness in court or that have already been admitted by the Chamber,

¹⁴ Guideline 8 on the admission of documentary evidence through a witness.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 65 *ter* and 89 (c) of the Rules,

GRANTS the request to add to the 65 *ter* List and allows the Prlić Defence to add Proposed Exhibits 1D 03114, 1D 03115, 1D 03122, 1D 03125, 1D 03126, 1D 03133, 1D 03134 to the 65 *ter* List,

DECLARES moot the requests for admission of Proposed Exhibits 1D 00909, 1D 01669, 1D 01954, 1D 02132, P 00412, P 00447, P 00735, P 01579 and P 10290,

GRANTS the requests for admission by the Pektović Defence and Stojić Defence,

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

DECIDES that it is appropriate to admit into evidence the Proposed Exhibits marked "admitted" in the Attached Annex, **AND**

DENIES in all other respects the requests for admission by the Prlić Defence, the Praljak Defence and the Prosecution, for reasons set out in the Attached Annex,

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twenty-first day of January 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number (Preferably in Numerical Order)	Party Proposing Admission of Exhibits	Admitted/Not Admitted/Marked for Identification (MFI)
1D 00003	Prlić Defence	Admitted
1D 00012	Prlić Defence	Admitted
1D 00013	Prlić Defence	Admitted
1D 00019	Prlić Defence	Admitted
1D 00020	Prlić Defence	Admitted
1D 00023	Prlić Defence	Admitted
1D 00025	Prlić Defence	Admitted
1D 00026	Prlić Defence	Admitted
1D 00027	Prlić Defence	Admitted
1D 00028	Prlić Defence	Admitted
1D 00030	Prlić Defence	Admitted
1D 00031	Prlić Defence	Admitted
1D 00032	Prlić Defence	Admitted
1D 00034	Prlić Defence	Admitted
1D 00035	Prlić Defence	Admitted
1D 00038	Prlić Defence	Admitted
1D 00039	Prlić Defence	Admitted
1D 00041	Prlić Defence	Admitted
1D 00047	Prlić Defence	Admitted
1D 00048	Prlić Defence	Admitted
1D 00049	Prlić Defence	Admitted
1D 00051	Prlić Defence	Admitted
1D 00052	Prlić Defence	Admitted
1D 00066	Prlić Defence	Admitted
1D 00106	Prlić Defence	Admitted
1D 00112	Prlić Defence	Admitted
1D 00114	Prlić Defence	Admitted
1D 00130	Prlić Defence	Admitted
1D 00140	Prlić Defence	Admitted
1D 00272	Prlić Defence	Admitted
1D 00275	Prlić Defence	Admitted
1D 00288	Prlić Defence	Admitted
1D 00295	Prlić Defence	Admitted
1D 00302	Prlić Defence	Admitted
1D 00304	Prlić Defence	Admitted
1D 00305	Prlić Defence	Admitted
1D 00306	Prlić Defence	Admitted
1D 00310	Prlić Defence	Admitted
1D 00311	Prlić Defence	Admitted
1D 00314	Prlić Defence	Admitted
1D 00315	Prlić Defence	Admitted
1D 00316	Prlić Defence	Admitted
1D 00362	Prlić Defence	Admitted

1D 00365	Prlić Defence	Admitted
1D 00559	Prlić Defence	Admitted
1D 00560	Prlić Defence	Admitted
1D 00561	Prlić Defence	Admitted
1D 00573	Prlić Defence	Admitted
1D 00581	Prlić Defence	Admitted
1D 00597	Prlić Defence	Admitted
1D 00605	Prlić Defence	Admitted
1D 00635	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 00798	Prlić Defence	Admitted
1D 00801	Prlić Defence	Admitted
1D 00803	Prlić Defence	Admitted
1D 00804	Prlić Defence	Admitted
1D 00806	Prlić Defence	Admitted
1D 00909	Praljak Defence	Already admitted (Decision of 14 October 2008.)
1D 00836	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01111	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01120	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01123	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01183	Stojić Defence, Prosecution	Admitted
1D 01199	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01288	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01350	Prlić Defence	Admitted
1D 01374	Prlić Defence	Admitted
1D 01375	Prlić Defence	Admitted
1D 01396	Prlić Defence	Admitted
1D 01399	Prlić Defence	Admitted
1D 01400	Prlić Defence	Admitted
1D 01401	Prlić Defence	Admitted
1D 01596	Prlić Defence	Admitted
1D 01597	Prlić Defence, Prosecution	Admitted
1D 01598	Prlić Defence	Admitted
1D 01599	Prlić Defence	Admitted

1D 01600	Prlić Defence	Admitted
1D 01669	Prosecution	Already admitted (Decision of 1 September 2008.)
1D 01678	Prlić Defence	Admitted
1D 01679	Prlić Defence	Admitted
1D 01733	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01737	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 01747	Prlić Defence	Admitted
1D 01896	Prlić Defence	Admitted
1D 01934	Prlić Defence, Petković Defence	Admitted
1D 01953	Prlić Defence	Admitted
1D 01954	Prlić Defence	Already admitted (Decision of 6 October 2008.)
1D 02002	Prlić Defence	Admitted
1D 02103	Prlić Defence	Admitted
1D 02114	Prlić Defence, Prosecution	Admitted
1D 02127	Prlić Defence, Prosecution	Admitted
1D 02128	Prlić Defence	Admitted
1D 02131	Prlić Defence	Admitted
1D 02132	Prlić Defence	Already admitted (Decision of 1 September 2008.)
1D 02133	Prlić Defence	Admitted
1D 02134	Prlić Defence	Admitted
1D 02135	Prlić Defence	Admitted
1D 02136	Prlić Defence, Prosecution	Admitted
1D 02137	Prlić Defence	Admitted
1D 02148	Prosecution	Admitted
1D 02165	Prlić Defence	Admitted
1D 02187	Prlić Defence	Admitted
1D 02222	Prlić Defence, Prosecution	Admitted
1D 02306	Prlić Defence	Admitted
1D 02331	Prlić Defence	Admitted
1D 02332	Prlić Defence	Admitted
1D 02333	Prlić Defence	Admitted
1D 02334	Prlić Defence	Admitted
1D 02337	Prlić Defence	Admitted
1D 02355	Prlić Defence	Admitted
1D 02357	Prosecution	Admitted
1D 02389	Prlić Defence	Admitted
1D 02519	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 02523	Prlić Defence	Not admitted: the document was not put to the witness in

		court.
1D 02524	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 02526	Prlić Defence	Not admitted: the document was not put to the witness in court.
1D 02540	Prlić Defence	Admitted
1D 02740	Prlić Defence	Admitted
1D 02741	Prlić Defence	Admitted
1D 02742	Prlić Defence	Admitted
1D 02744	Prlić Defence, Prosecution	Admitted
1D 02854	Prlić Defence	Admitted
1D 03046	Prlić Defence	Admitted
1D 03050	Prlić Defence	Admitted
1D 03051	Prlić Defence	Admitted
1D 03114	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
1D 03115	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
1D 03122	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
1D 03125	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
1D 03126	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
1D 03132	Prlić Defence	Not admitted: this exhibit does not appear on the 65 <i>ter</i> List of exhibits of the Prlić Defence.
1D 03133	Prlić Defence	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.

1D 03134	Prlić Defence	Not admitted: the witness only read passages from the document without commenting on the document.
2D 00891	Stojić Defence	Admitted
2D 00980	Stojić Defence	Admitted
2D 01475	Stojić Defence	Admitted
2D 01476	Stojić Defence	Admitted
3D 03096 (pages 1478, 1479, 1480, 1483, 1486, 1488, 1489, 1491, 1492, 1493, 1494, 1497, 1498, 1499, 1500, 1501, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511)	Praljak Defence	Admitted
IC 00877	Prosecution	Admitted
P 00412	Prlić Defence	Already admitted (Decision of 15 January 2008.)
P 00447	Prlić Defence	Already admitted (Decision of 15 January 2008.)
P 00498 (page 26) ¹⁵	Prosecution	Admitted
P 00735	Prlić Defence	Already admitted (Decision of 15 January 2008.)
P 00824	Prosecution	Admitted
P 01062	Prlić Defence	Not admitted: the document was not presented to the witness in court.
P 01063	Prlić Defence	Admitted
P 01579	Prlić Defence	Already admitted (Decision of 9 October 2008.)
P 06581 (page 7)	Prosecution	Admitted
P 08138	Prosecution	Admitted
P 08623	Prosecution	Admitted
P 08818 (pages 1, 2, 11, 12)	Prosecution	Admitted
P 08848 (pages 1 to 4, 8)	Prosecution	Admitted
P 10290	Prlić Defence	Already admitted (Decision of 15 January 2008.)
P 10532	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10657 (ET-0116-6666)	Prosecution	Admitted (The entire document has not been translated. Only the parts of

¹⁵ The page numbers in the Annex correspond to page numbers in the English version of the document in question in the e-court system.

		the exhibit translated into English are admitted.)
P 10675 (pages 1 to 5)	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10683 (pages 1 and 2)	Prosecution	Admitted
P 10685	Prosecution	Admitted
P 10696	Prosecution	Admitted
P 10698	Prosecution	Admitted
P 10700	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10701	Prosecution	Admitted
P 10702	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10704	Prosecution	Admitted
P 10705	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10706	Prosecution	Admitted
P 10707	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10709	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10711	Prosecution	Admitted
P 10715	Prosecution	Admitted
P 10717	Prosecution	Not admitted: the witness could not comment on the reliability, relevance and probative value of the exhibit.
P 10718	Prosecution	Admitted