



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-PT
Date: 09 February 2006
Original: ENGLISH

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge Jean-Claude Antonetti

Registrar: Mr. Hans Holthuis

Decision: 9 February 2006

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

**DECISION ON PROSECUTION MOTION FOR THE
ADMISSION OF EVIDENCE (ECMM DOCUMENTS)**

Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Daryl Mundis

Counsel for Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Mr. Tomislav Kužmanović and Ms. Senka Nožica for Bruno Stojić
Ms. Vesna Alaburić for Milivoj Petković
Mr. Tomislav Jonjić for Valentin Ćorić
Mr. Fahrudin Ibrišimović for Berislav Pušić

Accused:

Slobodan Praljak

THIS TRIAL 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”),

BEING SEIZED of the “Prosecution Motion for the admission of evidence (ECMM documents)”, filed partly confidentially on 26 January 2006 (“Prosecution Motion”), in which the Office of the Prosecutor (“Prosecution”) requests the Trial Chamber to admit into evidence 409 documents originating from the European Commission Monitoring Mission (ECMM), listed in the Confidential Annex to the Prosecution Motion,

NOTING “the Accused Valentin Ćorić’s Response to the Prosecution Motion for the admission of evidence”, filed 6 February 2006 (“Ćorić Response”), “Jadranko Prlić’s Response to Prosecution Motion for the admission of evidence (ECMM documents)”, filed on 7 February 2006, the “Response on behalf of Berislav Pusić to the Prosecution motion for admission of evidence (ECMM documents)”, filed 8 February 2006 and “The accused Milivoj Petković’s response to the Prosecution’s motion for the admission of evidence (ECMM documents)”, filed 8 February 2006,

NOTING that the Prosecution has not provided the Trial Chamber with the actual ECMM documents, but instead has only provided the Trial Chamber with titles and (in some instances) summaries of the ECMM documents,¹

NOTING FURTHER that the Prosecution has indicated that some ECMM documents are subject to certain protective measures,² but that it is unclear to the Trial Chamber which documents are subject to protective measures, and why such measures were accorded,

NOTING the Trial Chamber’s Decision of 3 February 2006, which states that “while it is plainly the duty of the pre-trial Judge and the pre-trial Chamber to take any measure necessary to prepare the case for a fair and expeditious trial,³ this Trial Chamber is of the view that a determination of the Prosecution Motion, insofar as it seeks admission into evidence of materials contained in Annex 1 to the Prosecution Motion pursuant to Rule 89 (C) of the Rules, involving as it does a

¹ See confidential annex to the Prosecution Motion.

² Prosecution Motion, para. 9.

³ See Rules 65 *ter* (B), and 65 *ter* (M) of the Rules.

critical examination of the content of the evidence and manner in which it is to be presented at trial, must be left to the bench that will hear the case,”⁴

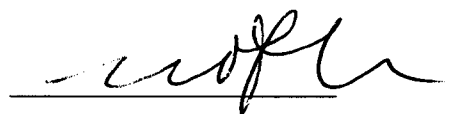
CONSIDERING that the Trial Chamber is in no position to assess the relevance or probative value of the ECMM documents at the present time,

CONSIDERING THEREFORE, regardless of the way in which the Prosecution Motion was filed, that it would be premature to admit this evidence at the present stage of proceedings under Rule 89(C) of the Rules, but that the Prosecution may tender all or some of the proposed documents listed in the confidential Annex as evidence at trial, *preferably* through the ECMM officers it intends to call at trial,⁵

FOR THE FOREGOING REASONS, pursuant to Rules 54 and 89(C) of the Rules,

DENIES the Motion.

Done in both English and French, the English text being authoritative.



Judge Carmel Agius
Presiding

Dated this ninth day of February 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ See also *Prosecutor v. Zeljko Mejakic et al.*, Case No. IT-02-65-PT, “Decision on Prosecution’s motion for admission of trial transcripts and statements pursuant to Rule 92 *bis* and Rule 89 (F) and protective measures”, 22 October 2004; *Prosecutor v. Sefer Halilović*, Case No.: IT-01-48-PT, “Order on Prosecution application for admission of evidence under Rule 92 *bis*”, 22 October 2004.

⁵ Prosecution Motion, para. 10.