



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: 13 July 2006  
Original: ENGLISH  
French

**TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti  
Judge Árpád Prandler  
Judge Stefan Trechsel

**Registrar:** Mr Hans Holthuis

**Decision of:** 13 July 2006

**THE PROSECUTOR**

v.

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

**DECISION ON ADMISSION OF EVIDENCE**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Daryl Mundis

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Peter Murphey for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić for Milivoj Petković  
Mr Dijana Tomašegović-Tomić 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 the “Prosecution Submission on the Admission of Documentary Evidence” (“Motion”), filed by the Office of the Prosecutor (“Prosecution”) on 15 June 2006, in which the Prosecution requests the Chamber to admit various documents from the European Community Monitoring Mission (“ECMM”) into evidence;

**CONSIDERING** the Joint Response to Prosecution Submission on the Admission of Documentary Evidence (“Response”), filed jointly by Counsel for the six Accused (“Defence”) on 26 June 2006, in which the Defence requests the leave of the Chamber to make observations regarding the admissibility of ECMM documents following the testimony of Christopher Beese, a former ECMM member;

**WHEREAS** during the testimony of Witness Christopher Beese on 14 and 15 June 2006, the Prosecution requested that 384 ECMM documents be admitted into evidence;<sup>1</sup>

**WHEREAS** among the 384 documents, 34 were put before Witness Christopher Beese during the hearing and were tendered into evidence on 15 June 2006;<sup>2</sup>

**WHEREAS**, outside of court, Witness Christopher Beese went through the remaining documents the Prosecution requested to admit and confirmed during his testimony before the Chamber that the documents were authentic and relevant;<sup>3</sup>

**WHEREAS**, however, those documents were not discussed during Witness Christopher Beese’s testimony before the Chamber, and the Chamber deferred its Decision on their admission to a later date, at the latest by the end of his cross-examination;<sup>4</sup>

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<sup>1</sup> Transcript in French (“T(F)”), 14 June 2006 and T(F), 15 June 2006, pp. 3269 and 3270.

<sup>2</sup> T(F) of 15 June 2006, p. 3283.

<sup>3</sup> T(F) of 14 June 2006, p. 3042 and T(F) of 15 June 2006, pp. 3260, 3262, 3263, 3264, 3277-328.

<sup>4</sup> T(F) of 15 June 2006, p. 3283.

**WHEREAS** in its motion, the Prosecution submits that all the ECMM documents, regardless of whether they were discussed in court, may be admitted into evidence pursuant to the case law and current practice of the Tribunal;<sup>5</sup>

**WHEREAS**, in its motion, the Prosecution makes general observations regarding the admission of documentary evidence;

**WHEREAS** according to the Prosecution, the admission of documentary evidence is based solely on the criteria of authenticity and relevance, while the criteria of probative value only concerns the weight to be given to documents in light of the evidence as a whole;<sup>6</sup>

**WHEREAS** the Prosecution further submits that a document need not be presented at trial to be admitted into evidence;<sup>7</sup>

**WHEREAS** the Defence recalls Rule 89(C) of the Rules of Procedure and Evidence (“Rules”) and submits that a document must not only be authentic and relevant to be admitted, but also must have some probative value;<sup>8</sup>

**WHEREAS** the Defence submits that a document must be tendered through a witness in order to enable the Chamber to verify its authenticity and content;<sup>9</sup>

**WHEREAS** the Defence further argues that pursuant to Rule 89(C) and (D) of the Rules, the Chamber may reject any evidence with minimal probative value, and that by taking into account only the evidence that is absolutely necessary for the case, the Chamber could reduce the size, complexity, and length of the trial, and remain focused on the examination of the essential issues of the case;<sup>10</sup>

**CONSIDERING** the “Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings”, rendered by the Chamber on 28 April 2006 (“Decision of 28 April 2006”),

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<sup>5</sup> Motion, para. 18.

<sup>6</sup> Motion, para. 17.

<sup>7</sup> Motion, paras. 3, 5, and 18.

<sup>8</sup> Response, paras. 16-19.

<sup>9</sup> Response, paras. 4 and 21.

<sup>10</sup> Response, paras. 13, 19, and 20.

**WHEREAS** in the Decision of 28 April 2006, the Chamber indicated that:

“The size and nature of the present case is such that a significant amount of documentary and other evidence will be tendered by the parties. However, it would not facilitate the completion of the trial within a reasonable amount of time to set limits on the amount of time available for in-court testimony and then to flood the Chamber with documentary evidence, which must be carefully analysed and assessed in order for a proper determination of the case. The Prosecution and the Defence must therefore be selective in their tendering of documents and other exhibits, and the Chamber will be rigorous in its application of Rule 89(C) and the requirements of relevance and probative value.”<sup>11</sup>

**WHEREAS** the Chamber further decided:

“As a general rule, the party tendering a piece of evidence shall to do so through a witness who is either the author of that evidence, or who can speak to its origins and content. However, there will be no blanket prohibition on the admission of evidence simply on the grounds that the purported author of that evidence has not been called to testify.”<sup>12</sup>

**WHEREAS** issues of admissibility are governed in particular by Rules 89(C), 90(F), and 95 of the Rules;

**WHEREAS** Rule 89(C) of the Rules provides that “the Chamber may admit any relevant evidence which it deems to have probative value” and that, pursuant to Tribunal case law, evidence is deemed to have probative value when it tends to prove a fact in issue;<sup>13</sup>

**WHEREAS** according to that same case law, evidence must have “some relevance” and “some probative value” to be admitted;<sup>14</sup>

<sup>11</sup> Decision of 28 April 2006, para. 8.

<sup>12</sup> Decision of 28 April 2006, guideline II(j).

<sup>13</sup> *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case no. IT-01-47-T, Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, 22 June 2005 (“Hadžihasanović Decision of June 2005”), para. 17.

<sup>14</sup> *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case no. IT-01-47-T, Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, 16 July 2004 (“Hadžihasanović Decision of July 2004”), para. 38, citing *The Prosecutor v. Alfred Musema*, Case no. ICTR-96-13-T, Judgement and Sentence, 27 January 2000 (“*Musema Judgement*”), para. 56.

**WHEREAS** reliability (including authenticity) is a component of admissibility under Rule 89(C) of the Rules, and a *prima facie* showing of a document's reliability is sufficient for it to be admitted into evidence;<sup>15</sup>

**WHEREAS** the Chamber subscribes to the Tribunal case law to the extent that a *prima facie* showing of a document's reliability may be achieved in various ways, and does not necessarily require that the document be presented to its author at trial;<sup>16</sup>

**WHEREAS** according to Tribunal case law, there is no hard and fast rule which would require all documents to be excluded simply because their presumed authors failed to confirm their authenticity and content under oath;<sup>17</sup>

**WHEREAS**, nevertheless, presenting and debating evidence at trial enables the Chamber to more easily establish its reliability;

**WHEREAS**, additionally, debates over evidence at trial assist the Chamber in better ascertaining its context and assessing its relevance and probative value;

**WHEREAS** the Chamber reserves its final decision on the weight to attach to a document for its deliberations, once all the evidence has been presented;<sup>18</sup>

**WHEREAS** Rule 89(C) of the Rules further gives the Chamber discretionary power over the admissibility of relevant evidence it deems to have probative value,<sup>19</sup> and the Chamber may restrict the admission of evidence so long as such restrictions have a legitimate purpose;

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<sup>15</sup> Hadzihasanović Decision of July 2004, para. 29, citing *The Prosecutor v. Radoslav Brdanin and Momir Talić*, Case no. IT-99-36-T, Order on the Standards Governing the Admission of Evidence, 15 February 2002, para. 25.

<sup>16</sup> Hadzihasanović Decision of July 2004, para. 29, citing *Musema Judgement*, paras. 66 and 67.

<sup>17</sup> Hadzihasanović Decision of July 2004, para. 44, citing *The Prosecutor v. Zejnil Delalić et al.*, Case no. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19 January 1998, para. 22 and *The Prosecutor v. Radoslav Brdanin and Momir Talić*, Case no. IT-99-36-T-AR73.9, Decision on Interlocutory Appeal, 11 December 2002, para. 52.

<sup>18</sup> Decision of 28 April 2006, guideline II(i).

<sup>19</sup> *The Prosecutor v. Sefer Halilović*, Case no. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, para. 14.

**WHEREAS** Rule 90(F) of the Rules provides:

“The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (i) make the interrogation and presentation effective for the ascertainment of the truth; and
- (ii) avoid needless consumption of time.”

**WHEREAS**, in the instant case, the Appeals Chamber noted the importance of Rule 90(F), and held that the Trial Chamber has broad discretionary power to enforce the Rule;<sup>20</sup>

**WHEREAS**, additionally, the Appeals Chamber further recognised the legitimate purpose of ensuring that the proceedings are not unduly delayed and that the trial is completed in a reasonable time;<sup>21</sup>

**WHEREAS** the list of exhibits submitted by the Prosecution pursuant to Rule 65 *ter* (E)(iii) of the Rules already contains 9490 exhibits;

**WHEREAS** it appears the Prosecution seeks to tender most of this documentary evidence without prior discussions in court;<sup>22</sup>

**WHEREAS** the admission of several thousand documents without prior discussions over them in court may unduly delay the proceedings, to the extent that the Chamber would not have the benefit of explanations from a witness who could help to put these documents in their context and establish their relevance and probative value;

**WHEREAS** the Chamber would therefore be required to spend much of its resources examining and assessing thousands of documents, which could take several months and would delay the pronouncement of the Judgement;

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<sup>20</sup> Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber’s Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel’s Request for Leave to File an *Amicus Curiae* Brief, rendered by the Appeals Chamber on 4 July 2006 (“Appeals Chamber Decision”), p. 3.

<sup>21</sup> Appeals Chamber Decision, p. 4.

<sup>22</sup> T(F) of 15 June 2006, p. 3274. Mr. Scott: “Apology to my colleague Mr. Mundis. I intervene because this is an issue that doesn’t relate only to Mr. Beese but will relate to a number of witnesses in the future, and indeed there will be a witness coming next week from another organization which we will propose and handle exactly same way that we have done with this witness unless and until the Trial Chamber gives us very clear instructions to the contrary.”

**WHEREAS** additionally, the Chamber limited the total duration of cross-examinations by Counsel for the six Accused to the same time taken by the Prosecution in examination-in-chief;<sup>23</sup>

**WHEREAS** the Defence could be disadvantaged if it were forced to use the limited time allocated for its cross-examinations to present and discuss at trial, for the first time, Prosecution documents of which it challenges the reliability or probative value;

**WHEREAS** the Prosecution therefore has a duty to make a choice and identify those documents which are strictly necessary for the determination of points in issue, and present those documents to a witness who is able to provide the Chamber information in court about the authenticity, relevance, and probative value of such documents;

**WHEREAS** neither the Defence nor the Chamber can make this choice for the Prosecution, especially since the Prosecution alone knows which strategy it intends to use;

**WHEREAS**, nevertheless, in the interests of justice and for the manifestation of the truth, the Chamber grants the Prosecution leave to request, by way of motion, the admission of additional evidence, so long as the conditions set out in the guidelines attached hereto in annex are met;

**WHEREAS** the Chamber deems it necessary to specify the guidelines on the admission of evidence, as set out in the Decision of 28 April 2006;

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rules 89(C) and 90(F) of the Rules;

**HEREBY DEFERS** its ruling on the Motion regarding the admission of additional ECMM documents produced through Witness Christopher Beese;

**ADOPTS** the guidelines attached hereto in annex which govern the admissibility of evidence;

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<sup>23</sup> Oral Decision of 8 May 2006, T(F) of 8 May 2006, p. 1475 and 1476, which was upheld by the Appeals Chamber.

**DIRECTS** the Prosecution to submit, in accordance with the guidelines attached hereto in annex, a written motion requesting the admission of additional ECMM documents, produced through Witness Christopher Beese;

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

/signed/

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this thirteenth day of July 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**



## **GUIDELINES FOR THE ADMISSION OF EVIDENCE**

1. As a general rule, the party seeking to tender evidence shall do so through a witness who can attest to its reliability, relevance, and probative value. The evidence must be put to the witness at trial.
2. The Prosecution must disclose to the Defence all the evidence it intends to produce during the examination of a witness, two weeks prior to that witness' appearance.<sup>24</sup> The documents must be translated into one of the official languages of the Tribunal as well as into the language of the Accused.<sup>25</sup> Only public documents such as Security Council Resolutions and Reports of the General Assembly of the United Nations need not be translated into the language of the Accused.
3. Pursuant to the Chamber's Oral Decision of 8 May 2006, the Defence shall disclose to the Prosecution, at the end of the examination-in-chief of a witness, the evidence it intends to tender during its cross-examination of that same witness.<sup>26</sup> That evidence must be translated into one of the official languages of the Tribunal.
4. Should a party only present an excerpt of a document during trial, it must limit its request for admission to that excerpt alone. The party must disclose the page and/or paragraph numbers of the document from which the excerpt it seeks to tender is taken. That party must provide the required translations of that excerpt. The Chamber directs the said party to provide, briefly in court, the context of the excerpt to facilitate a determination of its relevance and probative value.
5. If the opposing party seeks to dispute the admission of an excerpt from a document, it must provide its reasons to the Chamber for challenging the relevance and probative value of the excerpt. There will be no blanket prohibition on the admission of an excerpt simply on the grounds that the entire document has not been tendered into evidence. An opposing party

<sup>24</sup> Oral Decision of 3 July 2006, T(F) of 3 July 2006, pp. 4248 and 4249.

<sup>25</sup> Oral Decision of 3 July 2006, T(F) of 3 July 2006, pp. 4248 and 4249.

which argues that the excerpt takes on a different meaning when taken out of the context of the entire document must show this to be true. Should that party seek to discuss other excerpts from the same document in court, it must provide the necessary translations. Should it request the admission of such excerpts, it must provide the Chamber the page and/or paragraph numbers of the document from which the excerpt it seeks to tender is taken.

6. Subject to the following conditions, the Prosecution may, after the testimony of a witness and within eight days of his/her appearance before the Chamber, request the Chamber, by way of written motion, to admit documents which were not put before the witness in court and on which the witness could have testified.
  - a. The said motion, stating the reasons, must contain the following information or it may be denied:
    - i. Number, title, and description of the document;
    - ii. Source of the document and its indicia of reliability;
    - iii. References to relevant paragraphs of the Indictment;
    - iv. Reference to the witnesses and documents dealing with the same paragraphs in the Indictment;
    - v. Reasons why the document was not presented to the witness;
    - vi. Reasons why the document could not be presented to another witness;
    - vii. Reasons the party considers the document essential for the determination of the case.
  - b. The Defence shall have eight days to respond and make objections, if need be, to each request to admit documents in this manner.

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<sup>26</sup> Oral Decision of 8 May 2006, T(F), pp. 1474 and 1475.