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**UNITED
NATIONS**



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: 19 October 2006
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

Order of: 19 October 2006

THE PROSECUTOR

v.

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

ORDER TO ADMIT EVIDENCE RELATIVE TO WITNESS BA

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
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”);

CONSIDERING that Witness BA appeared before the Chamber on 25, 26 and 27 September 2006 pursuant to Rule 92*ter* of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that at the hearing of 25 September 2006, the Office of the Prosecutor (“Prosecution”) moved for the admission of 22 documents and that at the hearing of 27 September 2006 the Defence for the Accused Prlić, Stojić and Petković moved for the admission of 15 documents relating to the testimony of BA (“Proposed Exhibits”),¹

Considering that the Counsels for the Defence for the Accused Prlić, Stojić, Praljak, Petković and Čorić (“Defence”) oppose the admission of the written statement of Witness BA (“Witness”) as slightly modified by the Witness at the hearing,

CONSIDERING that the Defence for the Accused Prlić and Stojić submit that the Prosecution violated Rule 92*ter* of the Rules when it moved for admission of a written statement in lieu of viva voce testimony while at the same time carrying out the examination-in-chief of the Witness,

CONSIDERING that Rule 92*ter* provides that evidence presented by a witness in the form of a written statement may be admitted in whole or in part and that a Trial Chamber may authorise the party presenting the testimony to ask the witness additional questions about his statement,

CONSIDERING that, accordingly, at the hearing of 25 September 2006, the Chamber authorised the Prosecution to pose questions about certain parts of the Witness’s statement in order to clarify certain essential points going to the responsibility of the Accused,²

CONSIDERING that the Defence maintains that the Witness’s statement is actually an expert report,

¹ Court Transcript in French (“T(F)”), pp. 7240; 7497-7500.

² T(F) pp. 7147 and 7148; 7150.

CONSIDERING that, in order to support this argument, the Defence refers to the fact that the statement is presented in the form of headings and that the Prosecution showed the Witness numerous documents in order to refresh his memory during the compilation of his statement, which seems to be more the result of cooperation between the Witness and the Prosecution than a statement presenting the Witness's declaration,

CONSIDERING that Rule 92*ter* of the Rules does not prescribe the form to be used when presenting a witness's written statement,

CONSIDERING, moreover, that every written statement is a statement rendered in cooperation with the party moving for its admission, in that this party asks the witness questions and writes down his or her answers,

CONSIDERING that the issue here is to establish whether the statement reflects the Witness's declaration as attested by the Witness pursuant to Rule 92*ter* (A)(iii) of the Rules,

CONSIDERING that, at the hearing, the Witness attested under oath, both when he was questioned by the Prosecution and cross-examined by the Defence, and when he was questioned by the Judges of the Chamber, that his statement accurately reflects his declaration and confirmed that he would have said the same if he had been examined,

CONSIDERING, consequently, that the procedure adopted by the Prosecution is pursuant to Rule 92*ter* of the Rules,

CONSIDERING, moreover, that the content of the testimony produced in the statement pertains to facts or personal conclusions that are the result of various encounters between the Witness and one or several of the Accused, which qualifies the Witness as a witness of fact and not an expert witness,

CONSIDERING that the Chamber has also examined the written statement in light of the criteria for admissibility defined in its Decision of 13 July 2006,³

CONSIDERING that independently of the admission of evidence, the Chamber reminds the parties of its discretion to make the final decision regarding the weight to be attached to the Witness's statement during the deliberations at the end of the presentation of evidence,

³ *Prosecutor v. Jadranko Prlić et al.*, case IT-04-74-T, Decision on Admission of Evidence, 13 July 2006.

CONSIDERING, moreover, that the Defence for the Accused Prlić has asked the Chamber to disclose all the memoranda made during the compilation of the Witness's written statement and a list of all the documents presented to him during the proofing session,

CONSIDERING that the Chamber would remind the Defence for the Accused Prlić that Rule 70(A) of the Rules provides that the memoranda and internal documents established by a party are not subject to disclosure,

CONSIDERING, finally, that the Defence is opposed to the admission of the other Proposed Exhibits,

CONSIDERING that the Chamber has also examined them in the light of the objections raised by the Defence and the criteria for admissibility defined in its Decision of 13 July 2006,

CONSIDERING that the Chamber has decided to admit into evidence the documents labelled "admitted" in the Annex attached to this decision because they have satisfactory indicia of relevance, probative value and reliability,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 89 and 92*ter* of the Rules,

GRANTS the motion of the Prosecution,

PARTIALLY GRANTS the motions of the Prlić, Petković and Ćorić Defence,

DISMISSES the motion of the Prlić, Praljak, Stojić, Petković and Ćorić Defence in all other respects for reasons given in the Annex attached to this decision, **AND**

DECIDES that there are grounds to admit into evidence the documents labelled “admitted” in the Annex attached to this decision.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

Annex

Proposed exhibit no.	Party proposing the admission of evidence	Admitted/Not admitted/Marked for identification (MFI)
P 01498	Prosecution	Admitted
P 01894	Prosecution	Admitted
P 02144	Prosecution	Admitted
P 02471	Prosecution	Admitted
P 02714	Prosecution	Admitted
P 02746	Prosecution	Admitted on 2 October 2006
P 02793	Prosecution	Admitted
P 02872	Prosecution	Admitted
P 03292	Prosecution	Admitted
P 03413	Prosecution	Admitted
P 03539	Prosecution	Admitted
P 03804 under seal	Prosecution	Admitted
P 03923	Prosecution	Admitted
P 09677 under seal	Prosecution	Admitted
P 09678 under seal	Prosecution	Admitted
P 09679 under seal	Prosecution	Admitted
P 09680 under seal	Prosecution	Admitted
P 09681 under seal	Prosecution	Admitted
P 09682 under seal	Prosecution	Admitted
P 09708	Prosecution	Admitted
P 09712	Prosecution	Admitted
IC 00036	Prosecution	Admitted
P 03523	Prlić Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
P 05002	Prlić Defence	Not admitted (reason: document not in the Ringtail system)
1 D 00930	Prlić Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
1 D 00935	Prlić Defence	Admitted
1 D 00936	Prlić Defence	Admitted
1 D 00937	Prlić Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
1 D 00938	Prlić Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
P 01655	Stojić Defence	Not admitted (reason: document P 01655 does not correspond to document 2D 00160 presented in court)
2D 00155	Stojić Defence	Not admitted (reason: /witness/ unable to

		clarify to the Chamber its authenticity, relevance or probative value in court)
2D 00158	Stojić Defence	Admitted
2D 00160	Stojić Defence	Admitted
2D 00167	Stojić Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
P 02344	Petković Defence	Admitted on 11 July 2006
P 02449	Petković Defence	Not admitted (reason: witness unable to clarify to the Chamber its authenticity, relevance or probative value in court)
P 03835	Petković Defence	Admitted
P 03895	Petković Defence	Admitted
4D 00332	Petković Defence	Admitted