



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: 29 November 2006
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 29 November 2006

THE PROSECUTOR

v.

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

**DECISION AMENDING THE DECISION ON THE ADMISSION OF
EVIDENCE DATED 13 JULY 2006**

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 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”);

EX PROPRIO MOTU

CONSIDERING the “Decision on Admission of Evidence” rendered by the Chamber on 13 July 2006 (“Decision of 13 July 2006”),

WHEREAS in the Decision of 13 July 2006 the Chamber adopted guidelines for the admission of evidence (“Guidelines”);

WHEREAS pursuant to Guideline 1, “the party seeking to tender evidence shall do so through a witness who can attest to its reliability, relevance, and probative value,” and “the evidence must be put to the witness at trial”;

WHEREAS in the Decision of 13 July 2006, the Chamber allowed for a departure from this basic principle by allowing the Prosecution to seize the Chamber of written motions to admit documents which were not put before a witness in court, so long as the conditions set out in Guideline 6 were met;

WHEREAS one of those conditions is that written motions must be filed within eight days following the appearance of a witness who could testify about the documents the Prosecution seeks to admit;

WHEREAS from that condition it follows that the admission of a document by way of written motion presupposes that the Chamber has heard a witness testify about the circumstances surrounding the document in question;

WHEREAS during the hearing of 30 October 2006, the Chamber noted that no motion had been filed in accordance with the Guideline 6;¹

WHEREAS during that hearing the Chamber found that certain documents which appear to be relevant and are on the list of documents submitted by the Office of the Prosecutor (“Prosecution”) in accordance with Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), could not be tendered through witnesses who had appeared

¹ Transcript in French (“T(F)”), 30 October 2006, p. 9143.

before the Chamber because those witnesses were not able to attest to the authenticity, probative value, and relevance of those documents;²

WHEREAS during that same hearing, the Chamber expressed its willingness to relax to a degree the conditions set out in Guideline 6, and invited the Parties to make their observations on the conditions for submitting a written motion to admit documents that have not been presented to a witness at trial;

WHEREAS during the hearing of 6 November 2006, Defence Counsel for the six Accused (“Defence”) made their observations and proposed the following: 1) documents not presented at trial shall be accompanied by a written statement pursuant to Rule 92 *ter* of the Rules; 2) the Chamber should no longer apply the conditions set out in Guideline 6(a)(vii) which require that the Party making a written request give the reasons why it considers the document essential for the determination of the case; 3) Guideline 6 must be amended to enable not only the Prosecution but also the Defence to file a written motion for the admission of documents which have not been presented at trial;³

WHEREAS on 6 November 2006, the Prosecution filed its “Prosecution Submission on the Admission of Documentary Evidence” (“Submission on the Admission of Documentary Evidence”), but it did not respond to the question posed by the Chamber on 30 October 2006;

WHEREAS the same day, the Prosecution filed its “Prosecution Motion for the Admission of Documentary Evidence Relating to Prozor” (“Prozor Motion”), in which it requested the admission of 33 documents it claims support the allegations set out in the Amended Indictment (“Indictment”) regarding Prozor municipality;

WHEREAS, while the Chamber will dispose of the motion on the admission of the 33 documents in a separate decision, it will nonetheless refer to it insofar as the Prosecution made additional submissions therein regarding the admission of evidence;

WHEREAS in the Prozor Motion the Prosecution argued in particular that certain documents cannot be easily tendered through witnesses, considering the limited time allocated for it to present its case;

² *Ibid.*

³ T(F), 6 November 2006, pp. 9533 and 9534.

WHEREAS the Chamber does not wish to depart from the principle set out in the Decision of 13 July 2006, according to which a document must be tendered into evidence through a witness who can attest to its reliability, relevance, and probative value;

WHEREAS the Chamber refers the Parties to the reasoning developed in its Decision of 13 July 2006, particularly to the argument according to which the discussion of a document at trial enables the Chamber to better establish its reliability and evaluate its relevance and probative value;

WHEREAS nonetheless, in the interests of justice and to discover the truth, documents essential for the determination of this case should be admitted into evidence;

WHEREAS consequently, the Chamber may exceptionally be led to admit, upon a written motion, documents that could not be explained to the Chamber by a witness at trial;

WHEREAS the Chamber anticipates, *inter alia*, exceptional situations where a document significant for the trial cannot be tendered through a witness who has appeared before the Chamber due to the limited time the Prosecution has been given to hear that witness;

WHEREAS the Chamber considers in particular that there may be situations where the Prosecution is not able to present to the Chamber a witness who has the knowledge required to inform the Chamber as to the reliability, relevance, or probative value of a document significant to the case;

WHEREAS as a result, contrary to the provisions of Guideline 6, the deadline to present a written motion to admit documents must not be linked to the hearing of a witness who could testify about those documents;

WHEREAS consequently, Guideline 6 should be amended by eliminating the requirement that a written motion be filed within eight days following the appearance before the Chamber of a witness who could testify on the documents the Prosecution seeks to admit;

WHEREAS nevertheless, the Prosecution should present evidence in a consistent manner and therefore will be able to file written motions in accordance with Guideline 6 as amended by this decision after all the evidence concerning a municipality or a given subject has been presented;

WHEREAS the Chamber will decide on the admissibility of documents presented in a written motion after examining the information provided in accordance with the conditions set out in Guideline 6 as amended by this decision;

WHEREAS the Chamber will admit in particular documents whose content is corroborated by the testimony of witnesses who have appeared before the Chamber and/or documents which have already been admitted as evidence in this case;

WHEREAS consequently, in its written motion, the Prosecution must refer to the witnesses who have appeared before the Chamber and to documents already admitted into evidence dealing with the paragraphs in the Indictment to which the document it seeks to admit relates;

WHEREAS moreover, it is incumbent upon the Prosecution to select the documents that are significant for the determination of this case, which implies that the Prosecution must explain to the Chamber why a document presented in a written motion is significant to the case;

WHEREAS the Chamber further wishes to know whether the document the Prosecution seeks to admit by way of written motion could be tendered through a witness, in order to determine whether the admission of the document should be postponed until the witness in question appears;

WHEREAS as a result, the Chamber calls on the Prosecution to explain the reasons why the said document is not tendered through a witness;

WHEREAS furthermore, the Chamber subscribes to the proposal made by the Defence during the hearing of 6 November 2006 according to which the documents the Prosecution seeks to admit may be the subject of a written statement taken pursuant to Rule 92 *ter* of the Rules;

WHEREAS as such, the comments of witnesses regarding documents may be integrated into their written statements taken pursuant to Rule 92 *ter* of the Rules;

WHEREAS, nevertheless, applying the procedure under Rule 92 *ter* of the Rules supposes that the Prosecution is in a position to call the said witness at trial;

WHEREAS furthermore, at this stage of the proceedings, i.e. the presentation of the Prosecution case, only the Prosecution is offered the possibility of filing written motions before the Chamber in accordance with Guideline 6;

WHEREAS the Defence should be given 14 days to respond to the motions filed in accordance with Guideline 6 since, henceforth, such motions will deal with an entire municipality or a specific subject, and not the testimony of a single witness;

FOR THE FOREGOING REASONS,

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

ADOPTS the amended version of Guideline 6 attached hereto in annex;

AND INVITES the Prosecution, if need be, to file written motions in accordance with Guideline 6 as attached in annex as soon as possible after all the evidence concerning a municipality or a given subject has been presented.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this 29th day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

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;
- ii. References to relevant paragraphs of the Indictment;
- iv. Reference to the witnesses who have already appeared before the Chamber and to the documents admitted as evidence 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;~~ Reasons why the document will not be is not presented through a witness;
- vii. Reasons the party considers the document ~~essential~~ significant for the determination of the case.

b. The Defence shall have 14 ~~eight~~ days to respond and make objections, if need be, to each request to admit documents in this manner