



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: 20 February 2007  
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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:** 20 February 2007

**THE PROSECUTOR**

v.

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

**DECISION ON ADMISSION OF DOCUMENTARY EVIDENCE RELATING TO  
PROZOR MUNICIPALITY**

**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 Murphy for Bruno Stojic  
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

## I. INTRODUCTION

1. 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”) is seized of the “Prosecution Supplementary Motion for Admission of Documentary Evidence”, filed by the Office of the Prosecutor (“Prosecution”) on 7 December 2006 (“Supplementary Motion”), in which the Prosecution requests the Chamber to admit 32 documents relating to Prozor municipality.

## II. PROCEDURAL BACKGROUND

2. On 13 July 2006, the Chamber rendered the “Decision on Admission of Evidence” (“Decision of 13 July 2006”), in which it adopted the guidelines for the admission of evidence. Thus, in accordance with Guideline 1, as a general rule, a party requesting the admission of a document shall do so through a witness who can attest to its reliability, relevance, and probative value at trial. Nevertheless, 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 to a witness at trial, so long as the conditions set out in Guideline 6 were met.

3. On 6 November 2006, the Prosecution filed the “Prosecution Motion for Admission of Documentary Evidence relating to Prozor” (“Initial Motion”), in which it requested the admission of 33 documents it claims support the allegations set out in the Amended Indictment of 16 November 2005 (“Indictment”) concerning Prozor municipality.

4. On 14 November 2006, Counsel for the Accused Praljak filed “Slobodan Praljak’s Response to Prosecution Motion for Admission of Documentary Evidence relating to Prozor”, which the Accused Prlić, Stojić, Petković, Ćorić and Pušić joined on 15 and 17 November 2006.

5. On 29 November 2006, the Chamber rendered its “Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006” (“Decision of 29 November 2006”), in which it amended Guideline 6, attached in annex to the Decision of 13 July 2006. Guideline 6 as amended by the Decision of 29 November 2006 (“Guideline 6”) provides:

6. Subject to the following conditions, the Prosecution may request the Chamber, by way of written motion, to admit documents which were not put before a witness in court.

- 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. ---;
  - vi. Reasons why the document is not presented through a witness;
  - vii. Reasons why the party considers the document important for the determination of the case.

The Defence shall have 14 days to respond and make objections, if need be, to each document proposed for admission in this manner.

6. On 1 December 2006, the Chamber rendered the “Decision on Prosecution Motion for Admission of Documentary Evidence relating to Prozor”. In that decision, the Chamber indicated that it wished to rule on the Initial Motion on the basis of the criteria set out in Guideline 6. The Chamber requested the Prosecution to amend the Initial Motion and provide additional information in accordance with Guideline 6. In particular, the Chamber requested the Prosecution to provide additional information with respect to item (a) (iv) of the said Guideline, namely “[r]eference to [...] documents admitted as evidence dealing with the same paragraphs in the Indictment”, and with respect to item (a) (vi) of the said Guideline, namely “[r]easons why the document is not presented through a witness.” The Chamber deferred its decision on the Initial Motion until the additional information requested was provided.

7. On 7 December 2006, the Prosecution filed the “Supplementary Motion for Admission of Documentary Evidence” (“Supplementary Motion”), in which it requested the Chamber to admit 32 documents relating to Prozor municipality.

8. On 14 December 2006, Counsel for the Accused Prlić filed “Jadranko Prlić’s Response to Prosecution Supplementary Motion for Admission of Documentary Evidence” (“Prlić Response”), objecting to the Supplementary Motion.

9. On 15 December 2006, Counsel for the Accused Stojić, Ćorić and Pušić jointly filed “Valentin Ćorić, Bruno Stojić and Berislav Pušić’s Response to Prosecution Supplementary Motion for Admission of Documentary Evidence (“Joint Response”). In the Joint Response the Accused primarily request the Chamber to deny the Supplementary Motion. In the alternative, they request the Chamber to disallow four of the 32 documents proposed for admission. On 15 December 2006, the Accused Praljak joined the Joint Response in the “Joinder of the Accused Praljak in Valentin Ćorić, Bruno Stojić and Berislav Pušić’s Response to Prosecution Supplementary Motion for Admission of Documentary Evidence”) (“Praljak Response”), in which he further objected to a fifth document.

10. On 18 December 2006, Counsel for the Accused Petković filed “Milivoj Petković’s Response to Prosecution Supplementary Motion filed 6 December 2006 for Admission of Documentary Evidence Relating to Prozor (“Petković Response”) requesting that the Supplementary Motion be denied.

### III. ARGUMENTS OF THE PARTIES

11. In support of the Supplementary Motion, the Prosecution submits that the 32 documents it proposes for admission should be admitted in accordance with Tribunal case law and Guideline 6.

12. In the Prlić Response, the Accused Prlić argues in particular that the 32 proposed documents could have been tendered into evidence through witnesses who appeared before the Chamber. Prlić adds that if the documents were essential to the Prosecution’s case, they should have been introduced through witnesses.<sup>1</sup> The Accused Prlić also submits that the Prosecution failed to show that it would be prejudiced if the 32 documents were not admitted.<sup>2</sup>

13. In the Joint Response, the Accused Stojić, Praljak, Ćorić and Pušić argue that the Supplementary Motion fails to meet the criteria set out in Guideline 6. As such, they argue that the Prosecution did not explain the reasons why the documents were not introduced through

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<sup>1</sup> Prlić Response paras. 4 and 5.

<sup>2</sup> *Id.*, para. 6.

witnesses.<sup>3</sup> Moreover, they consider that the 32 documents could all be introduced through witnesses, who are already or have yet to be scheduled to appear before the Chamber.<sup>4</sup> The Accused further submit that the Prosecution failed to explain how exactly the documents are important for the case.<sup>5</sup> Alternatively, the Accused Stojić, Praljak, Ćorić and Pušić object to Exhibits P 00536, P 09335, P 00799 and P 00721.<sup>6</sup> The Accused Praljak objects additionally to Exhibit P 03764.<sup>7</sup>

14. The Accused Petković argues that the Prosecution has not established that the documents proposed for admission could not have been introduced through witnesses. Assuming that the Prosecution did not have enough time to present the documents at trial, it should have indicated in the Supplementary Motion the witness or witnesses to whom it would have liked to present the documents in question.<sup>8</sup>

#### IV. DISCUSSION

##### A. Applicable Law

15. The Chamber recalls the principles it has established in its previous decisions. Accordingly, the Chamber reiterates the fact that pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”), a document must offer a degree of relevance and probative value to be admitted. Because reliability is a component of admissibility under Rule 89(C) of the Rules, there must be a *prima facie* showing of a document’s reliability.

16. The Chamber prefers a document to be discussed at trial because such a discussion enables it to more easily establish a document’s reliability, relevance, and probative value. In its Decision of 13 July 2006, the Chamber nevertheless granted the Prosecution the possibility of seizing it of written motions requesting the admission of documents that were not discussed at trial. In that framework, in order to assess the relevance, probative value and reliability of those documents, the Chamber ordered the Prosecution to provide it information, which is listed specifically in Guideline 6. Accordingly, contrary to the argument of the Accused Prlić, it is not impossible for a document essential to the case to be admitted by way of written motion, provided that the Chamber has sufficient elements to assess its relevance, probative value, and reliability.

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<sup>3</sup> Joint Response, paras. 11-16.

<sup>4</sup> *Id.*, paras. 17-20.

<sup>5</sup> *Id.*, para. 21.

<sup>6</sup> *Id.*, paras. 22-26.

<sup>7</sup> Praljak Response, para. 2.

<sup>8</sup> Petković, Response paras. 2-5.

Furthermore, the Chamber reminds the Accused Prlić that Guideline 6 does not require a showing that any prejudice has been suffered.

### **B. Consideration of the Merits**

17. The Chamber first notes that the Prosecution has, for the most part, met the requirements set out in Guideline 6, especially the criteria set forth in items (a) (i), (ii), (iii), and (iv) thereof. As such, the Prosecution has provided information regarding the number, title, and description of the documents, the source of the documents, and references to the relevant paragraphs in the Indictment and to the witnesses and documents already in evidence which deal with the same paragraphs in the Indictment.

18. In the Joint Response, the Accused Stojić, Praljak, Ćorić and Pušić argue that the Prosecution failed in its obligation under Guideline 6 (a) (vii), which orders the Prosecution to explain to the Chamber the reasons why it considers the document important for the determination of the case. The Chamber considers, on the contrary, that the Prosecution has satisfied this criterion. In fact, the Prosecution has provided a summary of the passages in each of the documents which, it argues, are important for its case. In those summaries, the Prosecution also refers to the relevant paragraphs in the Indictment, explaining how the information is relevant with regard to a specific allegation in the Indictment.

19. Moreover, in their respective response, the Accused Stojić, Praljak, Ćorić, Pušić and Petković submit that the Prosecution failed in its obligation to explain to the Chamber why the 32 documents proposed for admission are not presented through witnesses as required under Guideline 6 (a) (vi). The Chamber first notes that the Prosecution seems to challenge the Decision of 29 November 2006 as such. The Prosecution thus claims that the criterion set out in Guideline 6 (a) (vi) is not a valid criterion for admission. The Chamber reminds the Prosecution that it must abide by the Chamber's decisions, failing which its motions may be denied. Should the Prosecution wish to challenge the validity of a decision of the Chamber, it may always request certification to appeal under Rule 73 (B) of the Rules. The Chamber notes that the Prosecution did not request certification to appeal the Decision of 13 July 2006, or that of 29 November 2006.

20. The Prosecution then submits that the time constraints would render it impossible for a witness to appear who would testify on each of the documents proposed for admission. The Chamber understands by the Prosecution's statement that it would be in a position to present witnesses, but that it has chosen not to in order to save time. The Chamber considers that the time constraints may warrant the presentation of a document for admission by way of written motion.

While the Chamber would have preferred more reasons on this issue, it considers that the Prosecution has sufficiently met the criterion in Guideline 6 (a) (vi).

21. In light of the above-mentioned admission criteria,<sup>9</sup> the Chamber will now examine the 32 documents proposed for admission. The Chamber first notes that it previously admitted some of the documents, namely Exhibits P 00654, already admitted as 3D 00131, P 00656, already admitted as P 00653, and P 00836, which was previously admitted as 3D 00425.

22. In the Joint Response, the Accused Stojić, Praljak, Ćorić and Pušić object to Exhibits P 00536, P 00721, P 00799 and P 09335.

23. Exhibit P 00536 is a military police report addressed to the Accused Ćorić. That document can be broken down into two parts, the first dealing with events in Prozor between 21 and 27 October 1992, and the second with events in Gornji Vakuf between 19 and 29 October 1992. Even if the Supplementary Motion deals exclusively with Prozor municipality and not Gornji Vakuf, the Chamber decides to admit the document in its entirety. Accordingly, the second part of the document is relevant with respect to paragraph 63 of the Indictment. Furthermore, several witnesses, particularly Witness Fahrudin Agić, testified about the events mentioned in the document.

24. The Accused Stojić, Praljak, Ćorić and Pušić next challenge the authenticity of Exhibit P 00721, which is a report issued by the HVO /Croatian Defence Council/ Security and Information Service in Prozor on 8 November 1992. The report deals with the appropriation and destruction of property following the outbreak of fighting in Prozor and holds the HVO military police responsible for those acts. The Chamber notes first that the report is not signed and only bears the initials "L.M." and "F.K." The Chamber further notes that there is no mention of the document's addressee. Nevertheless, the Chamber decides to admit this document because it bears the stamp of the Croatian archives and a registration number, which are sufficient to establish *prima facie* the document's reliability.

25. The Accused Stojić, Praljak, Ćorić and Pušić also challenge the relevance of Exhibit P 00799 with respect to the paragraphs in the Indictment relating to Prozor municipality. The document dated 25 November 1992 is signed by the Accused Stojić in his capacity of Head of the HVO Defence Department, and in it, he summons the commander of the Rama Brigade, the commander of a Prozor military police platoon, and the commander of the Prozor military police battalion to

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<sup>9</sup> *Supra*, para. 15.

Mostar on 26 November 1992. First, the Chamber considers that this document bears sufficient indicia of reliability. Next, while the Chamber does not have sufficient information to assess the definitive probative value that should be attached to this document, it considers nonetheless that this document is relevant to this case. Accordingly, this document mentions the commanders of the units accused of the crimes committed in Prozor in October 1992 by witnesses who appeared before the Chamber. Consequently, the Chamber decides to admit this document.

26. Finally, the Accused Stojić, Praljak, Ćorić and Pušić challenge the authenticity of Exhibit P 09335, which is a list of 71 names titled “Prozor Military Police”. As the Prosecution rightly points out, Witness BT mentioned the name of one of the persons whose name is on that list. Witness BT in fact stated that Nikola Marić participated in the arrests that took place in Lug on 17 July 1993. Furthermore, Witness BT and Exhibit P 03531 mention the presence of the military police in Lug on 17 July 1993. Accordingly Exhibit P 09335 is relevant and has some probative value. Although the document is not dated, it is signed and bears the stamp of the Croatian archives. Consequently, the Chamber considers that the document bears sufficient indicia of reliability and decides to admit it.

27. The Accused Praljak challenges the authenticity of Exhibit P 03764, an order of 28 July 1993, on the grounds that it is not signed. The Chamber indeed notes that Exhibit P 03764 is not signed. Conversely, at the foot of the page the document states: “Slobodan Praljak *Signed on the handwriting/sic!*”. It seems the document is a typewritten copy of a handwritten document. The Chamber considers that this typewritten copy does not bear sufficient indicia of reliability. Moreover, the documents cited by the Prosecution in support of this document do not date from July 1993. The Chamber next notes that Exhibit P 04203, which is also cited in the Supplementary Motion in support of Exhibit P 03764, was not admitted<sup>10</sup> and therefore may not be taken into account to determine the reliability of Exhibit P 03764. Consequently, the Chamber decides to disallow Exhibit P 03764 and invites the Prosecution to supply a copy of the original version of this document.

28. In view of the information provided by the Prosecution in the Supplementary Motion, the Chamber considers that the other documents the Prosecution seeks to admit all bear sufficient indicia of reliability, relevance, and probative value with respect to the allegations relating to Prozor municipality.

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<sup>10</sup> Oral Decision of the Chamber of 10 October 2006, Transcript (French version) p. 8064.



**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 89 of the Rules,

**PARTIALLY GRANTS** the Supplementary Motion,

**ADMITS** Exhibits P 00536, P 00607, P 00612, P 00628, P 00647, P 00654, P 00656, P 00662, P 00721, P 00726, P 00728, P 00799, P 00800, P 00836, P 01327, P 01937, P 01938, P 01949, P 02305, P 02911, P 02977, P 02982, P 03068, P 03262, P 03314, P 03375, P 03458, P 03510, P 04188, P 04260, and P 09335 **AND**

**DISALLOWS** Exhibit P 03764.

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

*/signed/*

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this twentieth day of February 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**