



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: 25 June 2007
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: 25 June 2007

THE PROSECUTOR

v.

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

PUBLIC

DECISION ON THE APPLICATION OF RULE 92 *ter* OF THE RULES

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy 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”);

NOTING the recent discussions held by the Parties at the hearings of 11, 12 and 18 June 2007 regarding the application of Rule 92*ter* of the Rules of Procedure and Evidence (“Rules”),¹

CONSIDERING that the Chamber considers it necessary to present in writing the common practice applied in this Chamber regarding the application of Rule 92 *ter* of the Rules and to clarify some points for the future,

CONSIDERING that pursuant to Rule 92 *ter* of the Rules, a Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness provided that the witness is present in court, that he is available for cross-examination and any questioning by the Judges, and that he attests that the written statement or transcript accurately reflects his declaration and what he would say if examined,

CONSIDERING that the main objective of Rule 92 *ter* is to ensure an effective and expeditious trial while respecting the rights of the Accused,

CONSIDERING that, following the adoption of Rule 92 *ter*, the Chamber encouraged the Office of the Prosecutor (“Prosecution”) to apply this Rules in the presentation of its evidence and developed a now common practice for its application,

CONSIDERING that, in accordance with this practice, once a witness has confirmed that a written statement accurately reflects his declaration and what he would say if examined, the Prosecution may ask the witness questions in order to clarify some points mentioned in the written statement,

CONSIDERING, moreover, that the Prosecution may also interrogate a witness about some points that are not mentioned in the written statement but were raised during the proofing of the witness,

CONSIDERING, however, that such practice must respect the conditions stipulated in the Chamber’s oral decisions of 3 July 2006² and 24 August 2006,³ whereby the Prosecution must inform the Defence and the Chamber about this as soon as possible, by any technical means, so that the Defence may prepare itself appropriately for the cross-examination and that the Chamber may render fully informed decisions on the objections that the Defence might raise in this connection, if so required,

CONSIDERING that this Rule was motivated by the need to limit to a maximum the Prosecution’s examination of a witness about the issues mentioned in summaries compiled in accordance with Rule 65 *ter* of the Rules,

CONSIDERING, moreover, that in conformity with the established practice, the Prosecution may present to a witness documents on the authenticity, relevance and probative value of which the witness is able to give evidence, and may interrogate the witness about these documents in court,

¹ See the French transcripts of the hearing (“Court Transcript in French (“T(F)”), pp. 19792-19802, 19937-19953 and 19964-19974.

² T(F) pp. 4246-4250.

³ T(F) pp. 5502-5504.

CONSIDERING that in order to do so, the Prosecution must respect the conditions stipulated in the Chamber's oral decisions of 3 July 2006,⁴ 21 August 2006⁵ and 13 November 2006⁶ and in the Chamber's written decision on the admission of evidence of 13 July 2006,⁷

CONSIDERING, consequently, that in conformity with the oral decision of 3 July 2006 and the written one of 3 July 2006, the Prosecution must disclose to the Defence the documents that it wishes to present as part of the witness evidence two weeks prior to the appearance of this witness in one of the official languages of the Tribunal and in the language of the Accused,

CONSIDERING, moreover, that pursuant to the oral decision of 21 August 2006, the Prosecution must, as a general rule, disclose to the Defence only the documents featuring on a list compiled pursuant to Rule 65 *ter* and that, should the Prosecution wish to present a document that is not included in this list, it should inform the Chamber about this, giving the basic grounds for which this document is pertinent to the case and justifying the belated disclosure of this document to the Defence, as well as the reason(s) for which the document was not included in the 65 *ter* list in the first place,

CONSIDERING that, in its oral decision of 13 November 2006, the Chamber allowed for the possibility that witness proofing may cause the Prosecution to amend the exhibit list which it had submitted to the Defence two weeks prior to the appearance of a witness in order to add or remove the documents that it wishes to present to the witness in court,

CONSIDERING, however, that such practice must respect the condition stipulated in the oral decision of 13 November 2006, whereby the Prosecution must inform the Defence and the Chamber about this as soon as possible,

CONSIDERING that the Chamber has noted an increasing tendency on the part of the Prosecution to ask additional questions regarding points mentioned in the written statement and that, although it is not opposed to this tendency, the Chamber invites the Prosecution henceforth to inform the Defence and the Chamber, as far and as soon as possible, by any technical means, the parts of a written statement about which it wishes to ask additional questions,

CONSIDERING, finally, that the Chamber has also observed another new practice by the Prosecution to introduce documents by means of a witness written statement without these documents being discussed in court,

CONSIDERING that in this way, within the scope of applying Rule 92 *ter*, the Prosecution recently submitted a written statement in which the witness claims that 14 documents annexed to it are an integral part of his written statement and that his previous written statements given before the Office of the Prosecutor comment on these documents,⁸

⁴ T(F) pp. 4246-4250.

⁵ T(F) pp. 5167-5168.

⁶ T(F) pp. 9975-9977.

⁷ Decision on Admission of Evidence of 13 July 2006, 13 July 2006.

⁸ See P 10071 (Zlatan Buljko's written statement of 15 May 2007).

CONSIDERING that, through such procedure, the content of these documents was introduced as evidence without fulfilling the conditions for the admission of documents stipulated in the decisions of 13 July 2006 and 29 November 2006,⁹

CONSIDERING that in order to avoid any possible misunderstanding and, where appropriate, the Chamber recalls that a Party wishing to tender a document into evidence should do it, as a rule, through a witness which can testify to its authenticity, relevance and probative value, and that this document should be presented to the witness in court, unless the Prosecution decides to present this document through a written request in conformity to guideline 6 cited in the Chamber's decision of 29 November 2006,

CONSIDERING, consequently, that there can be no question of opening a third "avenue" for the admission of documents through written statements submitted pursuant to Rule 92 *ter* of the Rules,

CONSIDERING that the Chamber will continue to examine the previous conditions for the application of Rule 92 *ter* of the Rules on a case by case basis,

FOR THE FOREGOING REASONS,

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

RECALLS the Chamber's oral decisions of 3 July 2006, 21 August 2006, 24 August 2006 and the Chamber's written decision on the admission of evidence of 13 July 2006 and 29 November 2006,

AFFIRMS that the principles mentioned in the above-cited decisions apply, respectively to additional questions put and to documents presented to witnesses called to appear in application of Rule 92 *ter*, **AND**

INVITES the Prosecution to inform the Defence and the Chamber, as far and as soon as possible, by any technical means, about which parts of a written statement it intends to ask additional questions.

Judge Antonetti appends a separate opinion as regards the present decision.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of June 2007

⁹ Decision amending the decision on the admission of evidence dated 13 July 2006, 29 November 2007.

At The Hague
The Netherlands

[Seal of the Tribunal]