

**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: 23 August 2007
Original : English
FRANÇAIS

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: 23 August 2007

THE PROSECUTOR

vs.

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

PUBLIC

**DECISION ON THE MOTIONS FOR ADMISSION OF DOCUMENTARY EVIDENCE
(ČAPLJINA/STOLAC MUNICIPALITIES)**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Defence Counsel:

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 Criminal Law Committed in the Territory of the Former Yugoslavia since 1991 ("Tribunal"),

SEIZED of two motions, *Prosecution Motion for Admission of Documentary Evidence (Čapljina/Stolac Municipalities)* filed by the Office of the Prosecutor ("Prosecution") on 19 June 2007 ("Čapljina/Stolac Motion"), in which the Prosecution requests that the Chamber admit 18 pieces of evidence relating to the municipalities of Čapljina and Stolac ("Proposed evidence relating to the Čapljina and Stolac municipalities") and the *Prosecution Motion for Admission of Documentary Evidence Related to Witness CG*, ("Witness CG Motion"), filed by the Prosecution on 14 December 2006 in which it requests that the Chamber admit 3 pieces of evidence related to the testimony of Witness CG ("Proposed Witness CG evidence"),

CONSIDERING that the Proposed Witness CG evidence relates to events in the municipality of Čapljina, the Chamber considers it appropriate to deal with the Witness CG Motion jointly with the Čapljina/Stolac Motion,

NOTING the *Joint Defence Response to the Prosecution Motion for Admission of Documentary Evidence (Čapljina/Stolac Municipalities)* filed by counsel for the Accused Prlić, Stojić, Praljak, Petković, Čorić and Pušić ("the Defence") on 12 July 2007 ("Joint Response"), requesting the denial of the Čapljina/Stolac Motion further to general Defence objections and specific objections raised individually by the various Defence counsel hereto annexed,

NOTING the *Prosecution Motion for Leave to Reply and Proposed Reply to Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (Čapljina/Stolac Municipalities)*, submitted by the Prosecution on 18 July 2007 ("Motion for Leave to Reply") in which it requests that the Chamber grant it leave to reply to the Joint Response,

NOTING the *Valentin Čorić Response to Prosecution Motion for Admission of Documentary Evidence related to Witness CG* filed by counsel for the Accused Čorić ("Čorić Defence") on 22 December 2006 ("Čorić Response") in which it requests that the Chamber deny the Witness CG Motion and, in the alternative, reject exhibit P 03665,

NOTING the *Response of Berislav Pušić to Prosecution Motion for Admission of Documentary Evidence Related to Witness CG Dated 14th December 2006* ("Pušić Response") filed by counsel for the Accused

Pušić (“Pušić Defence”) on 28 December 2006 in which it joins the Ćorić Motion and raises individual objections to the admission of certain Proposed Witness CG evidence,

CONSIDERING that the Chamber would first recall that further to its Decision of 28 April 2006,¹ the party wishing to file a reply must request leave of the Chamber to do so while clearly indicating why the circumstances are sufficiently compelling for the Chamber to grant its request and may file its reply only after leave of the Chamber has been granted,²

CONSIDERING that the Chamber notes that the Prosecution has not complied with the conditions set out in Rule 126 of the Rules of Procedure and Evidence (“Rules”) and the Decision Adopting Guidelines insofar as it has joined its Reply to the Motion for Leave to Reply without having been granted prior leave of the Chamber and that it has not indicated why the circumstances were sufficiently compelling for obtaining leave to file a Reply,

CONSIDERING that the Chamber further notes that in its Joint Response, the Defence raises arguments similar to those presented in some of their previous written submissions,³ arguments to which the Prosecution has already had the opportunity to respond,⁴

CONSIDERING that, as a result of this, the Chamber does not grant the Motion for Leave to Reply,

CONSIDERING that in support of the Čapljina/Stolac Motion, the Prosecution submits that the Proposed evidence relating to the Čapljina and Stolac municipalities satisfy the criteria for admissibility established by the case law and practice of the Tribunal as well as guideline no. 6 as amended by the Decision Amending the Decision on the Admission of Evidence dated 13 July 2006 rendered on 29 November 2006 (“Guideline no. 6”),⁵

CONSIDERING that the Prosecution also submits that the Proposed evidence relating to the Čapljina and Stolac municipalities is relevant here and has probative value insofar as it refers to

¹ *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings. 28 April 2006 (“Decision adopting guidelines”).

² Decision adopting guidelines, III.

³ In particular *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (UN documents), 2 July 2007.

⁴ In particular *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Prosecution Reply to Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (UN Documents), 11 July 2007.

⁵ Motion, para. 2.

paragraphs 154, 155, 157, 159, 172, 173 to 175, 181, 189 and 232 of the Amended Indictment dated 16 November 2005 (“Indictment”),⁶

CONSIDERING that the Prosecution also submits that in view of the time constraints set in this case, it does not anticipate calling witnesses *viva voce* to present the Proposed evidence relating to the Čapljina and Stolac municipalities,⁷

CONSIDERING that the Prosecution lastly submits that the Proposed evidence relating to the Čapljina and Stolac municipalities offers sufficient indicia of reliability insofar as all the Proposed evidence except for one exhibit, P 08813, comes from the archives of Croatia, the Army of Bosnia and Herzegovina (“ABiH”), the government of Bosnia and Herzegovina (“BiH”), the Stabilisation Force in Bosnia and Herzegovina (“SFOR”), the United Nations Protection Force (“UNPROFOR”) and the European Community Monitor Mission (“ECMM”),⁸

CONSIDERING that in support of the Joint Response, the Defence submits *inter alia* that the fact that the Proposed evidence relating to the Čapljina and Stolac municipalities comes from the archives of Croatia, the ABiH, the government of BiH, SFOR, UNPROFOR and the ECMM does not guarantee its reliability,⁹

CONSIDERING that the Defence also submits that the Prosecution has disregarded Guideline no. 6 insofar as it has not adequately explained why it is not introducing the Proposed evidence relating to the Čapljina and Stolac municipalities through a witness,¹⁰

CONSIDERING that the Defence submits moreover that the admission of documentary evidence by way of a written motion deprives the Accused of the right to cross-examine the Prosecution witnesses as guaranteed by Article 21(4)(e) of the Statute of the Tribunal,¹¹

CONSIDERING that the Defence objects to the Prosecution’s interpretation of the Proposed evidence relating to the Čapljina and Stolac municipalities,¹²

⁶ Motion, para. 4 and Annex 1.

⁷ Motion, Annex 1, p. 1.

⁸ Motion, Annex 1, p. 1.

⁹ Joint Response, para. 5.

¹⁰ Joint Response, paras. 9 and 10.

¹¹ Joint Response, para. 12.

¹² Joint Response, para. 14.

CONSIDERING that the Defence objects to the admission of exhibits P 00279, P 00907 and P 01706 insofar as they do not relate to any issue covered by the Indictment,¹³

CONSIDERING that the Defence objects to the admission of exhibit P 02043 insofar as the fact that it was submitted to Witness Zlatan Buljko whose testimony is not yet complete means that the Chamber should wait to see whether the Prosecution wishes to offer it through that witness before deciding on its admission,¹⁴

CONSIDERING that the Defence objects to the admission of exhibit P 02227 insofar as the fact that it is a document originating from an ABiH propaganda organ means that its reliability is questionable and that it objects to the Prosecution's interpretation of that exhibit,¹⁵

CONSIDERING that the Defence objects to the admission of exhibit P 08813 insofar as it does not fall within the time frame of the Indictment, presents no indicia of reliability and contains information based on hearsay,¹⁶

CONSIDERING that several Defence teams further object to the admission of exhibits P 00020, P 03230, P 03307, P 03478 and P 03580 insofar as they contest the Prosecution's interpretation of those exhibits,¹⁷

CONSIDERING that in the Joint Response, the Praljak Defence objects to the admission of exhibit P 03151 whose authenticity it contests,¹⁸

CONSIDERING that in support of the Witness CG Motion, the Prosecution submits that the Proposed Witness CG evidence is admissible insofar as it satisfies the conditions for admissibility established by the case law and practice of the Tribunal as well as the rules of the Chamber in respect of admission of evidence,¹⁹

¹³ Joint Response, paras. 16 to 18.

¹⁴ Joint Response, para. 19.

¹⁵ Joint Response, para. 20.

¹⁶ Joint Response, para. 21.

¹⁷ Joint Response, Annexes 1 to 5.

¹⁸ Joint Response, Annex 2.

¹⁹ Witness CG Motion, para. 2.

CONSIDERING that the Prosecution further submits that because of the time limits set in this case, it does not anticipate calling future witnesses through whom it would be able to introduce the Proposed Witness CG Evidence,²⁰

CONSIDERING that in the Ćorić Response, the Ćorić Defence *inter alia* submits that the Prosecution will have the opportunity to call witnesses through whom it will be able to introduce the Proposed Witness CG Evidence,²¹

CONSIDERING that the Ćorić Defence further objects to the admission of exhibit P 03665 whose authenticity it contests,²²

CONSIDERING that in the Pušić Response, the Pušić Defence also objects to the admission of exhibit P 03665 insofar as it contests the Prosecution's interpretation of that exhibit,²³

CONSIDERING that the Chamber would first recall its previous decisions in which it identified the principles for admission of evidence,²⁴

CONSIDERING that the Chamber would first note that both in the Čapljina/Stolac Motion and the Witness CG Motion, the Prosecution has satisfied the requirements of Guideline no. 6 (a) (i), (ii), (iii), (iv) and (vii) by having provided information on the number, title, description of the exhibits, their source, the relevant paragraphs of the Indictment, the witnesses who have already appeared in the case and the exhibits admitted which refer to the same paragraphs of the Indictment and the significance of the exhibits in the case at hand,

CONSIDERING that the Chamber then recalls that, in accordance with its Decisions of 7 March 2007²⁵ and 20 July 2007,²⁶ the time limits, as alleged by the Prosecution in the Čapljina/Stolac Motion and the Witness CG Motion, may justify a document's being submitted for admission in

²⁰ Witness CG Motion, Annex.

²¹ Ćorić Response, para. 15.

²² Ćorić Response, paras. 16 to 19.

²³ Pušić Response, para. 2 and 3.

²⁴ In particular the Decisions, *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Decision on the Admission of Evidence, 13 July 2006, *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Decision Amending the Decision on the Admission of Evidence, 13 July 2006, 29 November 2006 and *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Decision on Admission of Documentary Evidence Related to the Municipality of Prozor, 20 February 2007.

²⁵ *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Decision on the Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes, 7 March 2007 ("Herceg-Bosna Decision"), p. 4.

the form of a written motion and that the Prosecution has thus satisfied point (a) (vi) of Guideline no. 6 in its two motions,

CONSIDERING that as exhibit P 05289 has already been admitted, the Prosecution request regarding this exhibit is moot,

CONSIDERING that the Chamber can already note that the origin of the official archives of Croatia, the ABiH, the government of BiH, SFOR, UNPROFOR and the ECMM provides sufficient indicia of the authenticity of all the Proposed evidence relating to the Čapljina and Stolac municipalities, with the exception of exhibit P 08813,

CONSIDERING that the Chamber also notes that exhibit P 03151 bears a stamp of the archives of Croatia which provides sufficient indicia of authenticity,

CONSIDERING that the Chamber observes moreover that exhibit P 03665 bears a stamp of the military police administration of the Croatian Community of Herceg Bosna and an archive reference number which provide sufficient indicia of its authenticity,

CONSIDERING that the Chamber recalls that at this stage it need not make a definitive evaluation of the relevance, reliability and probative value of the evidence, which it will do only at the end of the trial when all the Prosecution and Defence evidence has been admitted into the record,

CONSIDERING that when evaluating the probative value of all the evidence, the Chamber will take into account the fact that some of the information is hearsay, that there has been no cross-examination in respect of that information and the objections raised against it by the Defence in its written filings,²⁷

CONSIDERING therefore that the Chamber will at the appropriate time take into account the objection raised by the Pušić Defence against the Prosecution's interpretation of exhibit P 03665 and the Defence objection in respect of exhibit P 02227,

²⁶ *The Prosecutor vs. Prlić et al*, Case no. IT-04-74-T, Decision on Admission of Documentary Evidence Presented by the Prosecution (Jablanica municipality), rendered confidentially on 20 July 2007.

²⁷ *The Prosecutor vs. Zlatko Aleksovski*, Case no. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admission of Evidence, 16 February 1999, para. 15.

CONSIDERING that contrary to the Defence arguments, exhibits P 00279, P 00907 and P 01706 display a certain degree of relevance and probative value insofar as they contain information related to paragraphs 26, 155, 173 and 232 of the Indictment,

CONSIDERING that the Chamber observes that exhibit P 08813 is a report originating from the authorities of the Federation of Bosnia and Herzegovina dated 14 January 1998 containing information about the 1991 census for the municipalities of Čapljina and Stolac and that it is therefore relevant in respect of paragraphs 154 and 155 of the Indictment,

CONSIDERING that the Chamber also notes that because exhibit 08813 bears a stamp, a signature and a register number, it displays sufficient indicia of authenticity,

CONSIDERING that the Chamber notes moreover that the Prosecution submits as an argument justifying its request for the admission of the Proposed evidence relating to the Čapljina and Stolac municipalities by way of a written motion, that the time limits set in this case preclude its calling witnesses to testify in respect of those documents,

CONSIDERING that the Chamber notes that exhibit P 02043 was already shown to Witness Zlatan Buljko at the hearing of 11 June 2007, that the testimony of the said witness has not been completed and that it will rule on its admission after having hearing the witness' evidence,

CONSIDERING therefore that the Chamber does not wish to admit exhibit P 02043 at this stage and invites the Prosecution to request its admission through Witness Zlatan Buljko,

CONSIDERING that as exhibit P 00020 does not bear any stamp, signature or identification of the document source, it does not offer sufficient indicia of reliability and cannot be admitted,

CONSIDERING that in view of the information provided by the Prosecution in the Čapljina/Stolac Motion and the Witness CG Motion, the Chamber considers that the other Proposed evidence relating to the Čapljina and Stolac municipalities and the Proposed Witness CG evidence offers sufficient indicia of reliability, relevance and probative value in respect of the allegations set out in the Indictment,

FOR THE FOREGOING REASONS

IN APPLICATION of Rule 89 of the Rules,

DENIES the Motion for Leave for File a Reply,

GRANTS the Witness CG Motion,

PARTIALLY GRANTS the Čapljina/Stolac Motion,

RECALLS that exhibit P 05289 has already been admitted,

ADMITS exhibits P 00279, P 00416, P 00907, P 01706, P 02117, P 02227, P 03151, P 03187, P 03230, P 03307, P 03326, P 03478, P 03580, P 03659, P 03665, P03666, P 03670 and P 08813 **AND**

REJECTS exhibits P 00020 and P 02043.

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

Jean-Claude Antonetti
Presiding Judge Trial Chamber III

Done this twenty-third day of August 2007

At The Hague

The Netherlands

[Seal of the Tribunal]