



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: 27 September 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: 27 September 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTION TO DISMISS CERTAIN PROSECUTION
MOTIONS FOR ADMISSION OF DOCUMENTARY EVIDENCE AS AN
ABUSE OF PROCESS**

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 Karim A. A. Khan 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 Čorić
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"),

BEING SEIZED of the "Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process" ("Motion") filed on 4 September 2007 by Counsel for the Accused Prlić, Stojić, Praljak, Petković, Čorić and Pušić ("Defence"), in which the Chamber is asked to dismiss seven motions for the admission of documentary evidence filed by the Office of the Prosecutor ("Prosecution")¹ on the grounds that they constitute an abuse of process and to suspend the schedule for responding to the Prosecution's motions set out in the Motion pending a Decision on the present Motion,

NOTING the "Prosecution Response to Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process" ("Response") filed on 18 September 2007 by the Prosecution, in which it responds to the Motion and asks the Chamber to dismiss it,

NOTING the Chamber's oral decision of 19 September 2007, in which it rejected the Defence's request to suspend the schedule for responding to the seven Prosecution motions set out in the Motion,²

NOTING the Decision of 29 November 2006³ in which the Chamber amended Guideline 6 ("Guideline 6"), as envisaged in the "Decision on Admission of Evidence" of 13 July 2006 ("Decision of 13 July 2006"),

CONSIDERING that in its Motion the Defence first recalls that the Prosecution is asking for the admission, without attempting to put them to any witness, of 1,667

¹ This concerns the motions for admission of documentary evidence relating to Ljubuški dated 12 June 2007, to Mostar dated 4 July 2007, to Josip Praljak also dated 4 July 2007, to Vareš dated 5 July, to Heliodrom dated 15 August 2007, to Dretelj and Gabela dated 21 August 2007 and finally to the structure of the HVO, dated 27 August 2007.

² French transcript, pp. 22480 and 22481.

³ "Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006", 29 November 2006 ("Decision of 29 November 2006").

documents, amounting to between 10% and 20% of the total documentary evidence contained in the Prosecution case file,⁴

CONSIDERING that the Defence maintains in particular that the various motions for the admission of documentary evidence constitute an abuse of process to the extent that they go against the Guidelines presented in the Decision of 13 July 2006, and Guideline 6 in particular,⁵

CONSIDERING that the Defence holds that Guideline 6 in particular requires the Prosecution to explain why documentary evidence, which it wants admitted in its motions, is not tendered through a witness, regardless of who the witness is,⁶

CONSIDERING that, according to the Defence, it is not enough for the Prosecution to say that it does not anticipate calling any witness in connection with tendering this evidence,⁷

CONSIDERING that the Defence also holds that the admission of documentary evidence by way of a written motion will deny the Accused of their right to cross-examine Prosecution witnesses, guaranteed by Article 21(4)(e) of the Statute, with respect to 10% to 20% of the documentary evidence relied on by the Prosecution to secure a conviction,⁸

CONSIDERING that the Defence believes that it would thus be denied its right to contest the authenticity, reliability and content of the documents,⁹

CONSIDERING that, in support of its Response, the Prosecution maintains that since the case is especially important and complex, it can come as no surprise that a large amount of documents has been tendered into evidence by the Prosecution;¹⁰

CONSIDERING, moreover, that the Prosecution maintains that the jurisprudence and practice of the Tribunal, as well as of the Trial Chamber, support the admission of documentary evidence by way of a written motion,¹¹

⁴ Motion, para. 1.

⁵ Motion, para. 9.

⁶ Motion, para. 13.

⁷ Motion, para. 13.

⁸ Motion, para. 9 and paras. 16 to 18.

⁹ Motion, para. 16.

¹⁰ Response, para. 4.

¹¹ Response, paras. 12 to 14.

CONSIDERING that the Prosecution argues that it has made every effort to present its case as efficiently as possible, while abiding by the requirements of the Trial Chamber, and that it was therefore led to presenting more evidence by means of a written motion,¹²

CONSIDERING that the Prosecution maintains that in order to do so, it tendered only a selection of the documentary evidence at its disposal,¹³

CONSIDERING that the Prosecution recalls that the right to cross-examination is not absolute and that the majority of documentary evidence tendered by means of a written motion relates to evidence presented through a *viva voce* witness and which the Defence had a full opportunity to challenge,¹⁴

CONSIDERING that the Prosecution also recalls that the Defence has had an opportunity to state its arguments by making a full response to the Prosecution's motion requesting the admission of documentary evidence,¹⁵

CONSIDERING that the Trial Chamber finds that, first of all, in its Decision of 13 November 2006,¹⁶ in which it reduced the time allocated to the Prosecution for the presentation of its case, it charged the Prosecution with only calling key witnesses to testify at the trial and producing only such exhibits that are crucial to prove that the crimes were committed and that the Accused were responsible for them, at the same time inviting it to use more frequently the procedure postulated under Rules 92*bis* and *ter* of the Rules of Procedure and Evidence ("Rules"),¹⁷

CONSIDERING, furthermore, that the Chamber recalls that according to Guideline 6, based on Rules 89(c) and 90(f) of the Rules, the Prosecution may request the admission of evidentiary documents by means of a written motion so as to allow it to file any important evidence which it did not have the opportunity to present through a witness because of the limited time allocated to it for the presentation of its case,

¹² Response, para. 27.

¹³ Response, para. 28.

¹⁴ Response, para. 34.

¹⁵ Response, para. 35.

¹⁶ Decision on the Adoption of New Measures to Bring the Trial to an End within a Reasonable Time

¹⁷ *Ibid.*, para. 21.

CONSIDERING that the Chamber also notes that the Defence always has the opportunity to respond to the Prosecution's written motions introduced on the basis of Guideline 6 and to formulate, if need be, its objections to each exhibit proposed for admission on this basis,¹⁸

CONSIDERING that the Trial Chamber recalls that time constraints may explain why the Prosecution did not have the opportunity to call a witness to testify in court in order to present each document it wishes to have admitted,¹⁹

CONSIDERING that the Trial Chamber recalls that at the stage of a decision on the admission of documentary evidence, it considers arguments put forward by the Defence on the authenticity and reliability of evidence so as to determine whether it will be tendered into evidence,

CONSIDERING that the Trial Chamber recalls that at the end of the trial, when assessing the probative value of all the evidence, it will take into account that there has been no cross-examination in respect of that evidence and the objections raised against it by the Defence in its written submission,²⁰

CONSIDERING that the Trial Chamber recalls that the Defence will have the opportunity elsewhere to contest the documents admitted by means of a written motion or through a witness during the presentation of the Defence case,²¹

CONSIDERING that the Trial Chamber deems that the complexity and scale of this case as well as the time constraints imposed on the Prosecution justify its using to a large extent written means in order to request the admission of documentary evidence so long as the Rules and the Guidelines established by the Trial Chamber on this matter are respected,

¹⁸ Guideline 6 as amended in the Decision of 29 November 2006.

¹⁹ See especially the Decision on Admission of Documentary Evidence Relating to Prozor Municipality, 20 February 2007, para. 20.

²⁰ See especially the Decision on the Motions for Admission of Documentary Evidence (Čapljina/Stolac Municipalities), pp. 7 and 8.

²¹ Decision on Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes, 7 March 2007, p. 5.

CONSIDERING, furthermore, that the Trial Chamber has shown great flexibility in frequently granting extensions to deadlines for responses to Prosecution motions in order to allow the Defence to present its objections,

CONSIDERING that the Trial Chamber believes that the Prosecution has not committed an abuse of process in requesting the admission of evidence by means of several motions,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89(C) of the Rules,

DISMISSES the Motion.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]