



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: 1 November 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

Order of: 1 November 2007

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS NICHOLAS J. MILLER

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 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”);

CONSIDERING that the Office of the Prosecutor (“Prosecution”) requested the admission of 22 pieces of evidence¹ while Counsel for the Accused Praljak (“Praljak Defence”) requested the admission of 6² pieces of evidence related to the testimony of Witness Nicholas Miller (“Proposed Exhibits”) whose appearance took place on 24, 25 and 26 September 2007,

CONSIDERING that the Chamber has heard the objection raised by Counsel for the Accused Petković (“Petković Defence”)³ (“Petković Defence Objection”) against the admission of Exhibit P 10239 which the Prosecution moves to admit, on the ground that the report lacks sufficient foundation and is based on sources that are not reliable enough to support the conclusions of the report,

CONSIDERING that in an oral decision of 3 October 2007, the Chamber granted the Praljak Defence additional time to file its objections against the admission of certain documents tendered by the Prosecution,⁴

CONSIDERING that the Chamber has heard the objections raised by the Praljak Defence⁵ (“Praljak Defence Objection”) against the admission of Exhibits P 10239, P 10240 and P 10285 which the Prosecution offers for admission, respectively on the grounds that Exhibit P 10239 is not relevant to the case, Exhibit P 10240 is not relevant and lacks solid foundations, and that Exhibit P 10285 does not appear on the Prosecution’s exhibit list⁶ and was not disclosed to the Defence before the first day of Witness Miller’s testimony,

¹ IC 00670.

² IC 00671.

³ IC 00675.

⁴ Hearing of 3 October 2007, Court transcript in French (“T(F)”) pp. 23075-23076.

⁵ Opposition of Slobodan Praljak to Evidence Tendered through Witness Nicholas Miller, 4 October 2007.

⁶ Prosecution’s Rule 65 *ter* List of Exhibits, filed 19 January 2006 and amended by the Decision on Prosecution Motion to Add Exhibits to Its Exhibits List dated 19 April 2007, the Decision on the Exhibit List dated 4 May 2007, the Decision on List of Exhibits dated 1 June 2007, the oral decision of 7 June 2007, the Decision on List of Exhibits dated 7 September 2007, the Decision on Prosecution Motion to Add to the Exhibits List dated 11 September 2007 and the Decision on the Prosecution Motion to Add Exhibits to Its Exhibit List and for Admission of Such Exhibits (28 Documents from the Presidential Office of the Republic of Croatia) dated 22 October 2007 (“List of Exhibits”).

CONSIDERING that during the hearing of 9 October 2007, the Chamber granted the Prosecution the right to respond to the Praljak and Petković Defence Objections before 12 October 2007,⁷

CONSIDERING that on 12 October 2007 the Prosecution filed its response to the Praljak and Petković Defence Objections concerning the expert reports of Nicholas J. Miller,⁸

CONSIDERING that the Chamber has heard the objections raised by the Prosecution⁹ (“Prosecution Objections”) against Exhibits 3D 01074, 3D 01077 and 3D 01081 on the ground that Witness Nicholas Miller had no knowledge at all about these documents and was not able to provide any confirmation in respect of the claims made therein; and against Exhibit 3D 01076 on the ground that the presentation of this document to the witness was inaccurate and irrelevant and that the witness was unable to confirm the claims made therein,

CONSIDERING that the Chamber recalls that pursuant to an oral decision of 21 August 2006,¹⁰ recalled by an oral decision of 13 November 2006,¹¹ the Prosecution is required to inform the Chamber of documents which do not appear on its List of Exhibits and to explain how they are essential for the case and why they do not appear on its List of Exhibits,

CONSIDERING that the Chamber notes that during the testimony of Nicholas Miller, the Prosecution put several documents to him which did not appear on its List of Exhibits to, which it did not request to add to the list, without informing the Chamber or the Defence,

CONSIDERING that it appears therefore that the Prosecution did not comply with the Chamber’s instructions in this regard, and the documents not appearing on the List of Exhibits may not be admitted,

CONSIDERING moreover that the Chamber notes that Exhibits P 10239 and P 10240 are the expert reports drafted by Witness Nicholas Miller and that they were disclosed in accordance with Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that with regard to these expert reports, the documents that indeed appear on the List of Exhibits, and the documents that the Praljak Defence requests for admission, the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria

⁷ Hearing of 9 October 2007, T(F) p. 23390.

⁸ Prosecution Reply to Defence Objections to Expert Reports of Nicholas J. Miller, dated 12 October 2007.

⁹ IC 00684.

¹⁰ Hearing of 21 August 2006, T(F) pp. 5167-5168.

set out in its “Decision on Admission of Evidence” rendered 13 July 2006 (“Decision of 13 July 2006”),

CONSIDERING that the Chamber recalls that at this stage it need not make a final assessment of the relevance, reliability and probative value of the Proposed Exhibits, that it will do so only at the end of the trial after all of the evidence, both Prosecution and Defence, has been tendered into the record and that at that time it will take into account the Praljak Defence and Petković Defence Objections regarding the relevance and reliability of expert reports P 10239 and P 10240,

CONSIDERING finally that the Chamber finds, as the Prosecution notes, that Witness Nicholas Miller was not able to provide the Chamber with information about the content of Exhibits 3D 01074, 3D 01076, 3D 01077 and 3D 01081, and that the Chamber cannot therefore admit them,

CONSIDERING that the Chamber decides to admit into evidence the documents indicated “Admitted” in the Annex attached to this decision since they were put to Witness Nicholas Miller and bear sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits indicated “Not Admitted” in the Annex attached to this decision since they do not satisfy the requirements of the Decision of 13 July 2006,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

PARTIALLY GRANTS the requests for admission of the Prosecution and Praljak Defence,

ADMITS into evidence the documents indicated “Admitted” in the Annex attached to this decision **AND**

DENIES by a majority Exhibits 3D01074 and 3D01076 which the Praljak Defence requests for admission **AND**

¹¹ Hearing of 13 November 2006, T(F) pp. 9975-9977.

DENIES unanimously and in all other respects the Prosecution and Praljak Defence requests for admission,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this first day of November 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
P 08448	Prosecution	Not admitted (reason: the Prosecution did not specify which part of the document it seeks to have admitted)
P 08545	Prosecution	Not admitted (reason: the Prosecution did not specify which part of the document it seeks to have admitted)
P 10239	Prosecution	Admitted
P 10240	Prosecution	Admitted
P 10241	Prosecution	Not admitted (reason: the document was not on the List of Exhibits at the time the witness testified).
P 10242	Prosecution	Not admitted (reason: the document was not on the List of Exhibits at the time the witness testified).
P 10243	Prosecution	Not admitted (reason: the document was not on the List of Exhibits at the time the witness testified).
P 10267: pp. 19-29	Prosecution	Not admitted (reason: the document was not on the List of Exhibits at the time the witness testified).
P 10271	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10272	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10273	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10276	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10277	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10278	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10279	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10280	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10281	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10282	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10283	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10284	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
P 10285	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).

P 10286	Prosecution	Not admitted (reason: the document is not on the List of Exhibits).
3D 01074: 3D27-060 to 3D27-061	Praljak Defence	Not admitted by a majority (reason: the witness was unable to provide the Chamber with information about the authenticity, relevance and probative value of the document).
3D 01076: 3D27-0141	Praljak Defence	Not admitted by a majority (reason: the witness was unable to provide the Chamber with information about the authenticity, relevance and probative value of the document).
3D 01077: 3D27-0230	Praljak Defence	Not admitted (reason: the witness was unable to provide the Chamber with information about the authenticity, relevance and probative value of the document).
3D 01081: 3D27-0363	Praljak Defence	Not admitted (reason: the witness was unable to provide the Chamber with information about the authenticity, relevance and probative value of the document).
3D 01085	Praljak Defence	Admitted
3D 01086	Praljak Defence	Admitted