



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: 4 December 2007
Original: English
FRENCH

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Judge Antoine Kesia-Mbe Mindua, Reserve Judge
Registrar: Mr Hans Holthuis
Decision of: 4 December 2007

THE PROSECUTOR

vs.

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

PUBLIC

**DECISION ON THE PROSECUTION MOTION FOR ADMISSION OF
DOCUMENTARY EVIDENCE
(Management and administration of Heliodrom camp)**

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 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 (“the 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 (“the Tribunal”),

SEIZED of the Prosecution Motion for Admission of Documentary Evidence Following the Testimony of Prosecution Witness Josip Praljak, filed by the Office of the Prosecutor (“the Prosecution”) on 4 July 2007 (“the Motion”) in which the Prosecution requests that the Chamber admit, pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“the Rules”), 26 exhibits related to the testimony of Josip Praljak (“the Proposed Exhibits”),¹ to which an annex is attached,

NOTING the Order to Admit Evidence Regarding Witness Josip Praljak issued on 3 April 2007 by the Chamber, in which it admitted 73 exhibits tendered and discussed at the hearing by way of Witness Josip Praljak (“the Order of 3 April 2007”),

NOTING the decision of the Chamber of 16 May 2007,² in which the Chamber invited the Prosecution to file a written motion in conformity with guideline 6 set out in the Decision of the Chamber of 29 November 2006 on the admission of evidence³ for the documents relating to the management and internal organisation of the Heliodrom camp while at the same time clearly indicating that, in this case, it would be excused from applying item (a) (iv) of that guideline,

NOTING the oral decision of the Chamber of 12 July 2007,⁴ in which the Chamber decided to stay its ruling on the Motion pending the Prosecution’s filing of its motion for admission in respect of the Heliodrom camp; invited counsel for the six Accused in this case (“the Defence”) to file a consolidated response to the two motions for admission and in which the Chamber recalled that guideline 6 of the Decision of 29 November 2006 authorises the Prosecution to submit written requests at the conclusion of the presentation of the evidence for a municipality or a specific subject, and not for a specific witness (“the Oral Decision of 12 July 2007”),

¹ Motion, para. 1.

² Decision of the Prosecution Motion for Reconsideration, or in the Alternative, Request for Certification for Appeal of the Decision of the Chamber of 3 April 2007 on the Admission of Evidence relating to Witness Josip Praljak, 16 May 2007 (“Decision of 16 May 2007”).

³ Decision amending the decision on the admission of evidence dated 13 July 2006, 29 November 2006 (“Decision of 29 November 2006”).

⁴ French hearing transcript, pp. 21195-21198.

NOTING the Joint Defence Response to the Prosecution Motion for Admission of Documentary Evidence Following the Testimony of Prosecution Witness Josip Praljak, filed jointly by the Defence on 12 September 2007 (“the Joint Response”) in which it objects to the admission of the Proposed Exhibits by raising general objections and to which counsel for the Accused Praljak (“the Praljak Defence”), counsel for the Ćorić Defence (“the Ćorić Defence”) and counsel for the Accused Pušić (“the Pušić Defence”) respectively attached an annex,

CONSIDERING that in support of the Motion, the Prosecution submits that all the information required by guideline 6 set out in the Decision of 29 November 2006, except for the information it is excused from providing, appears in the chart attached in the annex to the Motion,⁵

CONSIDERING that it also submits that the Proposed Exhibits are relevant and has probative value,⁶

CONSIDERING that in addition the Prosecution points out that the Proposed Exhibits have been authenticated and shown to witness Josip Praljak but that because of time constraints it was unable to discuss the Proposed Exhibits with that witness inside the courtroom,⁷

CONSIDERING finally that the Prosecution refers to its arguments in the Prosecution Motion for Admission of Documentary Evidence relating to Prozor, the Prosecution Motion for Admission of Documentary Evidence (Jablanica municipality) and the Prosecution Motion for Reconsideration, or in the Alternative, Request for Certification for Appeal, submissions filed respectively on 6 November 2006, 15 February 2007 and 10 April 2007,⁸

CONSIDERING that in the Joint Response, the Defence objects in general to the admission of the Proposed Exhibits on the ground that admitting them into the record would contravene guideline 6 as set out in the Decision of 29 November 2006 and the right of the accused to a fair trial,⁹

CONSIDERING that in support of the Joint Response, the Defence refers to its arguments in the Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence Following the testimony of Prosecution Witness (Heliodrom camp), filed on 12 September

⁵ Motion, para. 5.

⁶ Motion, para. 5.

⁷ Motion, Annex 1, p. 1.

⁸ Motion, para. 4.

⁹ Joint Response, para. 2.

2007, and the Joint Defence Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process filed on 4 September 2007 (“the Motion of 4 September 2007”),¹⁰

CONSIDERING that the Praljak, Ćorić and Pušić Defence present individual objections to the Proposed Exhibits,¹¹ objections which the Chamber has duly taken into account, without however discussing them all in this decision,

CONSIDERING first that the Chamber notes that the Defence did not comply with the instruction in the Oral Decision of 12 July 2007, insofar as it filed a response only to the Motion and not a consolidated response to the Motion and to the Prosecution Motion for Admission of Evidence in respect of the Heliodrom camp, as invited to do so by the Chamber,

CONSIDERING that, although this choice does not respond to a concern for judicial economy, the Chamber, exceptionally, will not hold this against the Defence,

CONSIDERING next that insofar as the Chamber has noted that the documents whose admission is sought in the Motion relating to the administration and management of the Heliodrom camp and that in its Decision of 16 May 2007 the Chamber had invited the Prosecution to file, if necessary, a written request on this latter subject, it decides to examine the Motion because it deals specifically with this subject and not because of its possible link with witness Josip Praljak,

CONSIDERING furthermore that as regards the Prosecution argument that the Proposed Exhibits were authenticated and shown to witness Josip Praljak, the Chamber considers them to have no relevance to the needs of this decision and recalls that these documents were not discussed at the hearing with witness Josip Praljak; that the Chamber also notes that it discussed this argument many times in its previous decisions;¹² and that it sees no point in repeating what it has fully discussed in those decisions and therefore refers to the reasons set out there,

CONSIDERING then that by a decision issued on 27 September 2007,¹³ the Chamber ruled on the Motion of 4 September 2007, so that the Defence arguments on this point are moot,

¹⁰ Joint Response, para. 4.

¹¹ Praljak, Ćorić and Pušić Defence Annexes.

¹² Decision of 3 April 2007; Decision on the Admission of Evidence, 13 July 2006.

¹³ Decision on the Motion to dismiss certain Prosecution motions for admission of documentary evidence as an abuse of process, 27 September 2007.

CONSIDERING that the Chamber recalls its previous decisions in which it identified the principles for the admissibility of evidence, in particular, the Decision on the Admission of Evidence of 13 July 2006, the Decision of 29 November 2006 and the Decision on the Admission of Documentary Evidence relating to Prozor Municipality of 20 February 2007,

CONSIDERING that in the annexes attached to the Motion, the Prosecution provided the information as required by guideline 6, set out in the Decision of 29 November 2006, except for the information which it is excused from providing by the Decision of 16 May 2007,

CONSIDERING that the Praljak Defence merely challenged the Prosecution's interpretation of Proposed Exhibits P 04341 and P 08147; that the Chamber considers that these objections relate to the weight to be given to the Proposed Exhibits and must not be dealt with at the stage of their admissibility; that the Chamber will bear this in mind when evaluating the probative value of the Proposed Exhibits,

CONSIDERING that in respect of Proposed Exhibits P 02267, P 02299, P 02332, P 02338, P 02343, P 02347, P 00352, P 04846, P 07391, P 08202, the Pušić Defence submits that these documents do not demonstrate that the Accused Pušić had any unilateral authority to release the detainees at the Heliodrom camp or significantly contributed to the taking of such a decision; that the procedure to be followed to determine whether a detainee was to be released was complex and involved several authorities with overlapping responsibilities; that any reference in these documents to the Accused Pušić is hearsay; that, for these reasons, depriving the Accused Pušić of the opportunity to refute them during cross-examination would make the trial unfair,¹⁴

CONSIDERING moreover that in respect of Proposed Exhibits P 00285, P 01765, P 02642, P 00285, P 04846, P 07391, P 08202, the Pušić Defence submits that, contrary to the Prosecution's interpretation of these documents, insofar as witness Josip Praljak testified that the work of the commission for prisons was not effective, it cannot be inferred from Josip Praljak's alleged membership of this commission that he had knowledge of those documents,¹⁵

CONSIDERING that the Chamber finds that all the objections mentioned in the two previous paragraphs concern the weight to be given to the Proposed Exhibits and recalls that it will bear this in mind when evaluating the probative value of the Proposed Exhibits; that, consequently,

¹⁴ Joint Response, pp. 7-8.

¹⁵ Joint Response, p. 8.

conducting a cross-examination on these exhibits as sought by the Pušić Defence is not justified,

CONSIDERING that in respect of Proposed Exhibits P 02267, P 02299, P 02332, P 02338, P 02343, P 02347, P 04846, P 07391 and P 08202, the Pušić Defence notes moreover that these documents are not signed by the Accused Pušić,¹⁶

CONSIDERING that the Chamber observes that documents P 02267, P 02299, P 02332, P 02338, P 02343 and P 02347 do not bear Berislav Pušić's signature but all mention his oral approval or his order to release detainees from the Heliodrom camp during the period relevant to the Amended Indictment ("the Indictment"); that similar documents were already admitted into the record¹⁷ and that these documents moreover present sufficient indicia of reliability, probative value and relevance,

CONSIDERING that this applies also to Proposed Exhibit P 07391, a list of exchanges of prisoners of war in December 1993 from the Heliodrom camp inter alia and indicates the authority taking the decision on these transfers; that this document does not bear Berislav Pušić's signature either but does mention his name as a member of the Exchange Office which ordered some of the transfers mentioned in the document; that it presents moreover sufficient indicia of reliability, probative value and relevance,

CONSIDERING that this applies also to Proposed Exhibits P 08202 and P 04846,

CONSIDERING furthermore that Proposed Exhibits P 00285, P 01765 and P 02642 all present sufficient indicia of reliability, probative value and relevance and that it is therefore appropriate to admit them,

CONSIDERING that as regards Proposed Exhibit P 00873, the Ćorić Defence submits that the documents does not fall within the scope of application of the Indictment in respect of the Heliodrom camp;¹⁸ that the Chamber does not share this opinion insofar as the exhibit deals with the system for reporting abuses observed within the Heliodrom camp as set in place in December 1992; that the Chamber finds moreover that this exhibit presents sufficient indicia of reliability and probative value and decides to admit it,

¹⁶ Joint Response, pp. 7-8.

¹⁷ See for example P 02278.

¹⁸ Joint Response, p. 6.

CONSIDERING that as regards Proposed Exhibit P 02289, the Ćorić Defence submits that it does not bear the stamp of the Croatian State archives and that, for this reason, is not sufficiently reliable,¹⁹

CONSIDERING that the Chamber does indeed note that exhibit P 02289 does not bear the stamp of the Croatian State Archives and must therefore not come from that source, contrary to what the Prosecution claims in its Motion; that the document does however bear Josip Praljak's signature and the stamp of the military police administration in Mostar; that these are identical to those on many other documents already admitted into the record whose reliability has not been challenged; that, for these reasons, in this case, the Chamber considers that the absence of the stamp of the Croatian State archives does not constitute a ground for not admitting Proposed Exhibit P 02289,

CONSIDERING that in respect of Proposed Exhibit P 02822, the Chamber notes that it was already admitted on 5 October 2007²⁰,

CONSIDERING that when it evaluates the probative value of the Proposed Exhibits, the Chamber will take into account the fact that some of the information is hearsay and the fact that the Defence has not had the opportunity to test them through cross-examination; that it will also take into account the Defence objections against them in its written submissions,

CONSIDERING that the Chamber also recalls that the Defence may have the opportunity to test the Proposed Exhibits as well as the interpretation the Prosecution gives to them during the presentation of the Defence case,

CONSIDERING that in view of the information provided by the Prosecution in the Motion, the Chamber finds that the other Proposed Exhibits all present sufficient indicia of reliability, relevance and probative value in respect of the allegations of the events in the Heliodrom detention camp,

¹⁹ Joint Response, p. 6.

²⁰ Decision to Admit Documentary Evidence Presented by the Prosecution (Ljubuski municipality including the HVO prison and Vitina-Otok camp), 5 October 2007.

FOR THESE REASONS,

PURSUANT to Rule 89 (C) of the Rules,

PARTIALLY GRANTS the Motion,

ADMITS exhibits P 00285, P 00352, P 00873, P 01514,P 01518, P 01577, P 01765, P 02267, P 02289, P 02299, P 02330, P 02332, P 02338, P 02343, P 02347, P 02642, P 04341, P 04846, P 05006, P 06859, P 07391, P 08147, P 08202, P 08240, P 08241,

REJECTS the request for the admission of exhibit P 02822 on the ground that it was already admitted on 5 October 2007.

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

/signed/

Jean-Claude Antonetti

Presiding Judge of the Chamber

Done this fourth day of December 2007

At The Hague, The Netherlands

[Seal of the Tribunal]