



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: 5 December 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Order of: 5 December 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADD THREE EXHIBITS TO
ITS 65 *ter* EXHIBIT LIST AND FOR ADMISSION OF SUCH EXHIBITS**

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”);

SEIZED of the Prosecution Motion to Add Three Exhibits to its Exhibit List and for Admission of Such Exhibits, filed by the Office of the Prosecutor (“Prosecution”) on 28 November 2007 (“Motion”), in which the Prosecution asks the Chamber to authorise the addition of three documents to its Exhibit List filed on 19 January 2006 pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List”), (“Proposed Exhibits”), to which two annexes are attached,

CONSIDERING that in its Motion the Prosecution states that the Proposed Exhibits admittedly are not new but had not been previously identified, and insofar as they are similar to other documents, the Defence would not undergo any real prejudice owing to their late addition to the 65 *ter* List and their admission,¹

CONSIDERING that in order to favourably receive a request to add exhibits to the Exhibit List filed by the Prosecution pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), the Chamber must make sure that the rights of the Defence are respected by ensuring that any added exhibits are communicated sufficiently in advance and do not hinder the Defence in the preparation of its cross-examination,²

CONSIDERING that the Chamber may take into account other factors which argue for or against the request to add exhibits to the list, such as a relationship with the Indictment or any other valid ground which might justify an amendment to the Exhibit List.³

CONSIDERING that the Chamber notes in this case that the Prosecution mentions no specific ground in support of its request for the late addition and, on the contrary,

¹ Motion, para. 2.

² See, for example, *The Prosecutor v. Martić*, Case No. IT-95-11-PT, *Decision on Prosecution’s Motion to Amend its 65 ter Exhibits List*, 15 December 2005, p. 3; *The Prosecutor v. Popović et al*, Case No. IT-05-88-T, *Decision on Prosecution’s Motion for Leave to Amend the Rule 65 ter Exhibit List* (“Popović Decision”), 6 December 2006, p. 8; *The Prosecutor v. Dragomir Milošević*, *Decision on Prosecution Motion to Amend its Rule 65 ter Exhibit List*, 21 December 2006 (“Milošević Decision”), p.2.

³ See, for example, *Popović Decision*, p. 8; *The Prosecutor v. Halilović*, Case No. IT-01-48-T, *Decision on Prosecution’s Application for Leave to Vary its Exhibit List Filed Pursuant to Rule 65 ter E (iii)*, 14 February 2005, p. 3 (“Halilović” Decision”); *Milošević Decision*, p. 2.

the Prosecution itself indicates that these are documents that were already in its possession,

CONSIDERING that the Chamber infers from this that the Prosecution has not shown due diligence in examining the evidence in its possession, and that at this very late stage in the Prosecution case it would be unfair to the Defence to accept the addition of the Proposed Exhibits to the 65 *ter* List without the Prosecution submitting any relevant ground for doing so.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

DECLARES the Motion inadmissible, **AND**

FINDS MOOT the request to admit the Proposed Exhibits.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this fifth day of December 2007
At The Hague, The Netherlands

[Seal of the Tribunal]