



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: 11 December 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: 11 December 2007

THE PROSECUTOR

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

**DISSENTING OPINION OF THE PRESIDING JUDGE OF THE CHAMBER ON
THE NON-ADMISSION OF EVIDENCE PRESENTED DURING THE
TESTIMONY OF WITNESS DV**

PUBLIC

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

On 11 December 2007, the Trial Chamber made a decision by majority on the admission of evidence relating to Witness DV in which it rejected a number of exhibits presented by several Defence teams. I hold that certain exhibits ought to have been admitted even though Witness DV was unable to provide the Chamber with information on their contents.

In line with my previous opinions rendered on the same subject,¹ I hold that the admission of evidence is not determined **solely** by “the exchange” a witness may offer on an exhibit during adversarial debate, except to consider that proceedings before an International Criminal Court depend upon the good will or the capacity of a witness to comment on an exhibit.

The Trial Chamber, by the majority of judges, decided to reject Exhibits 3D 00936 and 3D 01000 for reasons given in the Annex attached to the Decision: “Not admitted - reason: witness unable to provide the Chamber with information about the authenticity, relevance and probative value of the document.”

Exhibit 3D 00936

This exhibit was presented to the witness personally by the Accused Praljak. It is a report of the BH Army on crimes purported to have been committed against civilians in Grabovica. Though this fact is not mentioned in the Indictment, this document could prove to be relevant in order to identify the context in which the events took place.

In addition, even if it is true that this witness commented very little on the contents of the document, this in itself is enough for the Chamber to hold that it is relevant and could have a certain probative value.

¹ See for example, Dissenting Opinion on the Non-Admission of Evidence Presented During the Testimony of Witness DW, 4 December 2007.

Exhibit 3D 01000

This is a document stemming from Miljenko LASIĆ concerning events that took place in Mostar on 9 May 1993. This document is of a certain importance in the framework of events in Mostar and of fighting between the ABiH and the HVO.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]