



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
English
Original: 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

Decision of: 11 December 2007

THE PROSECUTOR

v.

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

PUBLIC

**DECISION TO LIST AND ADMIT EXHIBITS
TENDERED THROUGH MR. 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 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 List and Admit Miller Exhibits and Concerning Other Exhibits Tendered Through Witness Miller, filed by the Office of the Prosecutor (“Prosecution”) on 19 November 2007 (“Motion”) in which the Prosecution seeks the addition and admission of 14 exhibits to the 65 *ter* List¹ and the admission of 6 exhibits linked to the testimony of Witness Nicholas Miller (“Proposed Exhibits”) and to which Annex 1 has been attached,

NOTING the Joint Defence Response to Prosecution Motion to List and Admit Miller Exhibits and Concerning Other Exhibits Tendered Through Witness Miller, filed jointly by the Counsel for the six Accused (“Defence”) on 3 December 2007 (“Joint Response”), in which the Defence objects to the addition of 14 exhibits to the 65 *ter* List and the admission of all the exhibits,

NOTING the Decision Regarding Submission of Two Expert Reports of Nicholas J. Miller Pursuant to Rule 94 *bis* (A) and (B), rendered by the Chamber on 13 September 2007, in which it decided to have Mr Miller testify as an expert witness,

NOTING the Order to Admit Evidence Regarding Witness Nicholas J. Miller, issued by the Chamber on 1 November 2007, in which it denied the admission of certain documents because they were not on the Prosecution 65 *ter* List or because the Prosecution did not specify the parts of the documents it wanted admitted.

¹ Prosecution’s Rule 65 *ter* List of Exhibits, filed on 19 January 2006, amended by the Decision on Prosecution Motion to Add Exhibits to its Exhibit List of 19 April 2007, the Decision on the Exhibit List, of 4 May 2007, the Decision on List of Exhibits of 1 June 2007, the Oral Decision of 7 June 2007, Court transcript in French (“T(F)”), p. 19679, the Decision on List of Exhibits, of 7 September 2007, the Decision on Prosecution Motion to Add Exhibits to its Exhibits List of 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), of 22 October 2007; (“65 *ter* List”)

CONSIDERING that firstly and in support of the Motion to add to the 65 *ter* List and admit 14 exhibits, the Prosecution holds that these exhibits, with the exception of Exhibit P 10285, are simply documents cited in support of the reports prepared by Mr Miller that were filed before the Chamber and disclosed to the Defence on 14 June 2007, that these documents could therefore not have been known in January 2006, that the Defence was sufficiently informed of these documents, in particular since the Prosecution had informed the Defence that they would be open for discussion during Mr Miller's testimony, and that the Prosecution regarded the issue of these documents as solved and failed to request that they be added to the 65 *ter* List,²

CONSIDERING that with regard to Exhibit P 10285, the Prosecution holds that it was discussed among the questions asked during the cross-examination of Mr Miller, that it consists of reports and other public documents, that it was presented to the Witness and commented upon by him and that it may therefore be added to the 65 *ter* List and admitted into evidence without causing prejudice to the Defence,³

CONSIDERING that secondly, in support of the request to admit the six exhibits, the Prosecution states that it is requesting admission of the Presidential Transcript Evidence marked P 08448 and P 08545 in their entirety the way it tendered them, but should the Chamber refuse to accept the transcript evidence as such, it has stipulated in Annex 1 of the Motion which passages it presented to Witness Miller,⁴

CONSIDERING finally that in support of the request for admission of Exhibits P 10241, P 10242, P 10243 and P 10267, the Prosecution holds that the Chamber had permitted these Exhibits to be added to the 65 *ter* List in its Decision of 22 October 2007,⁵ that these Exhibits were presented to Witness Miller and that the Prosecution does not intend to present these Exhibits to any other witnesses,⁶

² Motion, paras. 9-11.

³ Motion, paras. 12-13.

⁴ Motion, para. 4.

⁵ 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), of 22 October 2007.

⁶ Motion, paras. 5-8.

CONSIDERING that in its Joint Response, the Defence asks the Chamber to deny the request in its entirety;

CONSIDERING that the Defence submits that the Prosecution has not provided sufficient explanation to justify this late request to add 14 documents to the 65 *ter* List, that the Prosecution only disclosed these documents for the testimony of Witness Miller on 24 September 2007, being the first day of Mr Miller's testimony, and that these documents are not directly relevant to the present case,⁷

CONSIDERING that for Exhibits P 08448 and P 08545,⁸ the Defence refers to the arguments it set forth in its Joint Defence Response to Prosecution Motion to Admit Presidential Transcript Evidence of 27 November 2007,

CONSIDERING that the Defence states that Exhibit P 10267 is in fact a compilation of documents that ought to have been presented separately and that some of these documents were not discussed or were little discussed by the Witness,⁹

CONSIDERING first of all that the Chamber wishes to remind the Parties once again that any submission must be self-sufficient and must be comprehensible without relation to any earlier submission filed in the present case; the Chamber will thus not refer to the arguments the Defence set out in its Joint Defence Response to Prosecution Motion to Admit Presidential Transcript Evidence of 27 November 2007, to which the Defence refers,

CONSIDERING that the Chamber intends initially to examine the Prosecution Motion to modify the 65 *ter* List and add the Proposed Exhibits,

CONSIDERING that the Chamber recalls that the reason for filing the 65 *ter* List before the beginning of the trial is firstly to enable the Defence to prepare its case and secondly to guarantee the efficient preparation of the presentation of evidence in court,

⁷ Joint Response, paras. 13-16.

⁸ Joint Response, paras. 3-5.

⁹ Joint Response, paras. 6-12.

CONSIDERING, however, that a motion to add an exhibit, filed by the Prosecution pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”), may be received favourably if the rights of the Defence are respected,

CONSIDERING that it is up to the Chamber to ensure respect for the rights of the Defence by assuring that any addition of exhibits be communicated sufficiently in advance and not obstruct the Defence in the preparation of its cross-examination,¹⁰

CONSIDERING that the Chamber may take account of other factors for and against the motion to add exhibits to the list, such as the existence of a link to the Indictment or any other valid grounds for justifying an amendment to the Exhibit List,¹¹

CONSIDERING, in addition, that pursuant to Rule 89 (C) of the Rules, the Chamber may admit any relative evidence which it deems to have probative value,

CONSIDERING that the Chamber wishes to inform the Prosecution of the fact that it ought to have disclosed the Proposed Exhibits properly to the Defence and to have requested that they be added to the 65 *ter* List before presenting them to Witness Miller,

CONSIDERING that the Chamber notes nonetheless that all of the Proposed Exhibits with the exception of Exhibit P 10285 are documents referenced in the expert reports of Witness Miller that were disclosed to the Defence on 14 June 2007,

CONSIDERING that the Chamber holds that the late addition to the 65 *ter* List of the Proposed Exhibits with the exception of Exhibit P 10285 is not prejudicial to the rights of the Accused as foreseen under Article 21 of the Statute of the Tribunal and, in particular to the right foreseen under Article 21 (4) (b) to have adequate time and facilities for the preparation

¹⁰ See for example *The Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution’s Motion to Amend its Rule 65 *ter* Exhibits List, 15 December 2005 (“Martić Decision”), 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, 6 December 2007, (“Popović Decision”), p. 8; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on the Prosecution Motion to Amend its Rule 65 *ter* Exhibit List, 21 December 2006 (“Milošević Decision”), p. 2.

of his defence, since the Defence has had the Expert Reports citing the Proposed Exhibits since June 2007,

CONSIDERING that the Proposed Exhibits have been discussed in court with Witness Miller and that they could provide further information on the Expert Reports marked P 10239 and P 10240 prepared by Witness Miller and admitted under the Order to Admit Evidence Regarding Witness Nicholas J. Miller, issued on 1 November 2007,

CONSIDERING that the Chamber holds consequently that it is in the interest of justice to add to the Exhibit List the Proposed Exhibits with the exception of Exhibit P 10285,

CONSIDERING that Exhibit P10285 is not among the references in the Mr Miller's Expert Reports, that this document was only disclosed to the Defence on the final day of Witness Miller's testimony, the very day the Prosecution presented this document to the Witness, that the Prosecution has not presented any valid argument to justify the extremely late disclosure, and that the Chamber consequently decides not to allow this exhibit to be added to the 65 *ter* List,

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked as "admitted" in the Annex attached to this Decision because they were presented to Witness Miller and offer sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Elements marked as "not admitted" in the Annex attached to this decision because they do not conform to the stipulations of the Decision of 13 July 2006,

¹¹ See for example, the Popović Decision, p. 7, Milošević Decision, p. 2.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 65 *ter* and 89 (C) of the Rules,

PARTIALLY GRANTS the Motion, and

AUTHORIZES the Prosecution to add the Proposed Exhibits P 10271, P 10272, P 10273, P 10276, P 10277, P 10278, P 10279, P 10280, P10281, P10282, P10283, P 10284, and P 10286 to the list filed pursuant to Rule 65 *ter* of the Rules,

DENIES the Prosecution Motion to add Proposed Exhibit P 10285 to the list filed pursuant to Rule 65 *ter* of the Rules,

DECIDES TO ADMIT into evidence in entirety or in part the exhibits marked as “Admitted” in the Annex attached to the present Decision.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of December 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: pp. 18-19 and pp. 38-39 of the English version in ecourt	Prosecution	Admitted.
P 08545: pp. 14-19 and pp. 66-73 of the English version in ecourt	Prosecution	Admitted in part, being pages 14 to 19 (Reason: the passage on pp. 66-73 was not presented to the witness during his evidence).
P 10241	Prosecution	Admitted.
P 10242	Prosecution	Admitted.
P 10243	Prosecution	Admitted.
P 10267: pp. 19-29 of the English version in ecourt	Prosecution	Admitted.
P 10271	Prosecution	Admitted.
P 10272	Prosecution	Admitted.
P 10273	Prosecution	Admitted.
P 10276	Prosecution	Admitted.
P 10277	Prosecution	Admitted.
P 10278	Prosecution	Admitted.
P 10279	Prosecution	Admitted.
P 10280	Prosecution	Admitted.
P 10281	Prosecution	Admitted.
P 10282	Prosecution	Admitted.
P 10283	Prosecution	Admitted.
P 10284	Prosecution	Admitted.
P 10286	Prosecution	Admitted.