



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: 12 December 2007
Original : English
FRENCH

TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Judge Antoine Kesia-Mbe Mindua
Registrar: Mr Hans Holthuis
Decision of: 12 December 2007

THE PROSECUTOR

vs.

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

PUBLIC

**SECOND DECISION ON THE ADMISSION OF DOCUMENTARY EVIDENCE
SUBMITTED BY THE PROSECUTION
(DRETELJ AND GABELA)**

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 (“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 Resubmission of Two Documents from the Prosecution Motion for Admission of Documentary Evidence (Primarily Dretelj and Gabela Detention Facilities)”, filed by the Office of the Prosecutor (“Prosecution”) on 23 November 2007 (“Second Motion”), in which the Prosecution requests that the Chamber admit, pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”), 2 exhibits relating primarily to the Dretelj and Gabela detention facilities (“Proposed Exhibits”),

NOTING the “Joint Defence Response to Prosecution Resubmission of Two Documents from the Prosecution Motion for Admission of Documentary Evidence (Primarily Dretelj and Gabela Detention Facilities)”, filed by Counsel for the Accused (“Defence”) on 7 December 2007 (“Response to the Second Motion”), in which the Defence objects to the admission of the Proposed Exhibits,

NOTING the Decision on the Admission of Documentary Evidence Submitted by the Prosecution (Dretelj and Gabela), rendered confidentially by the Chamber on 8 November 2007 (“Decision”), in which the Chamber ruled on the “Prosecution Motion for Admission of Documentary Evidence (Primarily Dretelj and Gabela Detention Facilities)”, filed by the Office of the Prosecutor (“Prosecution”) on 21 August 2007 (“First Motion”),

CONSIDERING that in support of the Second Motion, the Prosecution submits that the English translation of Exhibit P 05563 is now accessible in the e-Court system and that the Prosecution has corrected an error that crept into the First Motion with regard to the request for admission of Exhibit P 07358,

CONSIDERING that in the Response to the Second Motion, the Defence objects to the Second Motion on the grounds that the Prosecution is not entitled to re-submit into the case file documents already rejected by the Chamber; that in the Decision the Chamber did not invite the Prosecution to again request the admission of the Proposed

Exhibits; that the Second Motion highlights the fact that the Prosecution is not sufficiently diligent in the drafting of its motions; that the Prosecution misinterpreted the Decision insofar as the Chamber denied the admission of Exhibit P 07358 for reasons other than those put forth by the Prosecution,

CONSIDERING that the Defence also recalls the objections it had raised in respect of the admission of Exhibit P 07358 in the “Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (Primarily Dretelj and Gabela Detention Facilities,” filed by the Defence on 18 September 2007, and in the written submission filed by the Accused Stojić on 19 September 2007¹ (“Response to the First Motion”),

CONSIDERING that the Chamber recalls the Decision in which it denied the request for admission of Exhibit P 05563 on the ground that its English translation was missing in the e-Court system,²

CONSIDERING that the English translation of Exhibit P 05563 is now available in the e-Court system, that the exhibit is relevant, reliable and has probative value to inasmuch as it is a report from Stanko Božić dated 2 October 1993 addressed to the Accused Ćorić relating to the transfer of detainees from Dretelj prison to the Heliodrom,

CONSIDERING that in the Response to the First Motion, Counsel for the Accused Ćorić raised an objection to the admission of Exhibit P 05563 on the ground that the document is too important to be admitted without being put to a witness in court who could provide additional information,

CONSIDERING that the Chamber reminds the Defence that the right to cross-examination is not unlimited and that the Chamber may admit documents that have not been put to a witness in court, that Exhibit P 05563 is sufficiently precise and clear to be admitted, and that the Chamber therefore decides to admit it,

CONSIDERING that in the Decision, the Chamber denied the admission of Exhibit P 07358 since it does not meet the admissibility criteria of Rule 89 (C) of the Rules:

¹ Annex of Bruno Stojić to Joint Defence Response to Prosecution Motion to Admit Documentary Evidence (Dretelj and Gabela).

“**CONSIDERING** that this report falls under hearsay, provides no information about the selection and identity of the detainees interrogated, the meetings with the former detainees or the definition of the terms used in the report, and contains vague information and unclear figures.”³

CONSIDERING that the Chamber agrees with the Defence that a party may not request the Chamber to rule again on the admission of a document that has already been rejected by the Chamber beforehand, unless the requesting party demonstrates to the Chamber that the reasoning of the impugned decision is flawed by a manifest error or that exceptional circumstances, which could be new facts or arguments,⁴ justify its reconsideration in order to avoid injustice,⁵

CONSIDERING that in the Second Motion, the Prosecution argues that Exhibit P 10058, which has already been admitted through Witness Azra Krajsek, corroborates the information contained in Exhibit P 07358, which would justify its admission,

CONSIDERING that the Chamber has examined Exhibit P 10058 and finds that it is a report dated 9 October 1993 dealing with the former detainees at the Dretelj camp but does not corroborate Exhibit P 07358, in particular because it does not answer the question as to how the detainees interrogated were selected, who they were, how the discussions were conducted and the definition of the terms used in Exhibit P 07358,

CONSIDERING that the Chamber does not therefore see specific circumstances which would call its previous decision into question,

² Decision, pp. 4 and 10.

³ Decision, pp. 7 and 10.

⁴ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, pp. 3 and 4 citing *Prosecutor v. Laurent Semanza*, Case No. ITCR-97-20-T, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8.

⁵ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, pp. 3 and 4 citing in particular *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21Abis, Appeals Judgement on Sentence, 8 April 2003, para. 49; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 bis, 19 October 2006, p. 4.

FOR THESE REASONS,

PURSUANT TO Rule 89 (C) of the Rules,

PARTIALLY GRANTS the Second Motion,

ADMITS Exhibit P 05563 **AND,**

LEAVES the decision denying the admission of Exhibit P 07358 unchanged.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this twelfth day of December 2007

At The Hague

The Netherlands

[Seal of the Tribunal]