



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: 17 January 2008
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

Decision of: 17 January 2008

THE PROSECUTOR

v.

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

PUBLIC

DECISION TO ADMIT PRESIDENTIAL TRANSCRIPT EVIDENCE

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 Admit Presidential Transcript Evidence" ("Motion") filed by the Office of the Prosecutor ("Prosecution") on 26 October 2007 in which the Prosecution requests the Chamber principally to admit, under Rule 89 (C) of the Rules of Procedure and Evidence ("Rules"), the excerpts from 79 presidential transcripts ("Proposed Exhibits") or, in the alternative, to admit 28 of the Proposed Exhibits pursuant to Rule 94 B of the Rules on the ground that they have already been admitted in another case before the Tribunal,

NOTING the "Decision on the Prosecution Motion for Review of a Decision or, in the Alternative, for Admission of Documentary Evidence (Presidential Transcripts)" of 6 September 2007 ("Decision of 6 September 2007") in which the Chamber invites the Prosecution to file a motion requesting admission of the relevant excerpts of the presidential transcripts, specifying the reasons why it is not able to introduce these documents through a witness,

NOTING the confidential "Milivoj Petković's Response to Prosecution Motion to Admit Presidential Transcripts", filed by Counsel for the Accused Petković ("Petković Defence") on 27 November 2007 ("Petković Response"), in which the Petković Defence objects to the admission of the Proposed Exhibits on the ground that, it believes, the transcripts of the Croatian President are protected under Rule 70 of the Rules and that their admission would be a violation of this provision,

NOTING the "Joint Defence Response to Prosecution Motion to Admit Presidential Transcript Evidence" ("Joint Response"), filed jointly by Counsel for the Accused Prlić, Stojić, Praljak, Čorić and Pušić ("Joint Defence") on 27 November 2007, in which the Joint Defence requests that the Chamber principally deny the Motion or, in the alternative, admit the presidential transcripts in full and invite the Prosecution to provide the accurate English translations before the commencement of the Defence case,

NOTING the "Prosecution Reply to Defence Responses to Prosecution Motion to Admit Presidential Transcript Evidence", filed by the Prosecution on 3 December 2007 ("Request for Leave to Reply"), in which it asks the Chamber for leave to reply to the Petković Response and the Joint Response,

NOTING the "Prosecution Reply to Defence Responses to Prosecution Motion to Admit Presidential Transcript Evidence", filed by the Prosecution on 3 December 2007 ("Reply"), in which it replies to the arguments raised in the Petković Response and the Joint Response,

NOTING the "Corrigendum to Prosecution Motion to Admit Presidential Transcript Evidence Dated 26 October 2007", filed by the Prosecution on 9 January 2007 in which it provides corrections referring to pages of the Proposed Exhibits,

CONSIDERING that in support of the Motion, the Prosecution maintains that some of the Proposed Exhibits were already admitted in part by the Chamber and that, in the present Motion, the Prosecution requests the Chamber to admit the excerpts of what it tendered in its Motion,¹

CONSIDERING that the Prosecution holds that the Motion conforms to the Guidelines issued by the Chamber on the admissibility of documentary evidence, and that the arguments raised in it have already been approved by the Chamber in the past,²

CONSIDERING that the Prosecution argues that the Proposed Exhibits have come from the Government of the Republic of Croatia and that it is not in a position to introduce them through a witness in court due to the time limitations imposed in this case,³

CONSIDERING that the Prosecution maintains that the Proposed Exhibits are relevant to the Indictment amended on 16 November 2005 ("Indictment"), notably to paragraphs 7, 15 to 17, 20 and 232,⁴

¹ Motion, para. 10.

² Motion, para. 19.

³ Motion, Annex 1, p. 1.

⁴ Motion, Annex, 1, pp. 2 to 41.

CONSIDERING that the Prosecution also specifies that it does not intend to call other witnesses through whom it could introduce the Proposed Exhibits,⁵

CONSIDERING that the Prosecution recalls that the Chamber has already ruled that the Prosecution need only state that it does not intend to call witnesses through which it could introduce the Proposed Exhibits,⁶

CONSIDERING that the Prosecution, however, argues that it intends to use seven of the Proposed Exhibits in the examination of a future witness,⁷

CONSIDERING that the Prosecution maintains that, in the alternative, 28 of the Proposed Exhibits have already been admitted in the *Tuta-Štela* case⁸ and are therefore admissible pursuant to Rule 94 (B) of the Rules, if the Chamber decides to deny the main request,⁹

CONSIDERING that in support of the Petković Response, the Petković Defence maintains that when it approached the Government of the Republic of Croatia, it was informed that the use of the Croatian presidential transcripts of the by the Prosecution is subject to certain conditions imposed by Croatia,¹⁰

CONSIDERING that it therefore follows, according to the Petković Defence, that the presidential transcripts are protected under Rule 70 of the Rules and that the Prosecution failed to respect the conditions imposed by the Republic of Croatia in this case,¹¹

CONSIDERING that the Petković Defence maintains that, as a result, the admission of the Proposed Exhibits would be a breach of Rule 70 of the Rules,¹²

CONSIDERING that in support of their Joint Response, the Joint Defence maintains that the Prosecution has not justified the failure to present the Proposed Exhibits through a witness at the hearing and in what way they are relevant in this case,¹³

⁵ Motion, Annex 1, p. 1.

⁶ Motion, para. 21.

⁷ Motion, para. 22.

⁸ *The Prosecutor v. Mladen Naletilić, alias "Tuta" and Vinko Martinović, alias "Štela"*, case no. IT-98-34-T.

⁹ Motion, paras. 26 to 29.

¹⁰ Petković Response, paras. 3 to 7.

¹¹ Petković Response, paras. 8 and 13.

CONSIDERING that the Joint Defence argues that the Prosecution has not supplied the audio recording of the presidential transcripts or any other information that would allow the reliability of the Proposed Exhibits to be tested,¹⁴

CONSIDERING that, according to the Joint Defence, the Prosecution has chosen to translate only certain passages from the presidential transcripts available to it and not all of them in order to introduce a degree of confusion in the Chamber,¹⁵

CONSIDERING that in support of its Request for Leave to Reply, the Prosecution maintains that the Defence written submissions present arguments that were never addressed in the case, notably with regard to the status of the presidential transcripts and, therefore, the Prosecution should have an opportunity to respond to them,¹⁶

CONSIDERING that the Prosecution maintains, among other things, in its Reply that the existence and content of the presidential transcripts are to a great extent in the public domain, since they were reported in the media and discussed in academic works,¹⁷

CONSIDERING that the Prosecution argues, moreover, that presidential transcripts have already been admitted in other cases before the Tribunal,¹⁸

CONSIDERING that the Prosecution explains that the presidential transcripts are not subject to Rule 70 of the Rules but, on the contrary, their use is governed by a letter dated 21 November 2001, which the Prosecutor sent to the Deputy Prime Minister of the Republic of Croatia at the time, and in which the Prosecution informs the Republic of Croatia that it will notify the Republic of Croatia if it intends to use them in judicial proceedings,¹⁹

CONSIDERING that the Prosecution explains that, in accordance with the aforementioned, it informed the Croatian Government of its intention to use the

¹² Petković Response, para. 13.

¹³ Joint Response, para. 1.

¹⁴ Joint Response, para. 3 to 6,

¹⁵ Joint Response, para. 7.

¹⁶ Request for Leave to Reply, p.1.

¹⁷ Reply, paras. 3 to 7.

¹⁸ Reply, paras. 8 and 9.

¹⁹ Reply, para. 10.

presidential transcripts in this case and the Croatian Government did not raise any objections,²⁰

CONSIDERING that the Prosecution also maintains that the fact that it has not provided audio recordings of the meetings does not render the Proposed Exhibits inadmissible since there is no provision that obliges it to do so,²¹

CONSIDERING that the Prosecution also notes that the fact that it has only requested the admission of excerpts of the presidential transcripts does not render the Proposed Exhibits inadmissible and that, if the Defence so wishes, it may seek the admission of the remaining excerpts,²²

CONSIDERING that the Prosecution maintains, finally, that if the Defence objects to the translations of the Proposed Exhibits, it is free to request the admission of other translations,²³

CONSIDERING, first of all, that the Chamber considers it appropriate to accept the Reply on the ground that it helps clarify the status of the presidential transcripts,

CONSIDERING that in view of the information provided by the Prosecution in its Reply, the Chamber finds that the Croatian Presidential transcripts are not protected under Rule 70 of the Rules,

CONSIDERING that the Chamber also notes that certain excerpts of the Proposed Exhibits, as set out in the Annex attached to this Decision, have already been admitted and that the Prosecution's request with regard to them is therefore moot,

CONSIDERING that the Chamber furthermore notes that the Prosecution states that it intends to use seven Proposed Exhibits, three of which have already been admitted, through a witness whom it will call to appear in court,

CONSIDERING that the Chamber finds that at this stage it would not be appropriate to admit the Proposed Exhibits that the Prosecution wishes to introduce through a witness at the hearing,

²⁰ Reply, paras. 11 and 12.

²¹ Reply, para. 19.

²² Reply, paras. 20 and 21.

²³ Reply, para. 24.

CONSIDERING that the Chamber notes that the Prosecution has taken up its invitation²⁴ and has only asked for the admission of the excerpts of the presidential transcripts that it regards as relevant in this case and for which it has provided a translation,

CONSIDERING that the Chamber notes that several witnesses who appeared at the hearing and were cross-examined by the Defence, in particular Josip Manolić, Stjepan Klujčić and Peter Galbraith, have testified to the reliability of the presidential transcripts which came from the same source as the Proposed Exhibits,

CONSIDERING that the Chamber holds that the admission of the excerpts of the presidential transcripts would not prejudice the Defence since it will have the opportunity, if it deems it necessary, to ask for the admission of other excerpts it considers relevant during the presentation of the Defence case, all the more since the complete presidential transcripts are available in the E-court system in the language of the Accused,

CONSIDERING that the Chamber recalls that it will take into account, when assessing the probative value of the Proposed Exhibits, the objections raised against them by the Defence, as well as of the fact that the Defence has not had the opportunity to test them through cross-examination,²⁵

CONSIDERING that the Chamber notes also that the Prosecution has satisfied the conditions set out in Guideline 6, as amended by the "Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006", rendered on 29 November 2006 ("Guideline 6")²⁶ items (a) (i), (ii), (iii), (iv) and (vii) by providing information about the number, title, description of exhibits, their source, reference to the relevant paragraphs of the Indictment, witnesses who have already appeared in the case and to exhibits admitted as evidence dealing with the same paragraphs in the Indictment and the importance of the exhibits in this case,

²⁴ Decision of 6 September 2007, p. 6.

²⁵ See "Decision on Admission of Documentary Evidence (UN Documents)", 23 August 2007, p. 6.

²⁶ Request, para. 2.

CONSIDERING that the Chamber further recalls, in accordance with its Decision of 7 March 2007,²⁷ that the time constraints, as alleged by the Prosecution in its Motion, may justify the presentation of a document for admission by way of a written motion and that the Prosecution has, thus, complied with item (a) (vi) of Guideline 6,

CONSIDERING that, in view of the information provided by the Prosecution, the Chamber finds that the Proposed Exhibits marked as "admitted" in the Annex attached to this Decision show sufficient indicia of reliability, relevance and value,

CONSIDERING that the Chamber decides not to admit pages 25 to 23 of Exhibit P 07031 on the ground that they do not conform to Guideline 6, as set out in the Annex attached to this decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 (C) of the Rules,

DECLARES the request in the alternative moot,

DECLARES moot the request relating to the excerpts of the Proposed Exhibits that have already been admitted, as set out in the Annex attached to this Decision,

PARTIALLY GRANTS the Motion,

ADMITS the pages marked as "admitted" in the Annex attached to this Decision
AND

DISMISSES pages 25 to 33 of Exhibit P 07031, pages 2, 6, 7 and 39 of Exhibit P 00037, Exhibit P 00068, Exhibit P 00466 and Exhibit P 03704.

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

²⁷ "Decision on Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes ("Herceg-Bosna Decision"), 7 March 2007, p.4.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

	Number	Pages already admitted ²⁸	Pages admitted by	Reasons for dismissal
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²⁸ These pages correspond to pages in the E-court electronic system.

			this Decision ²⁹	
1.	P 00037	pp. 5, 8, 38, 47.	None	The Prosecution will present this document through a witness in court.
2.	P 00068		None	The Prosecution will present this document through a witness in court.
3.	P 00080		pp. 1, 46.	
4.	P 00108		pp. 1, 3 to 10, 17, 33, 40, 42, 48, 53, 54, 59.	
5.	P 00130		pp. 1, 73, 74.	
6.	P 00131		pp. 1, 27 to 32.	
7.	P 00134	pp. 1, 3, 99, 105, 108, 110, 111.	pp. 1, 103, 104, 112 to 115, 119 to 122.	
8.	P 00147		pp. 1, 23, 24.	
9.	P 00167		pp. 1, 5 to 10.	
10.	P 00263		pp. 1, 66, 67.	
11.	P 00336		pp. 1, 13, 14, 35 to 38, 42 to 45, 49 to 51, 61, 63, 64, 85, 86, 99 to 151.	
12.	P 00353		pp. 1, 23, 34.	
13.	P 00414		pp. 1, 6 to 13, 16, 19 to 22, 37, 41, 42, 55.	
14.	P 00466		None	The Prosecution will present this document through a witness in court.
15.	P 00498		pp. 1, 27 to 30, 63 to 81.	
16.	P 00524		pp. 1 to 12, 17 to 19, 22.	
17.	P 00699		pp. 1, 15 to 19, 54 to 57.	
18.	P 00822		pp. 1, 25, 51 to 52.	
19.	P 00866		pp. 1 to 11.	
20.	P 00890		pp. 1, 41 to 46.	
21.	P 01158		pp. 1, 11 to 13, 22, 33 to 38, 44 to 52.	
22.	P 01297		pp. 1, 32 and	

²⁹ These pages correspond to pages in the E-court electronic system.

			33.	
23.	P 01325	pp. 1, 2, 3, 5, 7, 8, 9, 12.	pp. 1, 4, 6, 9, 13 to 15.	
24.	P 01452	p. 4.	pp. 1, 5, 7, 9 to 12.	
25.	P 01544		pp. 1, 21 to 23.	
26.	P 01622		pp. 1, 27 to 39, 41, 42, 47 to 55.	
27.	P 01739		pp. 1, 26, 27.	
28.	P 01883		pp. 1, 9 to 13 and 18.	
29.	P 02099		pp. 1, 23, 38.	
30.	P 02122		pp. 1 to 8, 10, 11, 16, 25.	
31.	P 02302		pp. 1, 6 to 11, 15, 16, 46 to 54.	
32.	P 02466		pp. 1, 7 to 15.	
33.	P 02613		pp. 1, 5 to 13.	
34.	P 02645		pp. 1, 7 to 10.	
35.	P 02719		pp. 1, 21 to 23, 47 to 49.	
36.	P 03195		pp. 1, 21 to 39, 53, 54, 64, 65.	
37.	P 03240	p. 40.	pp. 1, 38, 39, 41, 42, 63.	
38.	P 03279		pp. 1, 13, 21, 22.	
39.	P 03324		pp. 1, 5 to 9, 20, 21.	
40.	P 03373		pp. 1, 14.	
41.	P 03467		pp. 1, 8 to 11, 16 to 18.	
42.	P 03517	pp. 17 and 36.	pp. 1 to 7.	
43.	P 03704		None	The Prosecution will present this document through a witness in court.
44.	P 03969		pp. 1 to 5.	
45.	P 04740		pp. 1 to 15 and 21.	
46.	P 05080		pp. 1 to 4 and 11 to 21.	
47.	P 05155		pp. 1 and 47 to 49.	
48.	P 05498		pp. 1 and 35.	
49.	P 05997		pp. 1 to 4, 8	

			and 9.	
50.	P 06006		pp. 1 to 7, 9, 10, 12, 14 to 16, 38 to 42 and 52 to 57.	
51.	P 06123		pp. 1, 3 to 6.	
52.	P 06454	pp. 1, 57 to 59, 60, 61.	pp. 2 to 6, 18 to 24, 30 to 39, 49 to 62, 80 to 85, 89, 90, 93, 94, 99, 100.	
53.	P 06485		pp. 1 to 7, 10 to 13, 16 to 20, 23, 24, 29 to 31, 35, 36.	
54.	P 06581		pp. 1, 3 to 5, 8, 9, 11 to 13, 15, 16, 20, 21, 25 to 29, 55 to 57.	
55.	P 06831		pp. 1 to 3, 7, 9 to 17, 19 to 27.	
56.	P 06930		pp. 1, 5 to 7, 9, 10, 12 to 17, 19, 21 to 26, 28, 29, 34 to 37.	
57.	P 07031		pp. 1, 5 to 12.	The Prosecution requests admission of pages 25 to 33. However, the name of the speaker does not appear on these pages. There is no translation available of the preceding pages. The Chamber therefore dismisses the request for admission of pages 25 to 33.
58.	P 07198		pp. 1, 7 to 11, 20 to 24.	
59.	P 07254		pp. 1, 19.	
60.	P 07260		pp. 1, 22 to 25, 28 to 31.	
61.	P 07464		pp. 1, 7, 8, 15, 16, 18 to 20, 25 to 30, 54.	
62.	P 07475	p. 11.	pp. 1, 4 to 10, 12 to 15, 17 to 21, 23, 32.	
63.	P 07485		pp. 1, 5 to 8.	
64.	P 07570		pp. 1, 3, 17 to 21, 32, 55, 56,	

			62 to 64.	
65.	P 07682		pp. 1, 12, 21, 22, 26, 27.	
66.	P 07695		pp. 1, 7, 16 to 19.	
67.	P 07719		pp. 1 to 7.	
68.	P 07856		1 to 5, 7, 10 to 15, 18 to 20, 41, 42, 46 to 48, 59 to 63, 66 to 69, 72, 73, 76, 80 to 85, 87, 88.	
69.	P 07910		pp. 1, 15, 29, 30, 34, 35, 37.	
70.	P 08012	pp. 2 to 4, 42, 49 to 51, 55, 56.	pp. 1, 5, 41.	
71.	P 08066		pp. 1, 14, 20, 21, 24.	
72.	P 08288		pp. 28 and 29.	
73.	P 08448	pp. 18, 19, 38, 39.	pp. 16, 17, 63, 65 to 69.	
74.	P 08465		pp. 1, 16 to 21.	
75.	P 08489		1, 19 to 31.	
76.	P 08526		pp. 1 to 4 and 13 to 18.	
77.	P 08545	pp. 14 to 19, 66 to 73.	pp. 5 to 13, 20, 63 to 65, 74 to 76.	
78.	P 08912		pp. 1, 31 to 35.	