



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: 22 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: 22 January 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION FOR VARIATION OF THE
EXHIBITS LIST AND FOR ADMISSION PURSUANT TO RULE 94 *BIS* OF
THE RULES (VRANICA)**

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 partly confidential “Prosecution Motion to Add Expert Reports to its Rule 65 *ter* List and to Tender Them into Evidence pursuant to Rule 94 *bis* (Vranica Forensic Evidence)”, and its three attached annexes, the first of which is confidential, filed by the Office of the Prosecutor (“Prosecution”) on 10 December 2007 (“Motion”), in which the Prosecution requests the leave of the Chamber to add three documents, including two reports from two experts on the exhumation and genetic analysis of the remains at the Goranći site and one document containing the *curricula vitae* of the said experts,¹ (“Proposed Exhibits”) to its exhibits list² and to admit them,

NOTING that at the hearing of 12 December 2007, the Counsel for the six Accused in this case (“Defence”) moved for an extension of time to file a response to the Motion, without however requesting a specific deadline, and that the Chamber granted the Defence application by giving it an extension up to 7 January 2008,³

CONSIDERING, however, that the Defence did not file a response to the Motion,

CONSIDERING that in the Motion, the Prosecution submits that it received the two expert reports on 10 December 2007,⁴

CONSIDERING that the Prosecution also submits that the exhumation and genetic analysis of the remains at the Goranći site were the subject of the recent testimony of Amor Mašović on 26 and 27 November 2007,⁵

CONSIDERING that the Chamber will first focus on the Prosecution application to vary the exhibits list filed under Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”) in order to add the Proposed Exhibits to it,

¹ The Prosecution proposes numbers P 10362, P 10363 and P 10364 for these three exhibits.

² Exhibits List, filed confidentially on 19 January 2006.

³ Court transcript in French, pp. 25735-25736.

⁴ Motion, paras. 2-3.

⁵ Motion, para. 1.

CONSIDERING that in order to grant a request to add exhibits to the exhibits list filed by the Prosecution pursuant to Rule 65 *ter* of the Rules, the Chamber must ensure that the rights of the Defence are respected by making sure that any additional exhibits are disclosed sufficiently in advance and will not inhibit the Defence in the preparation of its case,⁶

CONSIDERING that the Chamber may take into account other factors which argue in favour of or against the request to add exhibits to the list, such as the existence of a relationship with the Indictment or any other valid reason which might justify the variation of the exhibits list,⁷

CONSIDERING that pursuant to Article 20 of the Statute of the Tribunal (“Statute”), the Chamber shall ensure that the trial is fair and expeditious with full respect for the rights of the Accused and that pursuant to Article 21 of the Statute, the Accused has the right to be tried without undue delay and to have adequate time and facilities for the preparation of his defence,

CONSIDERING that the variation of the exhibits list at this stage of the proceedings may infringe upon the rights of the Accused as mentioned above,

CONSIDERING that the Chamber notes that to justify the tardy addition of the Proposed Exhibits, the Prosecution explains that it received the said reports only on 10 December 2007,

CONSIDERING that the Chamber notes that the report of Dr Thomas Parsons bears the date of 6 December 2007,⁸

CONSIDERING furthermore that in the “Prosecution Motion to Add Two Exhibits to Rule 65 *ter* Exhibit List (Witness Mašović/Vranica Exhumation Documents)”, filed confidentially by the Prosecution on 15 November 2007, which the Chamber ruled

⁶ See for example, *The Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Prosecution’s Motion to Amend Its Rule 65 *ter* Exhibit 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”, 6 December 2006 (“*Popović* Decision”), p. 7; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, Decision on the Prosecution Motion to Amend Its Rule 65 *ter* Exhibit List, 21 December 2006 (“*Milošević* Decision”), p. 2.

⁷ 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.

upon in a decision of 22 November 2007,⁹ the Prosecution had already stated that, taking into account the slow progress of ongoing autopsy procedures in the Republic of Bosnia and Herzegovina, it intended to file additional evidence on a rolling basis as it was received,

CONSIDERING that these documents are directly in line with the allegations set out by the Prosecution through the exhibits already on its 65 *ter* List that were tendered through Witness Amor Mašović,

CONSIDERING furthermore that the Prosecution request deals with only a very limited number of exhibits,

CONSIDERING finally that these documents directly concern the allegations contained in paragraph 95 of the Amended Indictment, inasmuch as they deal with the exhumation of several bodies identified as being victims detained at the Vranica building who disappeared on 10 May 1993,

CONSIDERING moreover that the Defence does not object to the addition of the Proposed Exhibits to the exhibits list,

CONSIDERING that under these circumstances, although the request to add the Proposed Exhibits is made at a very late stage of the proceedings, the Chamber holds that their tardy addition to the exhibits list filed under Rule 65 *ter* of the Rules does not infringe upon the rights of the Accused to prepare their defence,

CONSIDERING furthermore that the Chamber finds that the Proposed Exhibits are *prima facie* relevant and have some probative value,

CONSIDERING that the Chamber consequently deems that it is in the interests of justice to add them to the exhibits list,

CONSIDERING that upon reading the expert reports and professional qualifications of Thomas Parsons and Sharna Daley, the Chamber considers that they are entitled to the status of experts with regard to the subject matter dealt with in their report,

⁸ See Annex 2 to the Motion.

⁹ Decision on Prosecution Motion to Add Exhibits to the Exhibit List (7 Documents concerning the Detainees at the Vranica Building and Their Exhumation), confidential, 22 November 2007.

CONSIDERING moreover that the Defence does not object to the expert reports or challenge their status as experts,

CONSIDERING as a result that the Chamber admits the Proposed Exhibits without the expert witnesses being called to testify in person,

FOR THESE REASONS,

IN ACCORDANCE with Rules 73 *bis*, 89 (C) and 94 *bis* of the Rules,

GRANTS the Motion and, consequently,

AUTHORIZES the Prosecution to add the Proposed Exhibits to the list filed pursuant to Rule 65 *ter* of the Rules, **AND**

ADMITS the Proposed Exhibits.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]