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CASE/AFFAIRE NO. IT-04-74-T **DATE** 30 January 2008

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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: 23 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: 23 January 2008

THE PROSECUTOR

v.

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

PUBLIC

Decision on Request to Reconsider Decisions Rejecting Admission of 17 Exhibits

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 submission concerning various outstanding exhibits and requesting their admission*", filed by the Office of the Prosecutor ("Prosecution") on 16 January 2008 ("Motion"), in which the Prosecution asked the Chamber to admit 17 exhibits, the admission of which, for the most part, had already been requested earlier ("Proposed Exhibits");

NOTING the oral decision adopted by the Chamber on 29 November 2007¹, in which it set as 10 December 2007 the deadline for the Prosecution to file motions ("Decision of 29 November 2007");

NOTING the "Decision on the Prosecution Motion for Admission of Evidence (Heliodrom Camp)", rendered by the Chamber on 5 December 2007 ("Heliodrom Decision"), in which the Chamber rejected the Prosecution motion for admission of Proposed Exhibit P 07896;

NOTING the "Decision on the Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO and Herceg-Bosna)", rendered by the Chamber on 12 December 2007 ("HVO Decision"), in which the Chamber rejected the Prosecution motion for admission of all the other Proposed Exhibits, with the exception of Exhibit P 05737;

CONSIDERING that the Chamber notes firstly that, unlike the other Proposed Exhibits, Exhibit P 05737 had never been requested for admission previously;

CONSIDERING that in support of the Motion, the Prosecution maintains that this is not about a request for the admission of additional evidence, but about outstanding matters ("*outstanding matters*") it wishes to resolve;

CONSIDERING that the Prosecution maintains that it supplied the translations and pages missing from the Proposed Exhibits, that it corrected the technical difficulties and that the Chamber should consequently admit the Proposed Exhibits;

CONSIDERING that with the exception of Exhibit P 05737, the Chamber already rejected the motion for admission of all Proposed Exhibits in the Heliodrom Decision and the HVO Decision;

CONSIDERING that, contrary to what the Prosecution alleges, this is therefore not about outstanding matters which should be resolved, but rather about a request to reconsider the Heliodrom Decision and the HVO Decision;

CONSIDERING that the Trial Chamber has the intrinsic power to reconsider its own decisions and that it can receive a request for reconsideration if the requesting party demonstrates to the Chamber that the reasoning behind the contested decision

¹ Hearing transcript in French, p. 25312.

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contains a manifest error or that the particular circumstances, be they facts or fresh arguments², justify its reconsideration in order to prevent injustice³;

CONSIDERING that the Prosecution did not even try to explain to the Chamber why it had been unable to present all the Proposed Exhibits before, even though the Chamber allowed it to correct the mistakes which crept into the respective motions for admission⁴, either by authorising the filing of *corrigenda*, or responses⁵;

CONSIDERING, however, that in the Decision of 29 November 2007, the Chamber set a deadline for the Prosecution to file the motions for 10 December 2007, that the Heliodrom Decision is dated 5 December 2007 and the HVO Decision is dated 11 December 2007, but that the Prosecution waited until 16 January 2008 to file its Motion;

CONSIDERING that the Chamber finds that the Prosecution showed lack of due diligence concerning the motion to admit the Proposed Exhibits;

CONSIDERING that as regards Exhibit P 05737, the Prosecution should have filed a motion for admission before 10 December 2007;

CONSIDERING that the Chamber does not deem it necessary to wait for the Counsel for the six Accused to respond, insofar as the Motion is inadmissible;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

DENIES the Request.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

² *The 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 *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, *Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses*, 9 May 2002, para. 8.

³ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 et 4 citing in particular *The Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A bis, Appeals Judgement on Sentence, 8 April 2003, para. 49; *The 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.

⁴ Prosecution Motion for Admission of Documentary Evidence, 28 juin 2007, amended by the Amended Prosecution Motion for Admission of Documentary Evidence, filed on 27 August 2007; partly confidential Prosecution Motion for Admission of Documentary Evidence, filed on 21 September 2007.

⁵ HVO Decision, paras. 1, 2, 5, 9, 20, 28 and 29.

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

[Seal of the Tribunal]