



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 ČORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION ON MOTION FOR RECONSIDERATION AND ADMISSION OF
FOUR PRESIDENTIAL TRANSCRIPTS**

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 Čorić
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's Renewed Motion/Motion for Reconsideration concerning Certain Tendered Presidential Transcripts*", filed as confidential by the Office of the Prosecutor ("Prosecution") on 18 January 2008 ("Motion"), in which the Prosecution asks the Chamber to reconsider its "Decision on Admission of Presidential Transcript Evidence", filed on 17 January 2008 ("Decision of 17 January 2008") as regards the denial of the motion to admit four presidential transcripts, Exhibits P 00037, P 00068, P 00466 and P 03704 ("Proposed Exhibits"),

NOTING the "Prosecution Motion to Admit Presidential Transcript Evidence" of 26 October 2007 ("Motion of 26 October 2007"), in which the Prosecution asked the Chamber to admit the presidential transcripts, including the Proposed Exhibits,

NOTING "Milivoj Petković's Response to Prosecution Motion to Admit Presidential Transcript Evidence", filed by Counsel for the Accused Petković ("Petković Defence") confidentially on 27 November 2007 ("Petković Response"), in which it opposed the Motion of 26 October and responded to the arguments advanced by the Prosecution,

NOTING the "Joint Defence Response to Prosecution Motion to Admit Presidential Transcript Evidence", filed jointly by Counsel for the Accused Prlić, Stojić, Praljak, Čorić and Pušić ("Joint Defence") on 27 November 2007 ("Joint Response"), in which the Defence jointly opposed the Motion of 26 October 2007 and responded to the arguments advanced by the Prosecution,

NOTING the "*Prosecution Reply to Defence Responses to Prosecution Motion to Admit Presidential Transcript Evidence*", filed by the Prosecution partly confidentially on 3 December 2007 ("Reply of 3 December 2007"), in which the Prosecution responded to the arguments advanced in the Petković Defence and the Joint Response,

CONSIDERING that, in the Decision of 17 January 2008 the Chamber denied the Proposed Exhibits on the ground that, as the Prosecution had announced, they would be presented to a witness at the hearing,

CONSIDERING that in support of the Motion, the Prosecution maintains that the witness through whom it was to present the Proposed Exhibits will no longer come to testify, and that the other witnesses who are yet to appear will not be able to testify with regard to the Proposed Exhibits¹,

CONSIDERING that this being the case, the Prosecution asks the Chamber to reconsider the Decision of 17 January 2008 and admit the Proposed Exhibits as requested in the Motion of 26 October 2007²,

¹ Motion, para. 4.

² Motion, para. 5.

CONSIDERING that a 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 contains a manifest error or that the particular circumstances, be they facts or fresh arguments³, justify its reconsideration in order to prevent injustice⁴,

CONSIDERING that the Chamber finds that in this case, the fact that the witness selected by the Prosecution for the purpose of admitting the Proposed Exhibits into evidence will not come to testify, is a particular circumstance and that the Decision of 17 January 2008 should therefore be reconsidered,

CONSIDERING that in the Motion of 26 October 2007 the Prosecution met the criteria set out in guideline 6 as amended in the "Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006", filed on 29 November 2006⁵,

CONSIDERING that in order to examine the admissibility of the Proposed Exhibits, the Chamber took note of the additional information provided by the Prosecution in the Reply of 3 December 2007,

CONSIDERING that the Chamber also took note of the objections raised by the Defence in the Petković Response and the Joint Response, and it will take this into consideration during the final assessment of the exhibits admitted into evidence at the end of the trial,

CONSIDERING that the Chamber notes that pages 5, 8 and 38 of Exhibit P 00037 were already admitted on 28 September 2006 and that consequently, the request to admit them is moot,

CONSIDERING that, having examined the Proposed Exhibits, the Chamber finds that they are relevant and that they present sufficient indicia of reliability and probative value,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 (C) of the Rules of Procedure and Evidence,

DISMISSES as moot the request to admit pages 5, 8 and 38 of Exhibit P 00037,

PARTLY GRANTS the Motion, and

³ *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.

⁴ *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 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.

⁵ Decision of 17 January 2008, p. 7.

ADMITS pages 1 to 7 and 39 of Exhibit P 00037; pages 1 and 51 to 59 of Exhibit P 00068; pages 1, 14 to 17 and 51 to 57 of Exhibit P 00466 and pages 1 and 35 to 37 of Exhibit P 03704.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]