



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: 25 February 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:** 25 February 2008

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON MOTION FOR CLARIFICATION**

**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 Jadranko Prlić’s Motion for Clarification and Request for Reasoning from the *Non-Dissenting* Members of the Trial Chamber Concerning Their Decision to Reject Exhibits 1D 01595 and 1D 01936 Tendered Through Witness “DZ” (“Motion”), of which the public revised version was filed by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 18 February 2008,

**NOTING** the Order Admitting Evidence Related to Witness DZ, rendered by the Chamber on 31 January 2008 (“Order of 31 January 2008”) in which the Chamber decided by a majority to dismiss Exhibit 1D 01595 on the ground that Witness DZ had been unable to explain its probative value, reliability and relevance, and to dismiss Exhibit 1D 01936 on the ground that it did not have a cover page permitting its authentication,

**NOTING** the Dissenting Opinion of the Presiding Judge on the Exclusion of Evidence Presented During the Testimony of Witness DZ, rendered by Judge Jean-Claude Antonetti on 31 January 2008 (“Dissenting Opinion”) in which he objects to the dismissal of Exhibits 1D 01595 and 1D 01936 (“Proposed Exhibits”) on the ground that these documents are corroborated by other exhibits already admitted into the case file,

**CONSIDERING** that in support of the Motion, the Prlić Defence argues in particular that the Proposed Exhibits comply with the Chamber’s guidelines regarding the admission of evidence, in particular the Decision on Admission of Evidence rendered by the Chamber on 13 July 2006 (“Decision of 13 July 2006”), since their reliability, relevance and probative value are corroborated by other testimony heard by the Chamber and by other documents already admitted in the case,<sup>1</sup>

**CONSIDERING** that the Prlić Defence alleges that the dismissal of the Proposed Exhibits is not sufficiently justified in the Order of 31 January 2008 and that this

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<sup>1</sup> Motion, pp. 1-4.

dismissal is inconsistent with the Chamber's prior practice regarding the admission of evidence,<sup>2</sup>

**CONSIDERING** that owing to this fact, according to the Prlić Defence, the Chamber is sowing doubts regarding the rules that govern the admission of evidence in this case, thus prejudicing the Accused Prlić,<sup>3</sup>

**CONSIDERING** that according to the Prlić Defence, the Order of 31 January 2008 and the Dissenting Opinion reveal a division within the Chamber regarding the interpretation of the rules governing the admission of evidence,<sup>4</sup>

**CONSIDERING** that the Prlić Defence submits finally that in order to prepare the presentation of the Defence case, it must be able to rely on clear and certain rules of admission in order to avoid having crucial documents excluded from the case file,<sup>5</sup>

**CONSIDERING** that the Chamber first recalls that pursuant to the Decision of 13 July 2006, a Party wishing to tender evidence shall do so, in principle, through a witness at the hearing who can attest to its reliability, relevance and probative value,<sup>6</sup>

**CONSIDERING** that the Chamber next recalls that a Trial Chamber is a collegial body and may therefore render decisions by a majority,

**CONSIDERING** furthermore that since the commencement of the trial and particularly since the Decision of 13 July 2006, the Chamber has rendered a considerable number of decisions admitting exhibits presented to witnesses at the hearing; that owing to the large number of documents examined, the Chamber opted, after deliberation among the judges, for a short justification, exhibit by exhibit, for any possible dismissals,

**CONSIDERING** that the Chamber finds, contrary to the argument of the Prlić Defence, that the Order of 31 January 2008 is in keeping with its prior practice in that it has refused to admit proposed exhibits whose reliability or authenticity, probative value and relevance could not be verified by a witness at the hearing,

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<sup>2</sup> Motion, p. 4.

<sup>3</sup> Motion, p. 4.

<sup>4</sup> Motion, p. 4.

<sup>5</sup> Motion, p. 5.

<sup>6</sup> Decision of 13 July 2006, p. 9.

**CONSIDERING** that the Chamber recalls in this regard that it has already dismissed the admission of numerous documents for these same reasons,

**CONSIDERING** that the Chamber furthermore recalls that it has dismissed Exhibit 1D 01595 four times for the same reason, i.e. that the witness through whom the Prlić Defence intended to have it admitted was unable to provide the Chamber with information about its reliability, relevance and probative value,<sup>7</sup>

**CONSIDERING** that with regard to the dismissal of Exhibit 1D 01936, the Chamber by majority followed its established practice, well-known to the Parties, that if a witness at the hearing is unable to attest to the authenticity of an exhibit, it will not be admitted unless an exhibit allowing its authentication is produced to support the request,

**CONSIDERING** that the Chamber consequently finds unanimously that the ground for dismissing the Proposed Exhibits is clear, sufficient and consistent with its practice and the Decision of 13 July 2008,

**CONSIDERING** that the Chamber would furthermore note that the Prlić Defence will suffer no prejudice owing to the dismissal of the Proposed Elements since it will have the opportunity, during the presentation of the Defence case, to present them to a suitable witness who will be able to provide sufficient information about their authenticity, reliability and probative value as required by the Decision of 13 July 2006,

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence,

**DISMISSES** the Motion unanimously.

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

*/signed/*

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<sup>7</sup> “Order to Admit Evidence Regarding Witness Klaus Johann Nissen, 11 November 2007; Order on Requests to Admit Evidence Relating to Witness Cyril Ribičić, 15 January 2008; Order on Requests to Admit Evidence Relative to Witness BF, 23 January 2008, and Order of 31 January 2008.

Jean-Claude Antonetti  
Presiding Judge

Done this twenty-fifth day of February 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**