



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: 6 October 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Order of: 6 October 2008

THE PROSECUTOR

v.

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

PUBLIC

ORDER ADMITTING EVIDENCE RELATED TO WITNESS MARTIN RAGUŽ

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”);

NOTING the requests for admission filed during the hearing of 1 September 2008 by Counsel for the Accused Prlić (“Prlić Defence”), the Office of the Prosecutor (“Prosecution”) and Counsel for the Accused Petković (“Petković Defence”), in which they request the admission of 95 exhibits,¹ 13 exhibits² and 1³ exhibit, respectively, related to the testimony of Martin Raguž who appeared from 25 to 28 August 2008⁴ (“Proposed Exhibits”),

NOTING the submission filed by the Prosecution on 3 September 2008 (“Prosecution Response”) in which it objects, on the one hand, to the admission of Exhibits 1D 01099, 1D 01526, 1D 02151 et 1D 02154 tendered for admission by the Prlić Defence, on the ground that the Prlić Defence did not put the said exhibits to the witness in court⁵ and, on the other hand, to the admission of 31 exhibits, namely Exhibits 1D 01800, 1D 01801, 1D 01802, 1D 01803, 1D 01826, 1D 01827, 1D 01828, 1D 01831, 1D 01832, 1D 01833, 1D 01834, 1D 01835, 1D 01836, 1D 01837, 1D 01839, 1D 01840, 1D 01841, 1D 01842, 1D 01843, 1D 01844, 1D 01845, 1D 01846, 1D 01943, 1D 02020, 1D 02021, 1D 02142, 1D 02462, 1D 02531, 1D 02532, 1D 02534 and 1D 02541, on the ground that the documents were not put individually to the witness in court by the Prlić Defence and that the witness was unable to give an opinion on the authenticity, relevance and probative value of each of these exhibits,⁶

CONSIDERING that none of the Parties raised an objection against the admission of the Proposed Exhibits offered by the Prosecution and the Petković Defence,

CONSIDERING that the Prlić Defence did not give Witness Martin Raguž the opportunity to comment individually on Exhibits 1D 01800, 1D 01801, 1D 01802,

¹ IC 00835.

² IC 00842.

³ IC 00837.

⁴ Transcript in French (“T(F)”) pp. 31607 and 31608.

⁵ Prosecution Consolidated Response to the Requests of the Accused Prlić and Petković for Admission of Exhibits Tendered Through Witness Martin Raguž, 3 September 2008, paras. 1, 10 and 11.

1D 01827, 1D 01828, 1D 01831, 1D 01832, 1D 01833, 1D 01834, 1D 01836, 1D 01837, 1D 01839, 1D 01840, 1D 01841, 1D 01842, 1D 01843, 1D 01844, 1D 01845, 1D 01846, 1D 02020, 1D 02021, 1D 02462,

CONSIDERING that the Chamber holds that, contrary to what was alleged by the Prosecution, Exhibits 1D 01943 and 1D 02142 were put by the Prlić Defence to Witness Martin Raguž in court and that the witness was able to comment on the relevance, reliability and probative value of these two exhibits,

CONSIDERING that the Chamber holds that, following a question from Judge Antonetti with regard to Exhibit 1D 01835, Witness Martin Raguž was able to give an opinion on the reliability, authenticity and probative value of this exhibit,

CONSIDERING that the Chamber finds that, contrary to the Prosecution claim, Exhibits 1D 02531, 1D 02532, 1D 02534 and 1D 02541 were put to Witness Martin Raguž in court and that the witness commented upon them individually; however the Chamber notes that the four documents are not relevant with respect to the allegations in the Amended Indictment,

CONSIDERING that the Chamber finds that the Prosecution raised an objection against the admission of Exhibit 1D 01826 offered by the Prlić Defence⁷ but also requested the admission of this same exhibit,⁸ that the Chamber notes that this exhibit was put to Witness Martin Raguž in court and that the said witness was able to comment on the relevance, reliability and probative value of this exhibit,

CONSIDERING that the Chamber further examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in the Decision on Admission of Evidence, rendered by the Chamber on 13 July 2006 (“Decision of 13 July 2006”), and in the Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”),⁹

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits indicated “admitted” in the Annex attached to this decision because they

⁶ Prosecution Consolidated Response to the Requests of the Accused Prlić and Petković for Admission of Exhibits Tendered Through Witness Martin Raguž, 3 September 2008, paras. 1 and 4-11.

⁷ Prosecution Consolidated Response to the Requests of the Accused Prlić and Petković for Admission of Exhibits Tendered Through Witness Martin Raguž, 3 September 2008, paras. 4-9 and 11.

⁸ IC 00842.

were put to Witness Martin Raguž and bear sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits indicated “not admitted” and “not admitted by a majority” in the Annex attached to this decision, because they fail to satisfy the requirements set out in the Decisions of 13 July 2006 and 24 April 2008,

CONSIDERING that the Chamber reminds the Parties to indicate, in their requests for admission, the *ecourt* pages of the excerpt or excerpts of the exhibits whose admission they have requested,

CONSIDERING that the Chamber reminds the Parties that in accordance with the Decision of 24 April 2008, any objection to the documents in the requests for admission must be filed in writing no later than the day following the filing of the requests for admission,¹⁰

CONSIDERING that the Prosecution failed to respect this deadline and filed the Response belatedly, however, in accordance with Rule 127 A (ii) of the Rules of Procedure and Evidence (“Rules”), the Chamber decides nonetheless to allow it,

FOR THESE REASONS,

IN ACCORDANCE with Rules 54 and 89 of the Rules,

GRANTS the request for admission from the Petković Defence,

PARTIALLY GRANTS the requests for admission from the Prlić Defence and the Prosecution,

DECIDES that there is reason to admit into evidence the exhibits indicated “admitted” in the Annex attached to this decision,

DENIES by a majority the request of the Prlić Defence in respect of Exhibits 1D 00268, 1D 00282, 1D 00300, 1D 00853, 1D 01157, 1D 01523, 1D 01803,

⁹ Guideline 8 related to the admission of documentary evidence through a witness.

1D 01831, 1D 01832, 1D 01833, 1D 01834, 1D 01836, 1D 01837, 1D 02303, 1D 02531, 1D 02532, 1D 02534 and 1D 02541 for the reasons set out in the Annex attached to this decision,

DENIES in all other respects the request for admission from the Prlić Defence for the reasons set out in the Annex attached to this decision,

DECLARES MOOT the request of the Prlić Defence in respect of Exhibits 1D 01672, 1D 01935 and 1D 02373 for the reasons set out in the Annex attached to this decision,

DECLARES MOOT the request of the Prosecution in respect of Exhibit 3D 00921 for the reasons set out in the Annex attached to this decision,

DECIDES that there is reason not to admit into evidence the exhibits indicated “not admitted” or “not admitted by a majority” in the Annex attached to this decision,

The Presiding Judge attaches a dissenting opinion to this order.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of October 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁰ Decision of 24 April 2008, para. 32.

Annex

Exhibit Number (preferably in numerical order)	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
1D 00268	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 00282	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 00300	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 00530	Prlić Defence	Admitted
1D 00606	Prlić Defence	Admitted
1D 00613	Prlić Defence	Admitted
1D 00618	Prlić Defence	Admitted
1D 00625	Prlić Defence	Admitted
1D 00669	Prlić Defence	Admitted
1D 00749	Prlić Defence	Admitted
1D 00853	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 00931	Prlić Defence	Admitted
1D 01099	Prlić Defence	Not admitted (reason: the document was not put to the witness in court)
1D 01157	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 01198	Prlić Defence	Admitted
1D 01223	Prlić Defence/ Prosecution	Admitted
1D 01354	Prlić Defence	Admitted
1D 01355	Prlić Defence	Admitted
1D 01360	Prlić Defence	Admitted
1D 01410	Prlić Defence	Admitted
1D 01512	Prlić Defence	Admitted
1D 01523	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in

		the Indictment)
1D 01526	Prlić Defence	Not admitted (reason: the document was not put to the witness in court)
1D 01552	Prlić Defence	Admitted
1D 01672	Prlić Defence/ Prosecution	Moot (reason: the document was already admitted on 1 September 2008)
1D 01799	Prlić Defence	Admitted
1D 01800	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01801	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01802	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01803	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the relevance and probative value of this exhibit)
1D 01826	Prlić Defence/ Prosecution	Admitted
1D 01827	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01828	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01829	Prlić Defence	Admitted
1D 01831	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01832	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the

		reliability, relevance and probative value of this exhibit)
1D 01833	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01834	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01835	Prlić Defence	Admitted
1D 01836	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01837	Prlić Defence	Not admitted by a majority (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01839	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01840	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01841	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01842	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01843	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability,

		relevance and probative value of this exhibit)
1D 01844	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01845	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01846	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 01854	Prlić Defence	Admitted
1D 01855	Prlić Defence	Admitted
1D 01858	Prlić Defence	Admitted
1D 01868	Prlić Defence	Admitted
1D 01873	Prlić Defence	Admitted
1D 01892	Prlić Defence	Admitted
1D 01907	Prlić Defence	Admitted
1D 01935	Prlić Defence	Moot (reason: the document was already admitted on 1 September 2008)
1D 01943	Prlić Defence	Admitted
1D 01954	Prlić Defence	Admitted
1D 02020	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 02021	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 02022	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)
1D 02024	Prlić Defence	Admitted
1D 02025	Prlić Defence	Non admitted (reason: the final signed version of this so-called protocol was admitted by this order as 1D 02024. Moreover, the

		witness was unable to comment on the reliability, relevance and probative value of the draft protocol).
1D 02141	Prlić Defence	Admitted
1D 02142	Prlić Defence	Admitted
1D 02151	Prlić Defence	Not admitted (reason: the document was not put to the witness in court)
1D 02154	Prlić Defence	Not admitted (reason: the document was not put to the witness in court)
1D 02155	Prlić Defence	Admitted
1D 02168	Prlić Defence	Admitted
1D 02170	Prlić Defence	Admitted
1D 02179	Prlić Defence	Admitted
1D 02182	Prlić Defence	Admitted
1D 02183	Prlić Defence	Admitted
1D 02202	Prlić Defence	Admitted
1D 02281	Prlić Defence	Admitted
1D 02282	Prlić Defence	Admitted
1D 02299	Prlić Defence	Admitted
1D 02300	Prlić Defence	Non admitted (reason: The document lacks relevance and probative value. The document mentioned by D1 and by the witness was not offered in court. Only the cover page of a fax mentioning this document, namely Exhibit 1D 02300, was put to the witness.)
1D 02303	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 02343	Prlić Defence	Admitted
1D 02373	Prlić Defence	Moot (reason: The exhibit was already admitted as 1D 00928 on 29 March 2007. The Chamber notes that the English translation of the originals in BCS of Exhibits 1D 02373 and 1D 00928 are somewhat different).
1D 02462	Prlić Defence	Not admitted (reason: the witness was unable to comment on the reliability, relevance and probative value of this exhibit)

1D 02531	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 02532	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 02534	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 02541	Prlić Defence	Not admitted by a majority (reason: the document is not relevant to the allegations in the Indictment)
1D 02631	Prlić Defence	Admitted
1D 02733	Prlić Defence	Admitted
1D 02734	Prlić Defence	Not admitted (reason: the document is not relevant to the allegations in the Indictment)
P 03079	Prlić Defence	Admitted
P 06324 (7 pages: ¹¹ 7 pages: pp. 42-51 of the original BCS version; pp. 1-7 of the English translation)	Prlić Defence	Admitted (7 pages: pp. 42-51 of the original BCS version; pp. 1-7 of the English translation) (note: this exhibit is an excerpt of Exhibit P 06323 which has no status in court)
P 07582	Prlić Defence	Admitted
P 07669	Prlić Defence	Admitted
P 07677	Prlić Defence	Admitted
4D 00545	Petković Defence	Admitted
P 04697	Prosecution	Admitted
P 04794	Prosecution	Admitted
P 05626	Prosecution	Admitted
P 06981	Prosecution	Admitted
P 07500	Prosecution	Admitted
P 10519	Prosecution	Admitted
P 10578	Prosecution	Admitted
3D 00921	Prosecution	Moot (reason: the document was already admitted on 23 January 2008)

¹¹ The pages indicated in this table refer to the pages in the electronic "ecourt" system.

**DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI CONCERNING THE ORDER ADMITTING EVIDENCE
RELATED TO WITNESS MARTIN RAGUŽ**

Witness Martin Raguž is currently a member of the Parliament of Bosnia and Herzegovina.¹² From September 1992 to January 1993, he was Minister for Refugees and Displaced Persons within the government of Bosnia and Herzegovina. The most important aspect of his duties and those of this ministry related to managing the humanitarian catastrophe and its consequences, in particular in Sarajevo.¹³ From May 1993 to October 1993, he was employed in the HVO Office for Refugees and Displaced Persons in Mostar. From October to December 1993, he was the Deputy Head of the HVO Office for Refugees and Displaced Persons in Mostar. From December 1993 up until the end of Herceg-Bosna, he was Minister for Refugees and Displaced Persons in the HR H-B government. Finally, in April 1994, he again worked as Minister for Refugees and Displaced Persons in the Government of the Federation of Bosnia and Herzegovina.

According to the Indictment, the purpose of the joint criminal enterprise was ethnic cleansing.¹⁴ In this respect, the pre-trial brief refers to this ethnic cleansing¹⁵ in particular as regards internally displaced persons.

The Prosecution's case, which is supported by the aforementioned documents, is refuted by the Defence's presentation of Witness Martin Raguž and by the documents presented through this witness. (IC 00835, IC 00842 and IC 00837).

The Chamber decided to admit 62 documents out of the 104 documents tendered.

The majority of the Trial Chamber Judges considered that the following documents were not to be admitted: 1D 00268, 1D 00282, 1D 00300, 1D 01157, 1D 01831, 1D 00853, 1D 01803, 1D 01832, 1D 01833, 1D 01834, 1D 01836, 1D 01837, 1D 02303, 1D 02531, 1D 02532, 1D 02534, 1D 02541.

¹² Witness Martin Raguž, *Prlić et al.*, T(F) p. 31237.

¹³ Witness Martin Raguž, *Prlić et al.*, T(F) p. 31240.

¹⁴ Indictment, para. 15, para. 17.1.a, para. 17.1.d, para. 17.1.e, para. 17.1.i, para. 17.1.q and para.39.

The refusal to admit a large number of documents at the stage when the Defence is presenting its witnesses raises a fundamental problem regarding the sphere of activity of a Judge in a criminal trial.

To make a determination, a Judge must have as much available information as possible, and that right must not be restricted by anyone.

If one Judge considers that at the end of the trial he must evaluate evidence that has been brought to his attention, it appears to me that the other judges of the Chamber may not oppose this.

The rule is simple: a document becomes part of the proceedings once the decision is rendered to admit or reject it on the basis of the various criteria set out in the Rules,¹⁶ case law¹⁷ and guidelines.¹⁸

Where there is unanimity among the Judges, there is no problem: the exhibit is admitted or rejected.

Where there is disagreement among the Judges, in my view the exhibit must nonetheless be admitted after their deliberations, and each Judge is responsible for assessing the relevance and probative value of that exhibit.

The decision may mention that, in the majority view, this exhibit is admitted or rejected, but that one Judge is of a different opinion. In such cases, a number is nonetheless assigned to the exhibit declaring it admitted or rejected by the majority.

¹⁵ Prosecution Pre-Trial Brief, 2 June 2006, para. 15.

¹⁶ Rules 89 (C) and (D) and 95 of the Rules of Procedure and Evidence.

¹⁷ *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, 16 July 2004 (“*Hadžihasanović* Decision of July 2004”), para. 38 citing *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000 (*Musema* Judgement), para. 56; *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, 22 June 2005 (“*Hadžihasanović* Decision of June 2005”), para. 17; and *Hadžihasanović* Decision of July 2004, para. 29 citing *The Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Order on the Standards Governing the Admission of Evidence, 15 February 2002, para. 25.

¹⁸ Decision on the Admission of Evidence of 13 July 2006 and Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008, Guideline 8 related to the admission of documentary evidence through a witness.

In the case of a dissenting opinion on Judgement, the Judge would then be able to refer to that exhibit when providing the reasons for his opinion because, otherwise, should the exhibit not be admitted, he would not be able to refer to it.

The strict application of the rule as interpreted by the majority may result in a miscarriage of justice if, for example, an exhibit which has been rejected turns out to be essential for the assessment of the guilt or innocence of an Accused.

At this stage of the trial, it is impossible to state that by a majority an exhibit is of no significance, if one Judge is of a differing opinion.

It is appropriate to recall that the Defence proofs its witnesses as they arrive in order to discuss the content of their statement and show them documents that will be put to them.

In court, in the context of the line of defence determined by Counsel with the agreement of the Accused, the Counsel, through his questions to a witness, argues his case by presenting documents.

These documents are reviewed by the Judges **in court**, and questions may be asked by the Judges on the basis of these documents.

For example, Document 1D 02303 is a document written by Croatian elected officials in Zenica to international organizations on 15 May 1993 about the actions of the other party as from 15 April 1993, which allegedly resulted in consequences (445 incarcerated civilians and soldiers). Document 1D 01833 is particularly revealing as regards the issue of refugee flows. According to this document, it appears that in November 1993, 10,000 Croatian inhabitants of Vareš were displaced and that this number is included in the overall number of 320,000 allegedly displaced Croats. Having asked a question on the basis of this document,¹⁹ it would be paradoxical not to admit it. Document 1D 01836 should also be paralleled with this document.

¹⁹ Witness Martin Raguž, T(F) of 26 August 2008, p. 31393.

The information contained in these documents may be useful in understanding the phenomenon of displaced Croats and Muslims in Central Bosnia as a result of the violent acts revealed in these documents.

These exhibits, through their content, help to enlighten me about the overall context of the conflict and to understand the mechanisms of the migratory flows of displaced persons and refugees.

As this issue is particularly important, it appears to me that, notwithstanding the position taken by a part of the Chamber, the exhibits should be nonetheless admitted in order to be definitively assessed at the end of trial, both by the requesting judge and the other judges.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]