



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: 18 November 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

Decision of: 18 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON PRLIĆ DEFENCE MOTION TO ADD EXHIBITS TO ITS 65
TER EXHIBIT LIST**

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 “Jadranko Prlić’s Motion to Add Exhibits to the Rule 65 *ter* Exhibit List” filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 17 October 2008 (“Motion”), in which the Prlić Defence requests the leave of the Chamber to add 89 exhibits (“Proposed Exhibits”¹) to its list of exhibits established pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List”) and to admit them as evidence,

NOTING the “Prosecution Response Opposing Jadranko Prlić’s Motion to Add Exhibits to the Rule 65 *ter* Exhibit List and to Admit Them Into Evidence” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 20 October 2008 (“Response”), in which the Prosecution objects to the Motion,

NOTING “Jadranko Prlić’s Request for Leave to Reply and Reply to Prosecution Response Opposing Jadranko Prlić’s Motion to Add Exhibits to the Rule 65 *ter* Exhibit List and to Admit Them Into Evidence” filed confidentially by the Prlić Defence on 21 October 2008 (“Request for Leave to Reply and Reply”) in which it requests the Chamber to grant it leave to reply and explains the reasons why it wishes to withdraw the part of its Motion related to the admission of the Proposed Exhibits as evidence,²

NOTING the “Supplement to Jadranko Prlić’s Motion to Add Exhibits to the Rule 65 *ter* Exhibit List” filed confidentially by the Prlić Defence on 31 October 2008

¹ P 09551; P 00274; P 07001; 1D 00241; 1D 01078; 1D 01074; 1D 01093; 1D 01039; 1D 00832; P 01063; P 00733; P 07628; P 08035; P 00714; 1D 02959; 1D 02963; 1D 02964; 1D 02965; 1D 02966; 1D 02967; 1D 02969; 1D 02970; 1D 02971; 1D 02972; 1D 02973; 1D 02974; 1D 02975; 1D 02976; 1D 02977; 1D 02978; 1D 02979; 1D 02980; 1D 02981; 1D 02982; 1D 02983; 1D 02984; 1D 02985; 1D 02986; 1D 02987; 1D 02988; 1D 02989; 1D 02990; 1D 02991; 1D 02992; 1D 02993; 1D 02994; 1D 02995; 1D 02996; 1D 02997; 1D 02998; 1D 02999; 1D 03000; 1D 03001; 1D 03002; 1D 03003; 1D 03004; 1D 03005; 1D 03006; 1D 03007; 1D 03008; 1D 03009; 1D 03010; 1D 03011; 1D 03012; 1D 03013; 1D 03014; 1D 03015; 1D 03016; 1D 03017; 1D 03018; 1D 03019; 1D 03020; 1D 03021; 1D 03022; 1D 03023; 1D 03024; 1D 03025; 1D 03026; 1D 03027; 1D 03028; 1D 03029; 1D 03030; 1D 03031; 1D 03032; 1D 03033; 1D 03034; 1D 03035; 1D 03036 and 1D 03037.

² Request for Leave to Reply and Reply, p. 2, para. 2.

(“Supplement”) in which it requests the Chamber to withdraw document 1D 03001 from the Proposed Exhibits,³

NOTING the supplements to the Motion disclosed to the Registry on 31 October and 12 November 2008 on CD-ROM, containing the English translations of the Proposed Exhibits,

CONSIDERING that the Prlić Defence argues that the Proposed Exhibits were used by economic expert witness Milan Cvikl in the preparation of his report “Analysis of the Economic Measures & Developments in the HZ/HR HB within the Context of the Economic Environment in Bosnia and Herzegovina from 1991-1994”,⁴

CONSIDERING that the Prlić Defence asserts that the Proposed Exhibits have substantial probative value and are relevant with respect to the defence case of the Accused Prlić,⁵

CONSIDERING that the Prlić Defence submits that it was not in a position to add the Proposed Exhibits to the 65 *ter* List when it was prepared because the report had not yet been completed,⁶

CONSIDERING that the Prlić Defence submits that the Proposed Exhibits were provided to the Parties on 9 October 2008, at the same time as the aforementioned report,⁷

CONSIDERING that in its Response the Prosecution states that its position in relation to the testimony of Milan Cvikl was already set out in the “Prosecution Motion to Exclude the Testimony of the Defence Expert Witnesses Milan Cvikl and Svetlana Radovanović or in the alternative for Certification of Appeal under Rule 73(B)” and in the “Prosecution’s Renewed Motion to Exclude Report and Testimony of Witness Milan Cvikl and in the Alternative Suspension of the Deadline for Filing the Prosecution Response Under Rule 94 *bis* and for other Relief” filed on 6 and 16 October 2008, respectively,⁸

³ Supplement, p. 1, para. 1.

⁴ Motion, p.1.

⁵ Motion, p.1.

⁶ Motion, p.1.

⁷ Motion, p.1.

⁸ Response, p. 1, para. 2

CONSIDERING that in its Response the Prosecution recalls the argument presented in support of the two aforementioned motions, namely that it should have been provided with Milan Cvikl's expert report on 31 March 2008,⁹

CONSIDERING that the Prosecution submits that it received the expert report of Milan Cvikl only on 10 October 2008, without the materials to which the said report refers,¹⁰ even though by January 2008 expert witness Milan Cvikl had completed his review all of the Proposed Exhibits relevant to his report,¹¹

CONSIDERING that the Prosecution submits that Rule 94 *bis* requires it to file a response within 30 days of disclosure of an expert report and that, under these circumstances, it is not in a position to prepare that response or its cross-examination,¹²

CONSIDERING that the Prosecution notes that 58 of the Proposed Exhibits have not been translated into one of the official languages of the Tribunal and that, as noted by the Defence for the Accused Stojić, the expert report of Milan Cvikl has not been translated into BCS,¹³

CONSIDERING that the Prosecution submits that in accordance with the rules established by the Chamber,¹⁴ the above-mentioned report and the documents to which it refers may not be presented through expert witness Milan Cvikl if they have not been translated into one of the official languages of the Tribunal and into a language understood by the Accused,¹⁵

CONSIDERING that the Prosecution argues that it has been prejudiced by the Prlić Defence's late disclosure of Milan Cvikl's expert report and the numerous Proposed Exhibits related to it and the lack of their translation into one of the official languages of the Tribunal,¹⁶

⁹ Response, p. 2, para. 3.

¹⁰ Response, p. 2, para. 3. "[...] Further the Defence has yet to supply the Prosecution with all supporting and source materials to which the report refers [...]".

¹¹ Response, p. 2, para. 5.

¹² Response, p. 3, para. 8.

¹³ Response, p. 3, para. 6.

¹⁴ Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008, Guideline 8, para. 28; Decision on Admission of Evidence, 13 July 2006.

¹⁵ Response, p. 3, para. 6.

¹⁶ Response, p. 3, para. 7.

CONSIDERING that the Prosecution acknowledges that it would not object to the addition of the Proposed Exhibits to the 65 *ter* List if (1) the translations of Milan Cvikič's evidence are provided to it reasonably in advance and (2) the Chamber orders the postponement of expert witness Milan Cvikič's appearance in order to remedy the prejudice suffered by the Prosecution,¹⁷

CONSIDERING that in this specific case the Prosecution would nonetheless reserve its right to challenge the admission of the Proposed Exhibits as evidence if the Chamber were to so rule,¹⁸

CONSIDERING that, as a preliminary remark, the Chamber is of the opinion that the withdrawal of the part of the Motion related to the admission of the Proposed Exhibits as evidence is a sufficiently compelling circumstance which justifies granting the Prlić Defence leave to reply,

CONSIDERING that the Chamber notes that, in the Request for Leave to Reply and Reply, the Prlić Defence withdraws the part of the Motion related to the admission of the Proposed Exhibits as evidence and that, consequently, the Chamber need not rule on this part of the Motion,

CONSIDERING that the Chamber takes note of the fact that in its Supplement¹⁹ the Prlić Defence withdrew its request in respect of Exhibit 1D 03001,

CONSIDERING that the Chamber next recalls that in order to grant a request to add exhibits to the 65 *ter* List, the exhibits must be disclosed to the Parties sufficiently in advance in view of their presentation to a witness in court, so as not to hinder them in the preparation of their cross-examination,

CONSIDERING that the Chamber recalls the "Decision Adopting Guidelines for the Presentation of Defence Evidence", rendered on 24 April 2008 and more specifically Guideline 8 stipulating that in order for a request to add exhibits to the 65 *ter* List to be granted, the Parties concerned must request the leave of the Chamber to add the exhibit or exhibits to the 65 *ter* (G) list prior to the appearance of the witness to whom

¹⁷ Response, p. 4, para. 10. "[...] (1) if translations are provided to the Prosecution well in advance of M. Cvikič's testimony and (2) if the Trial Chamber postpones M. Cvikič's appearance [...]"

¹⁸ Response, p. 4, para. 10.

¹⁹ Supplement, p. 1, para. 1.

it intends to put the exhibits, providing the reasons why the exhibit or exhibits are essential to the case and reasons why the exhibit or exhibits were not on the list filed pursuant to Rule 65 *ter* (G) of the Rules,

CONSIDERING that the Chamber wishes to remind the Parties that they should not upload into *ecourt* any documents that have not been listed on the 65 *ter* Lists and in future should provide, in support of any requests to add exhibits to the 65 *ter* Lists, the original and translated documents on CD-ROM,

CONSIDERING, in principle, that when dealing with a request to add exhibits to the 65 *ter* List, the Chamber will always carry out a *prima facie* examination of the reliability, relevance and probative value of the documents before it,

CONSIDERING that by Oral Decision of 20 October 2008,²⁰ the Chamber announced that Milan Cvikl's appearance would be postponed to a later date,

CONSIDERING that in its Decision on Prosecution Motion to Postpone the Appearance of Defence Expert Witness Milan Cvikl, dated 5 November 2008 ("Decision of 5 November 2008"), the Chamber decided that the possible testimony of expert witness Milan Cvikl would be postponed until 12 January 2009 at the earliest,

CONSIDERING furthermore that the CD-ROMs containing the Proposed Exhibits translated into English were provided to the Registry on 31 October 2008 and 12 November 2008,

CONSIDERING that the Decision of 5 November 2008 and the disclosure of the documents in English remedy the prejudice suffered by the Prosecution by giving it sufficient time to review the Proposed Exhibits and Milan Cvikl's expert report and to submit the response in accordance with Rule 94 *bis* of the Rules,

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

²⁰ T(F) p. 33376.

CONSIDERING that the Chamber further holds that the fact that the Proposed Exhibits are cited in Milan Cvikič's expert report necessitates their addition to the 65 *ter* List, in spite of the tardiness of the Motion,

CONSIDERING that the Chamber nonetheless wishes to remind the Prlić Defence that the Motion is out of time but that it will be allowed on an exceptional basis,

CONSIDERING that the Chamber therefore finds that it is in the interests of justice to add them to the 65 *ter* List,

CONSIDERING that, as a result, the Chamber decides to grant the Motion and allows the Prlić Defence to add Exhibits P 09551; P 00274; P 07001; 1D 00241; 1D 01078; 1D 01074; 1D 01093; 1D 01039; 1D 00832; P 01063; P 00733; P 07628; P 08035; P 00714; 1D 02959; 1D 02963; 1D 02964; 1D 02965; 1D 02966; 1D 02967; 1D 02969; 1D 02970; 1D 02971; 1D 02972; 1D 02973; 1D 02974; 1D 02975; 1D 02976; 1D 02977; 1D 02978; 1D 02979; 1D 02980; 1D 02981; 1D 02982; 1D 02983; 1D 02984; 1D 02985; 1D 02986; 1D 02987; 1D 02988; 1D 02989; 1D 02990; 1D 02991; 1D 02992; 1D 02993; 1D 02994; 1D 02995; 1D 02996; 1D 02997; 1D 02998; 1D 02999; 1D 03000; 1D 03002; 1D 03003; 1D 03004; 1D 03005; 1D 03006; 1D 03007; 1D 03008; 1D 03009; 1D 03010; 1D 03011; 1D 03012; 1D 03013; 1D 03014; 1D 03015; 1D 03016; 1D 03017; 1D 03018; 1D 03019; 1D 03020; 1D 03021; 1D 03022; 1D 03023; 1D 03024; 1D 03025; 1D 03026; 1D 03027; 1D 03028; 1D 03029; 1D 03030; 1D 03031; 1D 03032; 1D 03033; 1D 03034; 1D 03035; 1D 03036 and 1D 03037 to the 65 *ter* List.

FOR THESE REASONS,

IN ACCORDANCE with Rules 54, 65 *ter* and 89 (C) of the Rules of Procedure and Evidence,

GRANTS the Request for Leave to Reply,

TAKES NOTES of the withdrawal of Exhibit 1D 03001 from the Motion,

DISMISSES as moot the part of the Motion related to the admission of these exhibits as evidence,

PARTIALLY GRANTS the Motion, **AND**

ALLOWS the Prlić Defence to add Exhibits P 09551; P 00274; P 07001; 1D 00241; 1D 01078; 1D 01074; 1D 01093; 1D 01039; 1D 00832; P 01063; P 00733; P 07628; P 08035; P 00714; 1D 02959; 1D 02963; 1D 02964; 1D 02965; 1D 02966; 1D 02967; 1D 02969; 1D 02970; 1D 02971; 1D 02972; 1D 02973; 1D 02974; 1D 02975; 1D 02976; 1D 02977; 1D 02978; 1D 02979; 1D 02980; 1D 02981; 1D 02982; 1D 02983; 1D 02984; 1D 02985; 1D 02986; 1D 02987; 1D 02988; 1D 02989; 1D 02990; 1D 02991; 1D 02992; 1D 02993; 1D 02994; 1D 02995; 1D 02996; 1D 02997; 1D 02998; 1D 02999; 1D 03000; 1D 03002; 1D 03003; 1D 03004; 1D 03005; 1D 03006; 1D 03007; 1D 03008; 1D 03009; 1D 03010; 1D 03011; 1D 03012; 1D 03013; 1D 03014; 1D 03015; 1D 03016; 1D 03017; 1D 03018; 1D 03019; 1D 03020; 1D 03021; 1D 03022; 1D 03023; 1D 03024; 1D 03025; 1D 03026; 1D 03027; 1D 03028; 1D 03029; 1D 03030; 1D 03031; 1D 03032; 1D 03033; 1D 03034; 1D 03035; 1D 03036 and 1D 03037 to the 65 *ter* List.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eighteenth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]