



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 March 2009
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

Acting Registrar: Mr John Hocking

Order of: 6 March 2009

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE RELATED TO WITNESS SLOBODAN BOŽIĆ

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"),

CONSIDERING that Counsel for the Accused Stojić ("Stojić Defence"), Counsel for the Accused Praljak ("Praljak Defence"), Counsel for the Accused Petković ("Petković Defence") and the Office of the Prosecutor ("Prosecution") have requested the admission of 49,¹ 3,² 2³ and 13⁴ exhibits, respectively, related to the testimony of Witness Slobodan Božić ("Proposed Exhibits") who appeared before the Chamber from 2 to 10 February 2009,

CONSIDERING that the Chamber has examined the objections formulated by the Praljak Defence with regard to certain exhibits proposed by the Prosecution,⁵ the objections formulated by the Petković Defence with regard to certain exhibits proposed by the Prosecution,⁶ the objections formulated by the Pušić Defence to certain exhibits proposed by the Prosecution ("Pušić Response"),⁷ the objection formulated by the Stojić Defence with regard to certain exhibits proposed by the Prosecution⁸ as well as the reply filed by the Prosecution in response to these objections ("Reply"),⁹

NOTING the Decision on Presentation of Documents by the Prosecution in Cross-examination of Defence Witnesses, rendered by the Chamber on 27 November 2008 ("Decision of 27 November 2008") in which the Chamber established the modalities for the presentation of new documents during the cross-examination by the Prosecution of Defence witnesses,

NOTING the "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-examination of

¹ IC 00913.

² IC 00914.

³ IC 00915.

⁴ IC 00916.

⁵ IC 00920.

⁶ IC 00918.

⁷ IC 00919.

⁸ Bruno Stojić's Objection to Admission of Slobodan Božić's Previous Interview into Evidence, 12 February 2009.

Defence Witnesses", rendered by the Appeals Chamber on 26 February 2009 ("Decision of 26 February 2009") in which it affirms the Decision of 27 November 2008,

CONSIDERING that the Pušić Defence objected in particular to the admission of Exhibits P 10782, P 10783, P 10785, P 10792, P 10795 and P 10807 on the ground that these are new documents that were not on the list of exhibits produced by the Prosecution pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence ("65 *ter* List"; "Rules") and that the Prosecution did not justify the exceptional circumstances that would allow their admission,¹⁰

CONSIDERING that, in its Reply, the Prosecution argues in particular that the new documents for which it seeks admission aim not only to test the credibility of the witness, but also to respond to the arguments presented by the Defence teams through this witness,¹¹

CONSIDERING that the Prosecution further claims that the Chamber should admit the new documents which the Prosecution has tendered for admission, to all intents and purposes, insofar as it would be unreasonable, unfair and contrary to the search for truth to admit these documents only with regard to the credibility of the witness and not to refute the arguments of the Defence,¹²

CONSIDERING, moreover, that the Prosecution has withdrawn its request for the admission of Exhibit P 10794,¹³

CONSIDERING that the Chamber takes note first of the fact that the Prosecution has withdrawn its request for the admission of Exhibit P 10794,

CONSIDERING, furthermore, that the Chamber finds that in their request for admission, the Parties refer to the page numbers of the documents themselves and not to the page numbers in the E-court system,

⁹ "Prosecution Reply to Defence Objections to the Admission of the New Documents by the Prosecution through Slobodan Božić", ("Reply"), 16 February 2009.

¹⁰ Pušić Response, p. 2.

¹¹ Reply, para. 6.

¹² Reply, para. 8.

¹³ Reply, para. 4.

CONSIDERING that in light of the practice of the Chamber, which requires that the pages of the documents tendered for admission by the Parties be listed according to the page numbers of the English version of the document in the E-court system, the Chamber requests that the Parties keep to this practice,

CONSIDERING, moreover, that the Chamber notes that Proposed Exhibits 2D00891 and 2D01458 have already been admitted by the Chamber¹⁴ and that the request in respect of them is therefore moot,

CONSIDERING that with regard to Exhibits P 10782, P 10783, P 10785, P 10792, P 10795 and P 10807 ("Mixed Documents"), the Chamber recalls that it has established that when the Prosecution wishes to introduce documents that would impeach the credibility of a witness while at the same time inculcate an Accused, it would decide on a case-by-case basis whether or not it is appropriate to admit them,¹⁵

CONSIDERING that the Chamber recalls that only exceptional reasons may justify the admission of these new documents from the Prosecution after the conclusion of its case in order to prove the guilt of an Accused, and that the Chamber will examine the potential infringement on the rights of the Accused caused by such an admission,¹⁶

CONSIDERING that, with this aim, the Chamber has established that when the Prosecution wishes to have new documents entered into evidence in order to establish the guilt of an Accused after the conclusion of its case, it must explain to the Chamber when and by which means it obtained these documents, when it disclosed them to the Defence and why they are being offered only after the conclusion of its case,¹⁷

CONSIDERING that the Appeals Chamber recalled in its Decision of 26 February 2009 that the Trial Chamber has the discretionary power to decide for what purpose the documents it decides to admit into evidence are used,¹⁸

¹⁴ Order Admitting Evidence regarding Witness Neven Tomić, 21 January 2009; and Order Admitting Evidence Related to Witness Davor Marijan, 25 February 2009.

¹⁵ Decision of 27 November 2008, para. 22

¹⁶ Decision of 27 November 2008, para. 20.

¹⁷ Decision of 27 November 2008, para. 20.

¹⁸ Decision of 26 February 2009, para. 29.

CONSIDERING that the Prosecution has itself admitted that the Mixed Documents serve both to test the credibility of Witness Slobodan Božić and to refute the arguments presented by the Stojić Defence through him,

CONSIDERING that the Chamber finds that the Mixed Documents have not already been admitted into evidence and do not appear on the Prosecution's *65 ter* List, and that therefore they are new documents that fall within the scope of paragraph 18 of the Decision of 27 November 2008,

CONSIDERING that the Prosecution has not followed the procedure established by the Chamber for requesting the admission of the Mixed Documents, for all intents and purposes, because while they partly go to proof of the guilt of an Accused, it has not explained when and by which means it obtained these documents, when it disclosed them to the Defence and why they are being offered only after the conclusion of its case,

CONSIDERING that by failing to provide these explanations, the Prosecution has not enabled the Chamber to hear the Parties on this matter and to evaluate the potential infringement on the rights of the Defence; that as a result, the Chamber decides not to admit the Mixed Documents in order to prove the guilt of an Accused,

CONSIDERING that the Chamber recalls that the Prosecution may, during the cross-examination of a Defence witness, nevertheless introduce documents that have not been admitted into evidence, for the sole purpose of testing the credibility of a witness or to refresh his/her memory,¹⁹ and that it will assess the admissibility of the Mixed Documents for this purpose alone,

CONSIDERING that the Chamber has examined each Proposed Exhibit on the basis of the criteria of admissibility defined in the Decision on Admission of Evidence rendered on 13 July 2006 ("Decision of 13 July 2006") and in the Decision Adopting Guidelines for the Presentation of Defence Evidence rendered on 24 April 2008 ("Decision of 24 April 2008"),²⁰

¹⁹ Decision of 27 November 2008, para. 24.

²⁰ Guideline 8 regarding the Admission of Documentary Evidence through a Witness".

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked "admitted" in the Annex attached to this Decision as they were put to Witness Slobodan Božić and present sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked "not admitted" in the Annex attached to this Decision as they do not conform to the instructions set out in the Decisions of 13 July 2006 and of 24 April 2008 for the reasons given in the Annex attached to this Decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

GRANTS the request for admission of the Praljak Defence and the Petković Defence,

PARTIALLY GRANTS the request for admission of the Stojić Defence and the Prosecution,

DECIDES that there is cause to admit into evidence Exhibits P 10782, P 10783, P 10785, P 10792, P 10795 and P 10807 solely because they go to impeach the credibility of Witness Slobodan Božić,

DECIDES that there is cause to admit into evidence the Proposed Exhibits marked "admitted" in the Annex attached to this Decision,

DECLARES MOOT the request by the Stojić Defence with regard to Proposed Exhibits 2D00891 and 2D01458 for the reasons given in the Annex attached to this Decision,

DENIES in all other respects the requests for admission of the Proposed Exhibits of the Stojić Defence and the Prosecution, for the reasons given in the Annex attached to this Decision .

Annex

Exhibit Number (Preferably in Numerical Order)	Party Proposing Admission of Exhibits	Admitted/Not Admitted/ Marked for Identification (MFI)
1D 00110	Stojić Defence	Not admitted (Reason: the document is not on the 65 <i>ter</i> List of the Stojić Defence and was used solely during the examination-in-chief)
1D 02423	Stojić Defence	Not admitted (Reason: the document is not on the 65 <i>ter</i> List of the Stojić Defence and was used solely during the examination-in-chief)
2D00444	Stojić Defence	Admitted
2D00445	Stojić Defence	Admitted
2D00558	Stojić Defence	Admitted
2D00567	Stojić Defence	Admitted
2D00689	Stojić Defence	Not admitted (Reason: the English translation appears to have one page more than the BCS original)
2D00694	Stojić Defence	Admitted
2D00847	Stojić Defence	Not admitted (Reason: Jadranko Prlić's name appears at the end of the English translation, while it does not appear in the BCS original)
2D00854	Stojić Defence	Admitted
2D00891	Stojić Defence	Moot (Reason: already admitted by the Order Admitting Evidence regarding Witness Neven Tomić of 21 January 2009)
2D00926	Stojić Defence	Admitted
2D00976	Stojić Defence	Not Admitted (Reason: the Stojić Defence did not specify which of the two translations in the E-court system under this number corresponds to the BCS original)
2D00978	Stojić Defence	Admitted
2D00985	Stojić Defence	Admitted

2D00989	Stojić Defence	Admitted
2D00992	Stojić Defence	Admitted
2D01000	Stojić Defence	Admitted
2D01006	Stojić Defence	Admitted
2D01018	Stojić Defence	Admitted
2D01031	Stojić Defence	Admitted
2D01262	Stojić Defence	Not Admitted (Reason: the document is incomplete, page 3 is not available in E-court. Moreover, the document has more than 20 pages and the Stojić Defence has not specified for which pages it seeks admission)
2D01321	Stojić Defence	Admitted
2D01363	Stojić Defence	Admitted
2D01443	Stojić Defence	Admitted
2D01444	Stojić Defence	Admitted
2D01458	Stojić Defence	Moot (Reason: already admitted by Order Admitting Evidence related to Witness Davor Marijan of 25 February 2009)
2D01459	Stojić Defence	Admitted
2D01460	Stojić Defence	Not Admitted (Reason: The original document is almost completely illegible. Moreover, another document in BCS, equally illegible, exists in the Annex under this E-court number)
2D01461	Stojić Defence	Not Admitted (Reason: the original document is almost completely illegible)
2D01462	Stojić Defence	Admitted
2D01463	Stojić Defence	Not Admitted (Reason: the translation under this number in the E-court system seems to correspond only to a part of the original BCS document. The Stojić Defence has not specified which part of the original corresponds to this translation)
2D02010	Stojić Defence	Not Admitted (Reason: the

		document is not on the Stojić Defence 65 <i>ter</i> list and was used solely during the examination-in-chief)
2D02011	Stojić Defence	Not Admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> list and was used solely during the examination-in-chief)
2D02014	Stojić Defence	Not Admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> list and was used solely during the examination-in-chief)
2D02016	Stojić Defence	Not Admitted (Reason: the document is not on the Stojić Defence 65 <i>ter</i> list and was used solely during the examination-in-chief)
4D00575	Stojić Defence	Admitted
P00767	Stojić Defence	Admitted
P00880	Stojić Defence	Admitted
P00921	Stojić Defence	Admitted
P01008	Stojić Defence	Admitted
P01075	Stojić Defence	Admitted
P01805	Stojić Defence	Admitted
P01846	Stojić Defence	Admitted
P04890	Stojić Defence	Admitted
P05133	Stojić Defence	Admitted
P06996	Stojić Defence	Admitted
P07419	Stojić Defence	Partially Admitted (only the pages corresponding to the English translation under number L002-9414 are admitted)
P07790	Stojić Defence	Admitted
1D01987 BCS pages 1D25-0931 ; 1D25-0941 ; 1D25-0942 and pages 1D25-0956 ; 1D25-0963 ; 1D25- 0964 ²¹	Praljak Defence	Admitted (pages 1, 8 and 9 of the English translation)
3D03101 BCS pages 3D35-1089 ; 3D35-1094 ; 3D35-1095	Praljak Defence	Admitted (pages 1 to 4 of the English translation under number 3D40-019)

²¹ Pages 1D25-0956, 1D25-0963, 1D25-0964 correspond to pages 1, 8 and 9 of the English version of the document in the E-court system.

and pages 3D40-0019 ; 3D40-0020 ; 3D40-0021 ; 3D40-0022 ²²		
3D03261	Praljak Defence	Admitted
4D01276 in its entirety or, alternatively, Article 47	Petković Defence	Admitted in its entirety
4D01287 article 11	Petković Defence	Admitted
P00463 in its entirety or, alternatively, pages 1, 72 and 97	Prosecution	Partially Admitted: pages 1, 72 and 97 of the original BCS document
P02380	Prosecution	Admitted
P05769	Prosecution	Admitted
P06335	Prosecution	Not Admitted (Reason: the Witness could not comment on the reliability, relevance or the probative value of the Exhibit ²³)
P08215	Prosecution	Admitted
P10782	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the credibility of Slobodan Božić)
P10783	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the credibility of Slobodan Božić)
P10785	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the credibility of Slobodan Božić)
P10792	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the credibility of Slobodan Božić)
P10795	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the credibility of Slobodan Božić)
P10807	Prosecution	Admitted (this document is admitted only to the extent that it goes to impeach the

²² Pages 3D40-0019, 3D40-0020, 3D40-0021, 3D40-0022 correspond to pages 1 to 4 of the English version of the document in question (3D40-0019) in the E-court system.

²³ 10 February 2009, 36661: 20 transcript.

		credibility of Slobodan Božić)
IC00912	Prosecution	Admitted