



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: 9 April 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

Registrar: Hans Holthuis

Decision of: 9 April 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON "SECOND MOTION FOR THE ADMISSION OF
DOCUMENTARY EVIDENCE" FILED BY THE PRLIĆ DEFENCE**

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 Second Motion for the Admission of Documentary Evidence, filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 27 February 2009 (“Motion”), in which the Prlić Defence asks the Chamber to admit 81 exhibits (“Proposed Exhibits”),

NOTING the Prosecution Response to Jadranko Prlić’s Second Motion for Admission of Documentary Evidence, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 13 March 2009 (“Response”),

CONSIDERING that the other Defence teams have not filed a response to the Motion,

NOTING the Decision Adopting Guidelines for the Presentation of Defence Evidence, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”) and, in particular, paragraph 35 thereof (“Guideline 9”), relating to the filing of written motions for the admission of evidence, that requires that any motion for the admission of evidence be presented “promptly” after the end of the presentation of evidence in respect of a given municipality or subject.

NOTING the Decision on Jadranko Prlić’s Motion to be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008, rendered by the Chamber on 23 July 2008 (“Decision of 23 July 2008”) and the Second Decision on the Application of Guideline 9 of the Decision of 24 April 2008, rendered by the Chamber on 23 September 2008 (“Decision of 23 September 2008”), in which the Chamber twice refused to grant the Prlić Defence relief from the deadline set forth in Guideline 9 to file written motions in accordance with the said Guideline¹ and requested that the Prlić Defence propose a schedule for the filing of motions, failing which the Chamber would be obliged to set such a schedule itself,²

¹ Decision of 23 July 2008, p. 5, and Decision of 23 September 2008, pp. 2 and 3.

² Decision of 23 July 2008, p. 6, and Decision of 23 September 2008, p. 3.

NOTING the Jadranko Prlić Proposed Schedule on the Application of Guideline 9 of the Decision of 24 April 2009, filed by the Prlić Defence on 1 October 2008 (“Schedule”), in which the Prlić Defence indicates that it intends to file two motions for the admission of evidence according to Guideline 9, one on the presidential transcripts, foreseen for 3 November 2008, and the other on all other documentary evidence, organized according to topics, that was to be filed on the last day of the Prlić Defence case, which was 27 November 2008 (“Two Motions”),

NOTING the Oral Decision rendered by the Chamber on 26 November 2008³, in which the Chamber granted the Prlić Defence an extension of time until 5 December 2008 to file the motion on all other documentary evidence, organized according to topics,

CONSIDERING *in limine* that the Chamber reminds the Prlić Defence that it ruled on the two Motions on 4 and 6 March 2009,⁴

CONSIDERING that in the Motion, the Prlić Defence asks the Chamber to admit 81 documents pursuant to Rule 89(c) of the Rules of Procedure and Evidence (“Rules”) in accordance with Guideline 9,

CONSIDERING that the Prlić Defence maintains that the Proposed Exhibits are relevant, reliable and have probative value; that they were not shown to a witness in court due to a lack of time or might have been shown to a specific witness in court but were not admitted by the Chamber,⁵

CONSIDERING that the Prlić Defence alleges that the Motion is timely because it was filed promptly after the Trial Chamber ruled on the admission of evidence related to several witnesses; and that it was thus impossible to include these documents in one of the previously filed motions,⁶

CONSIDERING that the Prlić Defence also maintains that in earlier motions it duly informed the Chamber of its intention to file the Motion shortly,⁷

³ Oral Decision of 26 November 2008, Transcript of Hearing in French (T(F)), p. 35111-35113.

⁴ Decision Admitting Presidential Transcripts, 4 March 2009; Decision on Prlić Defence Motion for Admission of Documentary Evidence, 6 March 2009 (“Decision of 6 March 2009”).

⁵ Motion, para. 14.

⁶ Motion, para. 10.

⁷ Motion, paras 1 and 6.

CONSIDERING that the Prlić Defence also submits that the Motion is timely because it has not yet rested its case in view of the 13 minutes of time allotted to it by the Chamber that have not been used, and may be used for further direct examination,⁸

CONSIDERING that the Prlić Defence also contends that some of the Proposed Exhibits (“Anonymous Documents”) were given to it by private persons (“Sources”) to be used in trial on the condition that the sources remain confidential and classified as such; and that not disclosing the sources of the documents does not prevent the Trial Chamber, or any of the other parties, from assessing the reliability of these documents, nor does it violate the fair trial rights of the Prosecution or of the other Accused,⁹

CONSIDERING that the Prosecution objects in part to the Motion,¹⁰ and maintains in the Response that 5 of the Proposed Exhibits are anonymous and cannot be evaluated by the Chamber;¹¹ that 61 of the Proposed Exhibits were submitted out of time, i.e. after 15 January 2009, the date on which the Prlić Defence rested its case;¹² that only 20 Proposed Exhibits¹³ seem to be timely, to the extent that they were requested for admission by other means and their admission was only recently denied by the Chamber,¹⁴

CONSIDERING that the Prosecution notes that, contrary to the assertion of the Prlić Defence, the 61 of the Proposed Exhibits were never tendered for admission through a witness and rejected by the Chamber,¹⁵

CONSIDERING that the Prosecution maintains primarily that the Prlić Defence concluded its case on 15 January 2009 and that can no longer present motions pursuant to Guideline 9,¹⁶

⁸ Motion, para. 11.

⁹ Motion, para.17.

¹⁰ Response, para. 13.

¹¹ Response, para. 5.

¹² Reponse, paras 6-11.

¹³ The Chamber notes that among the 61 Proposed Exhibits submitted, out of time according to the Prosecution, and among the other 20 Proposed Exhibits, there are 5 anonymous Proposed Exhibits.

¹⁴ Response, para. 11.

¹⁵ Response, para. 10.

¹⁶ Response, paras 6 and 8.

CONSIDERING that the Prosecution rejects the argument put forward by the Prlić Defence, according to which it has not concluded its case because it still has 13 minutes of time allocated to it by the Chamber,¹⁷

CONSIDERING that the Prosecution is of the view that this is an erroneous interpretation of the “ending of the case” and considers that if the Chamber were to accept such an interpretation, this would be the same as considering that the Prosecution had not ended its case either, in view of the fact that 19 of the 316 hours allocated to it by the Chamber still remain,¹⁸

CONSIDERING that the Chamber reminds the Prlić Defence once again of the well-established practice in this trial, according to which the party presenting its case may tender a written motion requesting the admission of exhibits “promptly” after the end of the presentation of evidence in respect of a given municipality or subject,¹⁹

CONSIDERING that the Chamber reminds the Prlić Defence once again that it has twice denied any exemption in principle from the provisions of Guideline 9 and that it ordered it to indicate, as appropriate, when it intended to file its motions pursuant to Guideline 9,²⁰

CONSIDERING that the Chamber recalls that the Prlić Defence informed it that it intended to file two motions, one of which on the last day of the defence case, that was initially foreseen for 27 November 2008,²¹

CONSIDERING that the Prlić Defence then filed a motion to extend the time granted to it by the Chamber to file a motion on 5 December 2008 on all other documentary evidence, organized according to topics,²²

CONSIDERING that the Chamber notes that the Prlić Defence never asked the Chamber for a further extension of time to submit the Motion,

¹⁷ Response, para. 9.

¹⁸ Response, para. 9.

¹⁹ Decision Amending the Decision on the Admission of Evidence Dated 13 July 2006, 29 November 2006 (“Decision of 29 November 2006”), p. 7; Decision of 24 April 2008, para. 35; Decision of 23 July 2008, pp. 4 and 5; Decision of 23 September 2009, pp. 2-4.

²⁰ Decision of 23 July 2008, pp. 4 and 5; Decision of 23 September 2009, pp. 2-4.

²¹ Schedule, para. 2.

²² Oral Decision of 26 November 2008, T(F) p. 35111-35113.

CONSIDERING that the Chamber holds that the referring in the footnotes of earlier submissions to the fact that the Motion would be filed promptly cannot be considered as a proper request for an extension of time.

CONSIDERING that, having examined the Motion, the Chamber notes that contrary to the assertion of the Prlić Defence, many of the Proposed Exhibits contained in the Motion could have been included in the motion of 5 December 2008 and this within the time set forth by the Chamber, to the extent that they were not pending for admission by the Chamber,

CONSIDERING, on the other hand, that the Chamber holds that since Witness Cvikl had not testified by the date of the motion of 5 December 2008, the Prlić Defence was not able to include the Proposed Exhibits relating to this witness in its motion of 5 December 2008,

CONSIDERING, in addition, that the Chamber has confidence in the good faith of the Prlić Defence that, in the absence of other specific indications from the Chamber, it might have thought it necessary to wait until the decisions on the admission of exhibits related to Witnesses Tomić, Batinić, Kožul and Zelenika had been taken before being able to request pursuant to Guideline 9 the admission by intermediary of these witnesses, of the exhibits denied,

CONSIDERING, however, that the argument according to which the Prlić Defence has not fully concluded its case because it still has 13 minutes of unused time and, as such, may still file the Motion, is not a reasonable argument in the Chamber's view.

CONSIDERING that the Chamber recalls that the Prlić Defence concluded its case in the main on 15 January 2009, the date on which its final witness appeared, and from that date on, the Stojić Defence has been presenting its case,

CONSIDERING, as a result, that with the exception of the Proposed Exhibits put to Witnesses Tomić, Batinić, Kožul, Zelenika and Cvikl, requested for admission and denied by the Chamber, the Chamber holds that the Prlić Defence is no longer allowed to request the admission of evidence by written motion pursuant to Guideline 9, not only in view of the time-limit of 5 December 2008 set by the Chamber but also in view of the fact that it concluded its case in the main on 15 January 2009,

CONSIDERING, in view of all the above, that the Chamber deems the Request partially unacceptable because it was presented out of time, and decides consequently that it will not deal with the Request with regard to the following Proposed Exhibits:

1D 00241; 1D 00334; 1D 00624; 1D 00832; 1D 00950; 1D 01039; 1D 01078; 1D 01074; 1D 01093; 1D 01689; 1D 01697; 1D 02963; 1D 02965; 1D 03009; 1D 02958; 1D 02978; 1D 02979; 1D 02981; 1D 02982; 1D 02983; 1D 02985; 1D 02986; 1D 02988; 1D 02987; 1D 02989; 1D 02992; 1D 02993; 1D 02998; 1D 02999; 1D 03005; 1D 03006; 1D 03007; 1D 03008; 1D 03010; 1D 03011; 1D 03012; 1D 03013; 1D 03014; 1D 03015; 1D 03016; 1D 03017; 1D 03020; 1D 03022; 1D 03023; 1D 03024; 1D 03025; 1D 03026; 1D 03027; 1D 03028; 1D 03029; 1D 03030; 1D 03031; 1D 03033; 1D 03034; 1D 03035; 1D 03037; 1D 01702 and P 07001,

CONSIDERING, in addition, that the Chamber recalls that it already ruled on the request for admission of Exhibit P 00733 tendered by the Prlić Defence as a written motion under Guideline 9²³ and, consequently, deems the Request “moot” with regard to Proposed Exhibit P 00733,

CONSIDERING that, with regard to Proposed Exhibit 1D 02959, the Chamber recalls that it already admitted pages 104 and 106 thereof²⁴ in the Order Admitting Evidence regarding Expert Witness Milan Cvikl, of 18 February 2009 and, consequently, the Request is “moot” with regard to pages 104 and 106 of this Proposed Exhibit,

CONSIDERING that the Chamber notes that Exhibit 1D 02475 was already admitted by the Order Admitting Evidence regarding Witness 1D-AA, of 3 July 2008, and that, consequently, the request is “moot” in this connection,

CONSIDERING that, with regard to the request for admission of Anonymous Documents, the Chamber recalls that, for the reasons given in the Decision of 6 March 2009,²⁵ to the extent that the Prlić Defence refused to disclose the identity of the Sources not even to the Chamber, the Prlić Defence has made it impossible for the Chamber to evaluate the reliability and authenticity of the Anonymous Documents;

²³ Decision of 6 March 2009, p. 22.

²⁴ Order Admitting Evidence regarding Expert Witness Milan Cvikl, 18 February 2009.

²⁵ Decision of 6 March 2009, paras 20-26.

and that under these conditions, the Chamber decides to deny the request for admission of these Anonymous Documents,

CONSIDERING in all other respects that the Chamber has examined each of the Proposed Exhibits in light of information provided by the Prlić Defence in the Request and the objections raised by the Prosecution, and decides to admit the Proposed Exhibits marked as “admitted” in the annex attached to the present decision since they provide sufficient indicia of reliability, relevance and probative value with regard to the Indictment,

CONSIDERING, finally, that the Chamber rejects the Proposed Exhibits marked as “not admitted” in the annex attached to the present decision, giving for each Proposed Exhibit the reason for its rejection,

FOR THESE REASONS,

IN ACCORDANCE WITH Rule 89 (C) of the Rules,

DEEMS the Motion partially unacceptable because it was presented out of time with regard to Proposed Exhibits 1D 00241; 1D 00334; 1D 00624; 1D 00832; 1D 00950; 1D 01039; 1D 01074; 1D 01078; 1D 01093; 1D 01689; 1D 01697; 1D 01702; 1D 02958; 1D 02963; 1D 02965; 1D 02978; 1D 02979; 1D 02981; 1D 02982; 1D 02983; 1D 02985; 1D 02986; 1D 02988; 1D 02987; 1D 02989; 1D 02992; 1D 02993; 1D 02998; 1D 02999; 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 03020; 1D 03022; 1D 03023; 1D 03024; 1D 03025; 1D 03026; 1D 03027; 1D 03028; 1D 03029; 1D 03030; 1D 03031; 1D 03033; 1D 03034; 1D 03035; 1D 03037; and P 07001 for the reasons given in the present decision,

DEEMS the Motion moot with regard to Proposed Exhibits P 00733, 1D 02959 (pages 104 and 106) and 1D 02475 for the reasons given in the present decision and the attached Annex,

DECIDES to admit into evidence the Proposed Exhibits marked “admitted” in the Annex attached to the present decision,

DISMISSES the Motion in all other respects for the reasons given in the attached Annex,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this ninth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

Proposed Exhibits	Admitted/Not Admitted/Moot
1D 00836	Not admitted (Nothing testifying to the relevance of the document with regard to the Amended Indictment of 11 June 2008 ("Indictment"))
1D 01089	Not admitted (Nothing testifying to the authenticity of the document)
1D 01847	Not admitted (the source of the document was not disclosed by the Prlić Defence)
1D 02298	Not admitted (the source of the document was not disclosed by the Prlić Defence and nothing testifying to the relevance of the document with regard to the Indictment)
1D 02443	Not admitted (the source of the document was not disclosed by the Prlić Defence and nothing testifying to the relevance of the document with regard to the Indictment)
1D 02475	Moot (already admitted by the Order Admitting Evidence regarding Witness 1D-AA, of 3 July 2008)
1D 02959 (p. 3-29, 31-95, 101-119)	Moot for pages 104 and 106 (already admitted by the Order Admitting Evidence regarding Expert Witness Milan Cviki, of 18 February 2009). <i>Ecourt</i> pages: 3-29, 31-95, 101-103, 105, 107-119 are admitted since Witness Cviki was able to express his opinion on the reliability and authenticity of the exhibit)
1D 02961	Not admitted (Lack of translation into English)
1D 02966 (p.122)	Admitted
1D 02967 (p. 10-18 et 20-102)	Admitted
1D 02974 (p. 18-29 ; 190-192)	Admitted in part (only <i>ecourt</i> pages 18 and 19 are admitted) Pages 20-29 and 190-192 <u>are not admitted</u> since there is nothing testifying to the relevance of the document with regard to

	the Indictment.
1D 02994	Admitted.
1D 03114	Not admitted (Nothing testifying to the relevance of the document with regard to the Indictment)
1D 03115	Not admitted (Nothing testifying to the relevance of the document with regard to the Indictment)
1D 03122	Not admitted (Nothing testifying to the relevance of the document with regard to the Indictment)
1D 03125	Not admitted (Nothing testifying to the relevance of the document with regard to the Indictment)
1D 03126	Not admitted (Nothing testifying to the relevance of the document with regard to the Indictment)
1D 03132	Not admitted (The exhibit is not on the 65 <i>ter</i> list of the Prlić Defence).
1D 03133	Admitted
1D 03134	Admitted
1D00432	Not admitted. (Nothing testifying to the relevance of the document with regard to the Indictment.)
P 01062	Admitted
P 00733	Moot (document already presented and rejected by the Decision of 6 March 2009)