



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: 31 August 2009
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IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 31 August 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON BRUNO STOJIĆ'S MOTION FOR RECONSIDERATION OF
*DÉCISION PORTANT SUR LA DEMANDE DE LA DÉFENSE STOJIĆ
D'ADMISSION D'ÉLÉMENTS DE PREUVE DOCUMENTAIRES (COOPÉRATION
ENTRE AUTORITÉS ET FORCES ARMÉES DE L'ABIH)***

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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

I. INTRODUCTION

1. 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") is seized of "Bruno Stojić's Motion for Reconsideration of *Décision portant sur la demande de la Défense Stojić d'admission d'éléments de preuve documentaires (coopération entre autorités et forces armées de l'ABiH) /Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH)*" filed publicly by Counsel for the Accused Stojić ("Stojić Defence") on 28 July 2009 ("Motion").

II. PROCEDURAL BACKGROUND

2. On 21 July 2009, the Chamber rendered the "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH)" ("Decision of 21 July 2009") in which the Chamber rejected 56 of 115 documents for which the Stojić Defence initially requested admission on grounds that 1) the English translation of the proposed exhibit had not been sent to the Chamber or the other parties, therefore making it impossible to examine its admissibility;¹ 2) that, in the absence of a letterhead, stamp, date or signature, seven proposed exhibits did not present sufficient indicia of reliability;² 3) that some exhibits relating to the delivery of military supplies, materiel and technical equipment ("MTS"), to medical aid to the Muslims in Bosnia or to the existence of good relations between the HVO and the ABiH in geographical areas not covered by the Second Amended Indictment of 11 June 2008 ("Indictment") or in unspecified geographical areas, did not provide sufficient indicia of relevance;³ and, finally, 4) that for a number of proposed exhibits relate to crimes committed against Croatian civilians in Bosnia or to the tension and conflicts between the HVO and the ABiH, to

¹ Decision of 21 July 2009, para. 25 and Annex.

² Decision of 21 July 2009, para. 26 and Annex.

which the Stojić Defence did not establish a sufficient link to the crimes in the municipalities alleged in the Indictment and/or the responsibility of the Accused for these crimes.⁴

3. In its Motion, the Stojić Defence asks the Chamber to reconsider this decision for the 36 exhibits that the Chamber refused to admit ("Exhibit(s)").⁵

4. On 7 August 2009, the Office of the Prosecutor ("Prosecution") publicly filed the "Prosecution Response to Stojić Motion for Reconsideration Dated 28 July 2009" ("Response").

III. ARGUMENTS OF THE PARTIES

5. In support of the Motion, the Stojić Defence raises five grounds.

6. First, the Stojić Defence maintains that the Chamber committed an error in rejecting the admission of Exhibits 2D 00177, 2D 01292 and 2D 01384 on the grounds that they did not present sufficient indicia of reliability.⁶ Firstly, the Stojić Defence argues that a document's indicia of reliability are to be examined in order to establish the weight to be accorded to it and not in order to assess its admissibility.⁷ Further, with regard to Exhibit 2D 00177, the Stojić Defence maintains that this document is a near duplicate of document P 03861, that its source is the United Nations, that it bears a date and the name of the author and, finally, that it directly disproves the allegations in the Indictment related to HVO attacks on Sovići and Doljani (Jablanica municipality).⁸ With respect to Exhibit 2D 01292, the Stojić Defence sets out that the original version of the document contains the author's signature, that it describes combat hostilities between the HVO and the VRS in November 1992 on the territory of Herceg-Bosna and thus refutes the allegations set out in Paragraph 27 of the Indictment.⁹ With regard to Exhibit 2D 01384, the Stojić Defence maintains that it is similar in every way to several other documents already

³ Decision of 21 July 2009, para. 27 and Annex.

⁴ Decision of 21 July 2009, paras 28-33 and Annex.

⁵ Motion, para. 1.

⁶ Motion, paras 4, 5, 10 and 12.

⁷ Motion, paras 13 and 14.

⁸ Motion, paras 5 to 9.

⁹ Motion, paras 10 and 11.

admitted into evidence.¹⁰ For these reasons, the Stojić Defence argues that these Exhibits present sufficient indicia of reliability.

7. Second, the Stojić Defence respectfully requests that the Chamber review its decision to reject the admission of Exhibit 2D 01385, on the grounds that there is no English translation, because of the importance of the content of the document or, alternatively, to allow it to request admission of document 2D 00759, which is identical to Exhibit 2D 01385 and has an English translation.¹¹

8. Third, the Stojić Defence alleges that the Chamber committed an error in rejecting the admission of Exhibits 2D 00175, 2D 00176, 2D 00180, 2D 00181, 2D 00234, 2D 00248, 2D 00256, 2D 00403, 2D 00407, 2D 00408, 2D 00475, 2D 00476, 2D 00639, 2D 00641, 2D 00647, 2D 00648, 2D 00673, 2D 00679 and 2D 01468 on the grounds that the Stojić Defence had not established their relevance and that it only offered them with the aim of establishing a line of defence based on the *tu quoque* principal.¹² The Stojić Defence adds that, on the contrary, these Exhibits contain information to disprove the allegations in the Indictment, especially in that they show that the ABiH planned to capture Konjic as part of the plan to control the territory of Herceg-Bosna and that they show the strategic importance of Konjic in conducting military operations in the neighbouring municipalities as described in the Indictment.¹³

9. Fourth, the Stojić Defence maintains that the Chamber committed an error in concluding that Exhibits 2D 01127, 2D 01128 and 2D 01129 concerned geographic areas that are not covered by the Indictment or are unspecified.¹⁴ The Stojić Defence claims that these Exhibits relate to the Croatian community of Salt, which was part of Herceg-Bosna and, as such, are within the geographic scope of the Indictment.¹⁵

10. Fifth, the Stojić Defence argues that the Chamber committed an error in rejecting the admission of the ten Exhibits 2D 00528, 2D 00529, 2D 00530, 2D 00531, 2D 00951, 2D 00960, 2D 00961, P00238, P 00262 and P 00267 referring to the shipment

¹⁰ Motion, paras 12 and 13.

¹¹ Motion, paras 14 to 16.

¹² Motion, paras 17 to 20.

¹³ Motion, paras 18 to 20.

¹⁴ Motion, para. 21.

¹⁵ Motion, paras 22 and 23.

of MTS to the ABiH.¹⁶ In fact, it considers that there is no formal agreement with the Prosecution regarding the shipment of MTS from the HV and the HVO to the ABiH and that it, therefore, has the right to present exhibits needed to disprove the Prosecution case.¹⁷ It also adds that the Exhibits present relevant information in that they can help to disprove the allegations contained in the Indictment.¹⁸

11. In its Response, the Prosecution asked the Chamber to reject the third, fourth and fifth grounds of the Stojić Defence as well as the request to reconsider Exhibit 2D 00177 in the first ground of the Stojić Defence.¹⁹ On the other hand, the Prosecution states that it takes no position on the second ground of the Stojić Defence and on the request to reconsider Exhibits 2D 01384 and 2D 01292 in the first ground.²⁰

12. Thus, with regard to the third and fifth grounds of the Stojić Defence, the Prosecution maintains that the Motion does not contain a single new fact or argument that the Stojić Defence could not have used during the filing of the initial motion and that it does not point to any clear error of the Chamber.²¹ Similarly, it maintains that in reality the Stojić Defence simply presented for a second time documents rejected by the Chamber and expressed its disagreement with the Chamber's decision not to admit them.²²

13. In particular, with regard to the third ground of the Stojić Defence, the Prosecution maintains that the arguments presented by the Stojić Defence do not satisfy the criteria set out by the Chamber for the exceptional admission of documents that are otherwise irrelevant because they violate the principal of not admitting documents that constitute a *tu quoque* defence.²³

14. Moreover, with regard to the fifth ground of the Stojić Defence, the Prosecution claims that the arguments of the Stojić Defence do not take into account the Chamber's conclusion according to which the ten Exhibits in questions relate to the

¹⁶ Motion, para. 24.

¹⁷ Motion, para. 24.

¹⁸ Motion, para. 24.

¹⁹ Response, para. 14.

²⁰ Response, paras 9, 13 and 14.

²¹ Response, para. 6.

²² Response, para. 7.

²³ Response, para. 7

shipment of weapons in geographic areas that are not covered by the Indictment or in unspecified geographic areas and that they are therefore irrelevant.²⁴

15. With regard to the fourth ground of the Stojić Defence, the Prosecution reiterates its original objection to the admission of these documents on the ground that they are of no relevance.²⁵

16. Finally, with regard to the request to reconsider Exhibit 2D 00177 contained in the first ground of the Stojić Defence, the Prosecution first shows, in line with a decision of the Appeals Chamber, that during the assessment of a document's admissibility, the Chamber has the right to decide whether an initial threshold showing of reliability has been made and that it only later proceeds to its final assessment.²⁶ The Prosecution adds that the request to reconsider Exhibit 2D 00177 should be rejected on the ground that the document is irrelevant.²⁷

IV. DISCUSSION

A. Applicable Law

17. A Trial Chamber has the intrinsic power to reconsider its own decisions. It may accept a request to reconsider if the requesting party satisfies the Chamber that the reasoning behind the impugned decision contains a clear error or that particular circumstances, such as new facts or arguments, justify its reconsideration in order to avoid an injustice.²⁸ Requests for reconsideration must be an exception.²⁹

18. On the merits, the Chamber disagrees with the assertion of the Stojić Defence that a document's indicia of reliability should be considered only in order to decide on the

²⁴ Response, para. 8.

²⁵ Response, para. 10.

²⁶ Response, para. 12, citing *The Prosecutor v. Prlić et al.*, Case No. IT-04074-AR73.13, "Decision on Jadranko Prlić's Consolidated Interlocutory Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence" rendered on 12 January 2009 ("Decision of the Appeals Chamber of 12 January 2009"), para 15.

²⁷ Response, para. 13.

²⁸ "Decision regarding Requests Filed by the Parties or Reconsideration of Decisions by the Chamber", 26 March 2009 ("Decision of 26 March 2009"), p. 4.

²⁹ Decision of 26 March 2009, p.3.

weight it should be assigned and not in order to decide on its admission.³⁰ The Chamber subscribes to the established jurisprudence of the Tribunal,³¹ reflected in the numerous previous decisions of the Chamber on the admission of evidence,³² according to which the evaluation of reliability, including the authenticity, of a document is a component of the assessment of admissibility pursuant to Rule 89 (C) of the Rules, but for an exhibit to be admissible as evidence, it suffices that one show *prima facie* evidence of its reliability.

B. Consideration of the Admissibility of a Request to Reconsider

19. The Chamber will first proceed to consider the first ground of the Stojić Defence concerning the Exhibits that were rejected because of insufficient indicia of reliability.

20. With regard to Exhibit 2D 00177, like the Stojić Defence, the Chamber notes that it is effectively the same as document P 03861. However, to the extent that it has not been entered into evidence and that its admission has not been requested in the Stojić Defence initial request for admission, the Chamber finds that this observation is not important for the assessment of the admissibility of Exhibit 2D 00177 and is late. Moreover, the Chamber finds that , though the Stojić Defence had indicated in its initial motion that this document, like document P 03861, originated from the United Nations archives, there is nothing to allow the Chamber to reach this conclusion insofar as the document in question, like document P 03861, does not contain any indicia of having originated from the official archives of the United Nations. The Chamber does not therefore see a reason to depart from its decision to reject the admission of Exhibit 2D 00177.

21. With regard to Exhibit 2D 01292, the Chamber finds that it does bear a signature and, for this reason, presents sufficient indicia of reliability. Having committed an

³⁰ Motion, para. 4.

³¹ See *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, 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; Decision of the Appeals Chamber of 12 January 2009, para. 15.

³² See in particular "Decision on Admission of Evidence", 13 July 2006; "Order to Admit Evidence Relative to Witness Christopher Beese", 27 September 2006.

error, the Chamber finds that this justifies the reconsideration of the Decision of 21 July 2009 with regard to this Exhibit.

22. With regard to Exhibit 2D 01384, the Chamber takes note of the additional information presented by the Stojić Defence according to which this Exhibit is in every way similar to document 2D 00503 admitted by the Chamber on 14 May 2004 through witness Ivan Bagarić.³³ However, the Chamber holds that the additional information does not constitute a new element in the sense of the Decision of 26 March 2009 insofar as the Stojić Defence had opportunity to pass on this information to the Chamber in its initial motion for the admission of documents. The Chamber also does not consider that the Stojić Defence has shown that there is a clear error. For that reason, the Chamber decides not to reconsider the Decision of 21 July 2009 with regard to this Exhibit.

23. Further, with regard to the second ground of the Stojić Defence relating to Exhibit 2D 01385, which was rejected because an English translation was not provided, the Chamber recalls that in the Decision of 26 March 2009 it decided that requests for reconsideration relating to decisions on the admission of evidence are not admissible insofar as they deal with errors attributable to the parties.³⁴ The Chamber notes that the failure to admit this document was based on the existence of an error attributable to the Stojić Defence so that there is no cause to reconsider this Exhibit. The Stojić Defence seeks in the alternative to be allowed to request the admission of document 2D 00759 which is identical to Exhibit 2D 01385, but which has an English translation. Insofar as this request constitutes a new request for admission of a document, the Chamber holds that it does not fall within the procedure provided for requests for reconsideration, and decides not to allow it. The Chamber notes, in addition, that document 2D 00759 even appears on the 65 *ter* List of the Stojić Defence, so that it had the opportunity to seek its admission in the initial request for admission.

24. With regard to the third ground of the Stojić Defence relating to the 19 Exhibits that were rejected due to a lack of explanation as to their relevance to the Indictment,

³³ "*Ordonnance portant admission d'éléments de preuve relatifs au témoin Ivan Bagarić*", 14 May 2009.

³⁴ Decision of 26 March 2009, p. 3.

the Chamber finds that the Stojić Defence objects to the Decision of 21 July 2009 in the part that concerns them, without presenting evidence of a clear error by the Chamber and adds the arguments that it had already introduced earlier without presenting any exceptional circumstances that would justify reconsideration, such as new facts that it was not able to present in its initial motion. The Chamber therefore decides to reject the request for reconsideration of these Exhibits.

25. With regard to the fourth and fifth grounds of the Stojić Defence relating to the Exhibits that deal with the good relations between the HVO and the ABiH in the Croatian Community of Salt (three Exhibits) and to the MTS (10 Exhibits), the Chamber finds again that the Stojić Defence only objects to the Decision of 21 July 2009 where they are concerned without presenting any proof of a clear error by the Chamber and similarly adds arguments that it had already developed without showing there were any exceptional circumstance that would justify their reconsideration. The Chamber therefore decides to reject the request for reconsideration of these Exhibits.

C. Assessment of Admissibility of the Reconsidered Exhibit

26. The Chamber therefore decides to reconsider the Decision of 21 July 2009 with regard to Exhibit 2D 01292.

27. The Chamber recalls that at this stage of the trial, it only considers the admissibility of this Exhibit once and does not have to make a final assessment of its probative value. The Chamber will do this only at the end of the trial when all the Defence and Prosecution evidence has been admitted. When performing this assessment, the Chamber will take account of the fact that the Prosecution has not had the opportunity to test this Exhibit during cross-examination.

28. In view of the information provided and the corrections made by the Stojić Defence in the Motion, and that the Prosecution takes no position regarding this Exhibit, the Chamber decides to admit this Exhibit insofar as it presents sufficient indicia of reliability, relevance and probative value.

FOR THE FOREGOING REASONS,

PURSUANT to Rules 54 and 89 of the Rules,

DECIDES partially to grant the Motion,

DECIDES to admit into evidence Exhibit 2D 01292, **AND,**

DISMISSES the Motion in all other respects.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]