



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: 7 December 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:** Mr John Hocking

**Order of:** 7 December 2009

**THE PROSECUTOR**

v.

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

***PUBLIC***

**ORDER TO ADMIT EVIDENCE REGARDING WITNESS IVAN BENETA**

**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”),

**NOTING** the request to admit 15 exhibits submitted by Counsel for the Accused Petković (“Petković Defence”),<sup>1</sup> the request to admit 2 exhibits submitted by Counsel for the Accused Praljak (“Praljak Defence”),<sup>2</sup> and the request to admit five exhibits submitted by the Office of the Prosecutor (“Prosecution”),<sup>3</sup> all relating to the testimony of witness Ivan Beneta (“Proposed Exhibits”) who appeared before the Chamber from 9 to 11 November 2009,

**NOTING** the objections formulated by the Praljak Defence to a Proposed Exhibit submitted by the Prosecution,<sup>4</sup> the objection formulated by the Petković Defence to three Proposed Exhibits submitted by the Prosecution,<sup>5</sup> the objection formulated by the Prosecution to three Proposed Exhibits submitted by the Petković Defence,<sup>6</sup> and the Reply filed by the Petković Defence in response to the objection formulated by the Prosecution,<sup>7</sup>

**NOTING** the Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses of 27 November 2008 (“Decision of 27 November 2008”),

**NOTING** the Decision on the Interlocutory Appeal against the Trial Chamber’s Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses, rendered by the Appeals Chamber on 26 February 2009 confirming the Decision of 27 November 2008,

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<sup>1</sup> IC 01106.

<sup>2</sup> IC 01107.

<sup>3</sup> IC 01108.

<sup>4</sup> IC 01109.

<sup>5</sup> IC 01110.

<sup>6</sup> IC 01111.

<sup>7</sup> IC 01115.

**CONSIDERING**, first, that the Chamber notes that Proposed Exhibit 4D 01042 has already been admitted by Order of the Chamber<sup>8</sup> and that the Petković Defence request is therefore moot in this respect,

**CONSIDERING**, moreover, that the Chamber notes that the version of Proposed Exhibit IC 01096, for which the Petković Defence seeks admission, as uploaded on to the e-court system by the Registry is of poor quality and does not allow the Proposed Exhibit to be seen in detail; it is therefore necessary for the Registry to upload Proposed Exhibit IC 01096 on to the e-court system again,

**CONSIDERING**, furthermore, that the Chamber notes that the Petković Defence objects to the admission of Proposed Exhibits P 03287, P 05880 and P 11070,<sup>9</sup> and the Praljak Defence also objects to the last of these exhibits,<sup>10</sup> on the grounds that they are "new documents" within the meaning of the Decision of 27 November 2008;<sup>11</sup> that the Chamber recalls in this respect that "new documents" are documents that have not been admitted already and used by the Prosecution in this case in the cross-examination of a Defence witness; that it is not relevant whether or not these documents appear on the Prosecution's 65 *ter* G List; decisive is only the fact that these documents have not already been admitted; that, in accordance with the Decision of 27 November 2008, the Chamber accepts that these "new documents" may be presented during the cross-examination by the Prosecution in order to test the credibility of the witness or to refresh his/her memory, recalling that the Chamber will decide on a case-by-case basis whether or not it is appropriate to admit them,<sup>12</sup>

**CONSIDERING** that with regard to the "new documents" aimed at establishing the guilt of one or more of the Accused, the Prosecution must explain the exceptional circumstances that, in the interest of justice, could provide justification for them to be admitted<sup>13</sup> by the Chamber and explain to the Chamber, for example, when and how it

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<sup>8</sup> "Ordonnance portant admission d'éléments de preuve relatifs au témoin Dragan Čurčić", 19 November 2009.

<sup>9</sup> IC 01110.

<sup>10</sup> IC 01109.

<sup>11</sup> Decision of 27 November 2008, paras 4, 13 and 20.

<sup>12</sup> Decision of 27 November 2008, para. 24.

<sup>13</sup> Decision of 27 November 2008, para. 23.

obtained these documents, when it disclosed them to the Defence and why it did not present them until after its case was completed,<sup>14</sup>

**CONSIDERING** that with regard to Proposed Exhibits P 03287, P 05880 and P 11070, the Chamber notes that the Prosecution does not mention the exceptional circumstances justifying the request to admit the Prosecution's "new documents" this late; that the Chamber will assess the admissibility of the Proposed Exhibits solely as to whether they go to disprove the credibility of the witness,

**CONSIDERING**, moreover, that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its Decision on Admission of Evidence of 13 July 2006 ("Decision of 13 July 2006") and in its Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Decision of 24 April 2008"),<sup>15</sup>

**CONSIDERING** that the Chamber finds that the Petković Defence and the Praljak Defence claim that Proposed Exhibit P 11070 is a statement made by a person to a Prosecution investigator and that the Prosecution did not bring him forth as a witness when it was presenting its case,

**CONSIDERING** that the Chamber notes that Proposed Exhibit P 11070 is actually a statement by a potential witness whose admission should be governed by Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules"); that the Chamber therefore cannot admit Proposed Exhibit P 11070 at this stage under the procedure to admit evidence through a witness,<sup>16</sup> and reminds the Prosecution that it may seek admission if it still finds it necessary during the rebuttal phase set out in Rule 85 (A) (iii) of the Rules,

**CONSIDERING**, finally, that the Chamber decides to admit into evidence the Proposed Exhibits indicated "Admitted" in the Annex attached to this order since they were put to Witness Ivan Beneta and bear sufficient indicia of relevance, probative value and reliability,

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<sup>14</sup> Decision of 27 November 2008, paras 20 and 23.

<sup>15</sup> Guideline 8 on the Admission of Documentary Evidence through a Witness.

<sup>16</sup> *See mutatis mutandis* "Order to Admit Evidence regarding Witness Husnija Mahmutović", 23 January 2008, p. 2.

**CONSIDERING** that the Chamber decides not to admit into evidence the Proposed Exhibits indicated “Not Admitted” in the Annex attached to this decision since they are not consistent with the instructions of the Decision of 13 July 2006 and the Decision of 24 April 2008 for reasons set out in the Annex attached to this Order,

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rules 54 and 89 of the Rules,

**PARTIALLY GRANTS** the requests of the Petković Defence, the Praljak Defence and the Prosecution,

**DECLARES** moot the request for admission of Proposed Exhibit 4D 01042,

**DECIDES** that the Proposed Exhibits indicated “Admitted” in the Annex attached to this Order should be admitted into evidence,

**DENIES** in all the other respects the requests of the Petković Defence, the Praljak Defence and the Prosecution for the reasons stated in the Annex,

**AND**

**REQUESTS** that the Registry upload a new version of Proposed Exhibit IC 01096.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this seventh day of December 2009

At The Hague

The Netherlands

**[Seal of the Tribunal]**

Annex

Exhibit Number	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
3D 00443	Petković Defence	Not admitted (Reason: the document is not on the Petković Defence 65 <i>ter</i> List and the Petković Defence did not ask for this exhibit to be added to the 65 <i>ter</i> List in accordance with para. 26 of the Decision of 24 April 2008)
4D 00475 - first: the entire document - alternatively: point 3 mentioned in the IC List	Petković Defence	Admitted
4D 00701	Prosecution	Admitted
4D 01042	Petković Defence	Moot (Reason: already admitted in Decision of 19 November 2009)
4D 01096	Petković Defence	Already
4D01101	Petković Defence	Not admitted (Reason: the witness did not comment on the reliability, relevance or probative value of the document)
4D 01240 - first: the entire document - alternatively: point 3 mentioned in the IC List	Petković Defence	Admitted in part (pages 1, 4 and 13 of the English translation on e-court)
4D 01406	Petković Defence	Admitted
4D 01483	Petković Defence	Admitted
4D 01695	Petković Defence	Admitted
IC 01096	Petković Defence	Admitted
IC 01097	Petković Defence	Admitted
IC 01098	Petković Defence	Admitted
IC 01099	Petković Defence	Admitted
IC 01100	Praljak Defence	Admitted
IC 01101	Praljak Defence	Not admitted (Reason: remarks in the document have not been translated into English)
P 00326	Petković Defence	Not admitted (Reason: the document has not been included in the Petković Defence 65 <i>ter</i> List and the Petković Defence did not ask for this exhibit to be added to the 65 <i>ter</i> List in accordance with

		para. 26 of the Decision of 24 April 2008)
P 03048	Petković Defence	Admitted
P 03287	Prosecution	Not admitted (Reason: the document was not put to the witness)
P 05880	Prosecution	Admitted solely in that it goes to disprove the credibility of the witness
P 11033	Prosecution	Admitted
P 11070	Prosecution	Not admitted (Reason: the admission of this exhibit is regulated by Rule 92 <i>bis</i> of the Rules)