



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: 10 May 2010
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: 10 May 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS ZVONKO VIDOVIĆ

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 for admission of 47 exhibits presented by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”),¹ the request for admission of 3 exhibits presented by Counsel for the Accused Jadranko Prlić (“Prlić Defence”),² the request for admission of 6 exhibits presented by Counsel for the Accused Bruno Stojić (“Stojić Defence”),³ the request for admission of 6 exhibits presented by Counsel for the Accused Milivoj Petković (“Petković Defence”)⁴ and the request for admission of 4 exhibits presented by the Office of the Prosecutor (“Prosecution”)⁵ (“Proposed Exhibit(s)”), all five relating to the testimony of Witness Zvonko Vidović (“Witness”), who testified on 29 March through 1 April 2010,

NOTING the objections raised by the Prosecution to 29 Proposed Exhibits of the (“Ćorić Defence”)⁶ and the Reply of the Ćorić Defence;⁷ the objections raised by the Prosecution to 3 Proposed Exhibits of the Stojić Defence⁸ and the Reply of the Stojić Defence;⁹ the objections raised by the Prosecution to 1 Proposed Exhibit of the Petković Defence¹⁰ and the Response of the Petković Defence;¹¹ the objections raised

¹ “Valentic Ćorić’s Notice Regarding Evidence used with Witness Zvonko Vidović”, confidential document, 12 April 2010.

² “Jadranko Prlić’s Motion for the Admission of Exhibits Tendered through Witness Zvonko Vidović”, confidential document, 6 April 2010.

³ “Bruno Stojić’s Filing of the List of Documents Tendered through Witness Zvonko Vidović on 30 March 2010”, public document, 12 April 2010.

⁴ “Milivoj Petković’s Motion for the Admission of Exhibits Tendered through Witness Zvonko Vidović”, confidential document, 12 April 2010.

⁵ “Prosecution Filing of ‘IC List’ of Exhibits Tendered for Admission concerning Witness Zvonko Vidović”, public document, 12 April 2010.

⁶ “Prosecution Objections to Exhibits Tendered by the Ćorić Defence in connection with the Witness Zvonko Vidović”, public document, 12 April 2010.

⁷ “Valentin Ćorić’s Response to ‘Prosecution Objections to Exhibits Tendered by the Ćorić Defence in connection with the Witness Zvonko Vidović’”, public document, 14 April 2010 (“Reply of the Ćorić Defence”).

⁸ “Prosecution Objections to Exhibits Tendered by the Stojić Defence in connection with the Witness Zvonko Vidović”, public document, 13 April 2010.

⁹ “Bruno Stojić’s Response to *Prosecution Objections to Exhibits Tendered by the Stojić Defence in connection with the Witness Zvonko Vidović* dated 13 April 2010”, public document, 14 April 2010 (“Reply of the Stojić Defence”).

¹⁰ “Prosecution Objections to Exhibits Tendered by the Petković Defence in connection with the Witness Zvonko Vidović”, public document, 13 April 2010.

¹¹ “Petković Defence Response to Valentin Ćorić’s and Prosecution Objections to Milivoj Petković’s Request for Admission of Exhibits Tendered through the Witness Zvonko Vidović”, public document, 15 April 2010 (“Reply of the Petković Defence”).

by the Ćorić Defence to 1 Proposed Exhibit of the Prosecution¹² and to 1 Proposed Exhibit of the Petković Defence¹³ and the Reply of the Petković Defence,¹⁴

NOTING the “Decision on Admission of Evidence” of 13 July 2006 (“Decision of 13 July 2006”) and the “Decision Adopting Guidelines for the Presentation of Defence Evidence” of 24 April 2008 (“Decision of 24 April 2008”),¹⁵

NOTING the “Decision on Presentation of Documents by the Prosecution” 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, upholding the Decision of 27 November 2008,

NOTING the “*Ordonnance portant clarification de la Décision du 27 novembre 2008*”, issued publicly by the Chamber on 12 January 2010,

CONSIDERING initially that the Chamber observes that the Reply of the Petković Defence was filed on 15 April 2010, that is, one day after the time-limit established by the Chamber for replies to be filed;¹⁶ that the Chamber consequently finds that the said Reply is inadmissible and that it is proper to dismiss the Reply of the Petković Defence,

CONSIDERING that the Chamber observes that the BCS version of Proposed Exhibit P 11237, whose admission was requested by the Prosecution, as uploaded on *ecourt*, is of poor quality; that the Chamber points out that the English translation of the said Proposed Exhibit is complete but that the Prosecution will apparently need to upload a correct BCS version of the said Proposed Exhibit onto *ecourt*,

¹² “Valentin Ćorić’s Opposition against the Prosecution’s Request to Tender Certain Exhibits into Evidence through Witness Zvonko Vidović”, public document, 13 April 2010.

¹³ “Valentin Ćorić’s Opposition against the Defence for Milivoj Petković’s Request to Tender Certain Exhibits into Evidence through Witness Zvonko Vidović”, public document, 13 April 2010.

¹⁴ “Petković Defence Response to Valentin Ćorić’s and Prosecution Objections to Milivoj Petković’s Request for Admission of Exhibits Tendered through the Witness Zvonko Vidović”, public document, 15 April 2010.

¹⁵ Guideline No 8: The Admission of Documentary Evidence through a Witness.

¹⁶ Decision of 24 April 2008, para. 32.

CONSIDERING the Chamber observes, moreover, that the Petković Defence argues it tendered Proposed Exhibit P 04544 with a view to undermining the credibility of the Witness and that the Petković Defence consequently requests its admission for this reason;¹⁷ that the Chamber will review the admissibility of this Proposed Exhibit only insofar as it tends to undermine the credibility of Zvonko Vidović,

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its Decision of 13 July 2006 and in the Decision of 24 April 2008,¹⁸

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked “Admitted” in the Annex attached to this Order, as they were put to Witness Zvonko Vidović during the hearing and bear 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 are not consistent with the instructions of the Decisions of 13 July 2006 and of 24 April 2008, for the reasons set forth in the Annex attached to this Order,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules of Procedure and Evidence,

DISMISSES the Reply of the Petković Defence for the reasons set forth in this Order,

GRANTS the requests for admission of the Stojić Defence and the Prosecution,

PARTIALLY GRANTS the requests for admission of the Ćorić Defence, of the Prlić Defence and of the Petković Defence,

DECIDES that it is proper to admit Proposed Exhibit P 04544 into evidence, only insofar as it tends to undermine the credibility of the Witness,

¹⁷ “Milivoj Petković’s Motion for the Admission of Exhibits Tendered through Witness Zvonko Vidović”, confidential document, 12 April 2010.

¹⁸ Guideline No 8: The Admission of Documentary Evidence through a Witness.

DECIDES that it is proper to admit the Proposed Exhibits of the Ćorić Defence, the Prlić Defence, the Stojić Defence, the Petković Defence and the Prosecution, marked “Admitted” in the Annex attached to this Order,

DENIES BY A MAJORITY the remaining requests for admission of the Proposed Exhibits of the Ćorić Defence, the Prlić Defence and the Petković Defence, for the reasons set forth in the Annex attached to this Order, **AND**

ORDERS the Prosecution to upload on *ecourt* a correct BCS version of Exhibit P 11237 for the reasons set forth herein,

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this tenth day of May 2010

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)
P 00453	Ćorić Defence	Admitted
P 01405	Ćorić Defence	Admitted
P 01728	Ćorić Defence	Admitted
P 02832	Ćorić Defence	Admitted
P 03118	Ćorić Defence	Admitted
P 03483	Ćorić Defence	Admitted
P 03513	Ćorić Defence	Admitted
P 04139	Ćorić Defence	Admitted
P 04163	Ćorić Defence	Admitted
P 05128	Ćorić Defence	Admitted
P 06727	Ćorić Defence	Not admitted by a majority (Grounds: the witness was unable to speak about the probative value and the relevance of the document)
P 06893	Ćorić Defence	Admitted
P 09465	Ćorić Defence	Admitted
5D 02040	Ćorić Defence	Admitted
5D 02095	Ćorić Defence	Admitted
5D 02097	Ćorić Defence	Admitted
5D 02146	Ćorić Defence	Admitted
5D 03087	Ćorić Defence	Admitted
5D 04154	Ćorić Defence	Admitted
5D 04165	Ćorić Defence	Admitted
5D 04168	Ćorić Defence	Admitted
5D 04169	Ćorić Defence	Admitted
5D 04173	Ćorić Defence	Admitted
5D 04198	Ćorić Defence	Admitted
5D 04199	Ćorić Defence	Admitted
5D 04200	Ćorić Defence	Admitted
5D 04201	Ćorić Defence	Admitted
5D 04202	Ćorić Defence	Admitted
5D 04203	Ćorić Defence	Admitted
5D 04207	Ćorić Defence	Admitted
5D 04209	Ćorić Defence	Admitted
5D 04212	Ćorić Defence	Admitted
5D 04216	Ćorić Defence	Admitted
5D 04226	Ćorić Defence	Admitted
5D 04230	Ćorić Defence	Admitted
5D 04231	Ćorić Defence	Admitted
5D 04233	Ćorić Defence	Admitted
5D 04237	Ćorić Defence	Admitted
5D 04238	Ćorić Defence	Admitted
5D 04240	Ćorić Defence	Admitted
5D 04242	Ćorić Defence	Admitted
5D 04243	Ćorić Defence	Admitted
5D 04249	Ćorić Defence	Admitted
5D 04250	Ćorić Defence	Admitted

5D 04258	Čorić Defence	Admitted
5D 04259	Čorić Defence	Admitted
5D 04350	Čorić Defence	Admitted
5D 04152	Prlić Defence	Not admitted by a majority (Grounds: the witness was unable to speak about the authenticity, relevance and probative value of the document)
5D 04241	Prlić Defence	Not admitted by a majority (Grounds: the witness was unable to speak about the relevance and probative value of the document)
5D 04362	Prlić Defence	Admitted
5D 02013	Stojić Defence	Admitted
5D 05022	Stojić Defence	Admitted
5D 05024	Stojić Defence	Admitted
5D 05027	Stojić Defence	Admitted
5D 05032	Stojić Defence	Admitted
P 06873	Stojić Defence	Admitted
P 04544 (in view of undermining the credibility of the witness)	Petković Defence	(This document is admitted solely for purposes of undermining the credibility of Zvonko Vidović.)
4D 02063	Petković Defence	Admitted
5D 04110	Petković Defence	Admitted
5D 04114	Petković Defence	Admitted
5D 04115	Petković Defence	Admitted in part (pages 1-7 of the English version ¹⁹) Not admitted by a majority: pages 8-13 of the English version (Grounds: the Petković Defence did not present these pages of the 5D 04115 compilation to Zvonko Vidović)
5D 04117	Petković Defence	Admitted
IC 01230	Prosecution	Admitted
P 03616	Prosecution	Admitted
P 11237	Prosecution	Admitted
P 11240	Prosecution	Admitted

¹⁹ Ecourt page numbers.

**DISSENTING OPINION OF JEAN-CLAUDE ANTONETTI, PRESIDING
JUDGE OF THE CHAMBER**

The majority has decided not to admit the following documents: P 06727, 5D 04152, 5D 04241, and 5D 04115.

The reasons provided for not admitting these documents are characteristic, and so, declining to spend additional time there, I wish to explain why, from my perspective, these documents ought to be admitted.

One must recall, in the first place, that according to the Prosecution, the HVO had not undertaken any prosecution against the perpetrators of these crimes, and particularly in those instances where the victims were Muslim.

Thus, at §17(k) regarding the role and participation of the several accused they cite: by “promoting, instigating, encouraging and condoning the commission of crimes against Bosnian Muslims by failing to report and/or investigate crimes or alleged crimes against them, to follow up on such investigations, and/or to punish or discipline subordinates and others in the Herceg-Bosna/HVO authorities and forces for crimes committed against Bosnian Muslims or other non-Croats”.

The Prosecution thus emphasizes the fact that the several accused did not draw attention to the criminal actions, did not open investigations and thus did not punish the subordinates likely to have committed these violations.

The argument of the Defence is entirely different. According to the Defence, investigations and prosecutions did occur. In the context of this debate, it seems to me that these 4 documents are entirely germane.

In fact, **Document 5D 04115** is a transcript of a meeting held on 21 July 1993 with several participants, including Witness Zvonko Vidović “Head of Department of Crim. Police MP”. One should note that the session is opened by Milenko Mandžo, who recounts the state of crime in Mostar. Several participants speak, including Witness Zvonko Vidović who takes the floor several times, stating in pertinent part:

“[i]f we, /who had been appointed/ have finished with ‘collecting’ inhabitants in the city, it can not happen that one ‘unite’ or ‘group’ is collecting people in the city. He is giving the example of the police from the Pupils hostel, that have ‘on their own initiative’, collected inhabitants from one part of the city, and upon they were forced to leave, same have been robbed and things have been taken. Social Work Center is the one who is making the list of people who wishes to go abroad, why should we deny that to them. Military and Civil Police, should not give motive to criminals to, hiding behind our back, commit criminal acts. My opinion is that concrete agreement is necessary from higher instance, about what we have to do regarding Muslims leaving city, in order not to take responsibility for committed crimes, after departure of citizens”.

It would seem then, that this document is particularly relevant and has certain probative value.

Document P 06727 addresses that gentleman, Miroslav Kolobara, member of the Convicts Battalion. This document, in my view, categorically establishes that, as of the date of 18 November 1993, there were investigations, prosecutions and a military prosecutor in Mostar.

Document 5D 04152 is an indictment targeting 3 individuals for a violation committed on 12 August 1993 in the village of Bijakovići, municipality of Čitluk.

Document 5D 04241 is a report prepared by the police in Mostar on behalf of the prosecutor for Mostar regarding a certain gentleman, Zdravko Ivanković, concerning a violation committed on 18 October 1993.

These documents lead to the inference that, during the period covered by the Indictment, there were investigations and prosecutions and that the authorities exercised their powers to the fullest extent.

Review and consideration of these documents could permit a **reasonable trier of fact** to draw this inference and to understand these documents within a broader framework of substantial crime raging in the municipalities covered by the Indictment and it may permit us to understand the responses of those same authorities case by case.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this tenth day of May 2010

At The Hague

The Netherlands

[Seal of the Tribunal]