



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: 3 June 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: 3 June 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER ON STOJIĆ DEFENCE MOTION TO ADMIT EXHIBIT (2D 03088)

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”),

SEIZED of “Bruno Stojić’s Motion for the Admission of Exhibit 2D 03088”, filed confidentially by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 13 May 2010, to which a confidential annex is attached (“Motion”) and in which the Stojić Defence requests admission of document 2D 03088, a letter from the Ministry of Justice of the Republic of Croatia dated 27 November 2009 regarding Exhibit 4D 00461 admitted into evidence on 13 December 2006 (“Proposed Exhibit”),

NOTING “Milivoj Petković’s Response to Bruno Stojić’s Motion for the Admission of Exhibit 2D 03088”, filed publicly by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 25 May 2010 and accompanied by public annexes (“Response”), in which the Petković Defence asks the Chamber to reject the motion to admit the Proposed Exhibit,

NOTING the motion for leave to reply and the reply of the Stojić Defence “Bruno Stojić’s Request for Leave to Reply to Milivoj Petković’s Response to Bruno Stojić’s Motion for the Admission of Exhibit 2D 03088 & Bruno Stojić’s Reply”, filed publicly by the Stojić Defence on 28 May 2010 (“Reply”),

CONSIDERING, in support of its Motion, that the Stojić Defence argues that Proposed Exhibit 2D 03088 calls into question the authenticity and reliability of Exhibit 4D 00461,¹ that this Proposed Exhibit is relevant and has probative value as it goes to the authenticity and reliability of Exhibit 4D 00461² and that the admission of the Proposed Exhibit is warranted on the basis of the right of the Stojić Defence to a fair trial and the interest of justice,³

CONSIDERING that the Stojić Defence notes in this connection that the Statute of the Tribunal and Rules of Procedure and Evidence (“Rules”) favour the admission of

¹ Motion, paras 1, 4 -10.

² Motion, paras 1, 11-13.

³ Motion, para. 1.

Proposed Exhibit 2D 03088 at this stage in the proceedings,⁴ and, if necessary, the Proposed Exhibit could be added to its 65 *ter* list of exhibits ("65 *ter* List"),⁵

CONSIDERING, in support of the Response, that the Petković Defence raised arguments mainly to reinforce the reliability and authenticity of Exhibit 4D 00461 by arguing 1) that the assertion of the Stojić Defence that Exhibit 4D 00461 was obtained by the Petković Defence from the Croatian military archives is incorrect;⁶ 2) that a document identical to Exhibit 4D 00461 was disclosed by the Office of the Prosecutor ("Prosecution") during the pre-trial phase of the case;⁷ 3) that the registration number of the Exhibit 4D 00461 is clear⁸ and that it is included in the list of registration numbers of orders signed by Bruno Stojić in 1993⁹ and 4) that the use of several typewriters to write a document of this kind is not a fact that undermines the authenticity of the exhibit,¹⁰

CONSIDERING, furthermore, that the Petković Defence argues that the Motion is late and that the Stojić Defence did not act with due diligence because, as Exhibit 4D 00461 was admitted in December 2006, it had time to challenge the authenticity and reliability of this document¹¹ and because it did not request addition of the Proposed Exhibit onto the 65 *ter* List before the close of the Defence case,¹²

CONSIDERING, in the Reply, that the Stojić Defence argues that the Response raises issues that require clarification by way of a reply and asks for leave to reply;¹³ that it subsequently raises arguments in reply and submits chiefly that the Response focuses on the authenticity of Exhibit 4D 00461 while the Motion raises the issue of the admissibility of Proposed Exhibit 2D 03088;¹⁴ that the admission of the Proposed Exhibit does not affect the exhibit status of 4D 00461 but deals rather with the weight

⁴ Motion, para. 14-17.

⁵ Motion, para. 18.

⁶ Response, paras 4 -5.

⁷ Response, paras 6-8.

⁸ Response, paras 9-10.

⁹ Response, paras 15-16.

¹⁰ Response, paras 11-14.

¹¹ Response, paras 19.

¹² Response, para. 20.

¹³ Reply, para. 1.

¹⁴ Reply, para. 2.

and probative value that should be given to it during deliberations;¹⁵ that, finally, it responds to the arguments relating to authenticity raised by the Petković Defence,¹⁶

CONSIDERING, moreover, that the Stojić Defence submits in the Reply that it raised arguments justifying the late Motion and reiterates that a delay caused by factors external to its case should not endanger the Accused's right to present an effective defence,¹⁷

CONSIDERING, *in limine*, that the Chamber decides to allow the Reply to the Response since the Stojić Defence provides precisions to the arguments it raised in the Motion and substantively replies to the Response,

CONSIDERING that the Chamber notes firstly that Exhibit 4D 00461 was used for the first time in court in November 2006, and admitted into evidence in December 2006;¹⁸ that even if the Stojić Defence argues that it had approached the Croatian archives several times, as stated in the transcript of 19 September 2007,¹⁹ it had not raised the issue subsequently, including during the presentation of its case; that it was only on 7 September 2009 that the Stojić Defence contacted the Petković Defence to obtain information about the authenticity of this document, and on 26 October 2009 that it contacted the Ministry of Justice of the Republic of Croatia to obtain the original version of this exhibit,

CONSIDERING that the Chamber notes furthermore that the Stojić Defence had the Proposed Exhibit in its possession since 27 November 2009, and that in no point in time did it notify the Chamber of its intention to introduce this new Proposed Exhibit at a later time by requesting its addition to the 65 *ter* List at that time,

CONSIDERING, in that respect, that the Chamber notes that it is only in the present Motion and, moreover, peripherally that the Stojić Defence is requesting the addition of the Proposed Exhibit to its 65 *ter* List; that the Chamber, however, provides no explanation justifying why this request for addition was not filed earlier, as the letter

¹⁵ Reply, para. 5.

¹⁶ Reply, paras 3-4.

¹⁷ Reply, para. 6.

¹⁸ Oral Decision of 13 December 2006, transcript in French ("T(F)"), pp. 11614 and 11615.

¹⁹ T(F), pp. 22485-22486.

from the Ministry of Justice of the Republic of Croatia was received on 27 November 2009,

CONSIDERING, furthermore, that the Chamber recalls that the Stojić Defence concluded its case on 28 April 2009;²⁰ that the Stojić Defence never reacted to this finding by notifying the Chamber that it had taken steps to collect information regarding 4D 00461 that might be the subject of a subsequent motion for admission; that the possible testimony of Mr Mandić following the end of the presentation of the Stojić Defence case cannot justify the absence of follow-up action by the Stojić Defence and in any case, it cannot justify the absence of a motion for addition to the 65 *ter* List prior to the present Motion; that even if the Stojić Defence wished to introduce the Proposed Exhibit through Mr Mandić, there was nothing to exempt it from requesting that this Proposed Exhibit be added to the 65 *ter* List as of 29 November 2009,

CONSIDERING, consequently, that the Chamber deems that the Stojić Defence did not show due diligence by producing a motion for admission at this late stage in the proceedings; that under these conditions, the Motion is too late and it decides to reject the Motion.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 65 *ter*, 89 and 126 *bis* of the Rules,

ALLOWS the Reply, **AND**

REJECTS the Motion.

The Presiding Judge attaches a separate concurring opinion to this decision.

²⁰ Oral Decision of 20 April 2009, T(F), pp. 38866-38867; hearing of 28 April 2009, T(F), pp. 39444 and 39445. *See also* “Order Regarding the Closure of the Presentation of the Defence Cases”, public, 17 May 2010, p. 2.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this third day of June 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

Separate Concurring Opinion of Presiding Judge Jean-Claude Antonetti

I fully concur with the position stated in our **unanimous decision**.

It would have been appropriate as of 27 November 2009 to inform the Chamber that document 4D 00461 admitted on 13 December 2006 was not listed in the Croatian archives, as confirmed in the letter addressed to Ms Nožica.

The Defence for Mr Stojić does not in any way justify the reasons why it did not address this document to us, all the more so since it had legitimate reason to believe that the document dated 3 July 1993 was fake.

The content of document **4D 00461** shows that Bruno Stojić (allegedly) requested the municipalities of Čapljina and Stolac to act on 3 July 1993 against the Muslim police members of these localities and that the Knez Domagoj Brigade was deployed to carry out this task.

The Stojić Defence was informed as of 27 November 2009 of the fact that this document did not originate from the Croatian archives, yet it did nothing and it is therefore now out of time to request admission of the letter.

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this third day of June 2010

At The Hague

The Netherlands