



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: 26 November 2008
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 Hans Holthuis

Decision of: 26 November 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON STOJIĆ DEFENCE MOTION TO ADD 24 EXHIBITS TO ITS
65 TER EXHIBIT LIST**

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 to Add Exhibits to the Rule 65 *ter* (G) Exhibit List with Confidential Annex” filed confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 27 October 2008 (“Motion”), in which the Stojić Defence requests the leave of the Chamber to add 24 exhibits (“Proposed Exhibits”¹) to its list of exhibits established pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List”) and to admit them as evidence,

CONSIDERING that the other parties did not file a response to the Motion,

CONSIDERING that the Stojić Defence submits that the Proposed Exhibits were used by Witness Davor Marijan, whom the Stojić Defence requested to appear as an expert, in the preparation of his report entitled “Department of Defence of the Croatian Community/Croatian Republic of Herzeg-Bosnia,”²

CONSIDERING that the Stojić Defence states that the Proposed Exhibits have substantial probative value and are relevant for the presentation of the Defence case for the Accused Stojić as they deal with the functioning of the Defence Department of the HVO /Croatian Community of Herceg-Bosna,³

CONSIDERING that the Stojić Defence intends to tender the Proposed Exhibits through Witness Davor Marijan,⁴

CONSIDERING that the Stojić Defence notes that it was not able to add the Proposed Exhibits to the 65 *ter* List when it was made because it did not know of them until the Davor Marijan report was finalised,⁵

¹ 2D 00299, 2D 01443, 2D 01444, 2D 01446, 2D 01447, 2D 01448, 2D 01449, 2D 01450, 2D 01451, 2D 01452, 2D 01453, 2D 01454, 2D 01455, 2D 01456, 2D 01457, 2D 01458, 2D 01459, 2D 01471, 2D 01474, P 00770, P 01154, P 01828, P 07433, P 05266.

² Motion, p. 3.

³ Motion, p. 2.

⁴ Motion, p. 2.

⁵ Motion, p. 3.

CONSIDERING first of all that the Chamber observes that Proposed Exhibit 2D 00299 has already been uploaded into the e-court system, which has been a source of confusion for the Parties and the Chamber; that the Chamber wishes to remind the Stojić Defence and the other Parties that they should not upload into e-court any documents that have not been listed on the 65 *ter* Lists and in future should provide, in support of any requests to add exhibits to the 65 *ter* Lists, the original and translated documents only on CD-ROM,

CONSIDERING that the Chamber recalls that in order to grant a request to add exhibits to the 65 *ter* List, these exhibits must be disclosed to the Parties sufficiently in advance in order to be able to present them to a trial witness so as not to impede the preparation of their cross-examination,

CONSIDERING that the Chamber recalls the Decision Adopting Guidelines for the Presentation of Defence Evidence rendered on 24 April 2008 and in particular guideline 8 stipulating that in order for the Chamber to grant a request to add exhibits to the 65 *ter* List, the Parties concerned must file the request to add the exhibit or exhibits to the 65 *ter* (G) list prior to the appearance of the witness through whom it will present the exhibits, providing reasons why the exhibit or exhibits are essential to the case and reasons why it was/they were not on the list filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that when there is a request to add exhibits to a 65 *ter* List, the Chamber always makes a *prima facie* examination of the reliability, relevance and probative value of the documents presented to it,

CONSIDERING that the Proposed Exhibits were translated, filed and disclosed to the Parties at the time of the filing of the Marijan Davor report, on 27 October 2008,⁶

CONSIDERING that the possible appearance of Witness Davor Marijan will take place during the presentation of the Stojić Defence, which will probably not start before late January 2009,

⁶ Bruno Stojić’s Submission of the Expert Report of Dr. Davor Marijan with Confidential Annexes A and B, filed on 27 October 2008.

CONSIDERING, consequently, that the Parties have sufficient time to familiarize themselves with the Proposed Exhibits and to prepare a response to the filing of the aforementioned report pursuant to Rule 94 *bis* of the Rules and a possible cross-examination of the Witness Davor Marijan,

CONSIDERING, moreover, that the Chamber finds that the Proposed Exhibits are *prima facie* relevant and have a certain probative value,

CONSIDERING that the Chamber also considers that reference to the Proposed Exhibits in the report of Witness Davor Marijan makes their addition to the 65 *ter* list necessary,

CONSIDERING that the Chamber therefore finds that it is in the interests of justice to add them to the 65 *ter* List,

CONSIDERING, consequently, that the Chamber decides to grant the Motion and authorise the Stojić Defence to add the Proposed Exhibits to the 65 *ter* List,

FOR THESE REASONS,

IN ACCORDANCE with Rules 54, 65 *ter* and 89 (C) of the Rules,

GRANTS the Motion, **AND**

AUTHORISES the Stojić Defence to add the following exhibits to the 65 *ter* List: 2D 00299, 2D 01443, 2D 01444, 2D 01446, 2D 01447, 2D 01448, 2D 01449, 2D 01450, 2D 01451, 2D 01452, 2D 01453, 2D 01454, 2D 01455, 2D 01456, 2D 01457, 2D 01458, 2D 01459, 2D 01471, 2D 01474, P 00770, P 01154, P 01828, P 07433, P 05266.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]