



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: 30 March 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: 30 March 2010

THE PROSECUTOR

v.

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

PUBLIC

ORDER TO ADMIT EVIDENCE REGARDING WITNESS 4D-AA

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 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 the admission of four exhibits presented by Counsel for the Accused Petković (“Petković Defence”),¹ the request for the admission of one exhibit presented by Counsel for the Accused Praljak (“Praljak Defence”)² and the request for the admission of 10 exhibits presented by the Office of the Prosecutor (“Prosecution”),³ (“Proposed Exhibit(s)”), regarding the testimony of Witness 4D-AA (“Witness”) who appeared before the Chamber on 8 and 9 February 2010, on the one hand, as a *viva voce* witness for the Petković Defence and, on the other hand, as a witness presented by the Praljak Defence under the procedure established in Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”),⁴

NOTING the objections formulated by the Petković Defence to one Proposed Exhibit presented by the Prosecution;⁵ the objections formulated by the Stojić Defence to two Proposed Exhibits presented by the Prosecution,⁶ and the Prosecution response to the objections formulated by the Petković Defence and the Stojić Defence,⁷

NOTING the “Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses”, rendered publicly by the Chamber on 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 publicly by the Appeals Chamber on 26 February 2009 (“Decision of 26 February 2009”), in which it confirmed the Decision of 27 November 2008 and recalled that it is a matter for the Trial Chamber to decide on a

¹ IC 01170.

² IC 01171.

³ IC 01172.

⁴ Oral decision on allocation of time of Witness 4D AA, Hearing of 11 January 2010, Transcript in French (“T (F)”) pp. 48113-48115.

⁵ IC 01176.

⁶ IC 01177.

⁷ IC 01178.

case-by-case basis whether or not to admit “new documents” and to what purpose they will be used,⁸

CONSIDERING with regard to Proposed Exhibits P 11119, P 11152, P 11153, P 11159, P 11160, P 11164 and P 11193, the Chamber notes that the Prosecution seeks their admission on the sole ground that they go to challenging the Witness’s credibility,⁹

CONSIDERING that the Chamber notes that the Prosecution seeks the admission of Proposed Exhibits P 00376, P 01901 and 4D 01034 as inculpatory evidence, without indicating whether it also intends to seek their admission in order to impeach the Witness’s credibility,¹⁰

CONSIDERING that the Chamber decides, therefore, to examine the Prosecution request with regard to the Proposed Exhibits P 00376, P 01901 and 4D 01034 as “new documents” only in that they are inculpatory within the meaning of the Decision of 27 November 2008,

CONSIDERING that the Stojić Defence opposes the admission of Proposed Exhibits P 01901 and 4D 01034 on the ground that the Prosecution has not demonstrated the existence of exceptional circumstances that would justify the admission of these new documents within the meaning of the Decision of 27 November 2008,¹¹

CONSIDERING that the Petković Defence opposes the admission of Proposed Exhibit P 00376 presented by the Prosecution notably on the ground that as it is inculpatory evidence against the Accused Petković, the Prosecution has not demonstrated the existence of exceptional circumstances that would justify the admission of this new document within the meaning of the Decision of 27 November 2008,¹²

CONSIDERING that the Chamber cannot accept the sole argument of the Prosecution according to which the Proposed Exhibits P 00376 and P 01901 are

⁸ Decision of 26 February 2009, paras 28 and 29.

⁹ IC 01172.

¹⁰ IC 01172.

¹¹ IC 01176 and IC 01177.

¹² IC 01176.

linked to the Witness's testimony, in order to justify their admission as inculpatory evidence at this stage of the proceedings,¹³

CONSIDERING that the Chamber notes that the Prosecution does not put forward any exceptional circumstance that would justify the admission of Proposed Exhibits P 00376 and P 01901 as inculpatory evidence at this late stage of the proceedings; that the Chamber decides, therefore, that these two Proposed Exhibits are not admissible,

CONSIDERING that with regard to the Proposed Exhibit 4D 01034, the Chamber finds that this is a "new document" sought for admission by the Prosecution; that the latter has demonstrated the existence of exceptional circumstances that would justify the admission of this new document within the meaning of the Decision of 27 November 2008,¹⁴ namely the source and the date on which it acquired this document, the disclosure date to the other parties and the reasons for which it did not present this document until after the close of its case,

CONSIDERING that the Chamber notes that the Proposed Exhibit comes from the Petković Defence who disclosed it to the Prosecution at the end of the presentation of the Prosecution case when it filed its exhibit list pursuant to Rule 65 *ter* (G) (ii) of the Rules and when it uploaded it onto the *ecourt* system for the Witness's appearance; and in so doing the Prosecution was unable to present it during the presentation of its case since it was not in its possession,

CONSIDERING, furthermore, that the Prosecution notes that the Petković Defence had informed the other parties of its intention to present the Proposed Exhibit during the hearing of the Witness,

CONSIDERING that the Chamber notes that only the Stojić Defence opposes its admission at this late stage of the proceedings without, however, referring to how its admission could cause any prejudice,

CONSIDERING that under these circumstances, the Chamber agrees to examine the admissibility of the Proposed Exhibit 4D 01034 presented as inculpatory evidence,

¹³ Prosecution Notice, pp. 2-5.

CONSIDERING that the Chamber has examined each of the Proposed Exhibits on the basis of the admissibility criteria set out in its “Decision on the Admission of Evidence”, rendered by the Chamber on 13 July 2006 (“Decision of 13 July 2006”) and in the “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered by the Chamber on 24 April 2008 (“Decision of 24 April 2008”)¹⁵,

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits indicated as “Admitted” in the Annex attached to this Order since they were put to Witness 4D-AA and bear sufficient indicia of relevance, probative value and reliability,

CONSIDERING that, particularly with regard to the Proposed Exhibit 4D 01034, the Chamber notes that is relevant and has a degree of probative value notably with regard to the military action that took place in Sovići and Doljani on 17 April 1993 and the involvement of the Convicts Battalion and the hierarchical link between it and the Accused Stojić and the Accused Petković,

CONSIDERING that, consequently, the Chamber decides that in light of the circumstances of this case, it is in the interests of justice to admit the Proposed Exhibit 4D 01034 at this late stage of the proceedings,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits indicated as “Not Admitted” in the Annex attached to this Order since they are not in accordance with the instructions set forth in the Decisions of 13 July 2006 and of 24 April 2008, for the reasons stated in the Annex attached to this Order,

¹⁴ IC 01172 and IC 01178.

¹⁵ Guideline No. 8 on the Admission of Documentary Evidence through a Witness.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

GRANTS the requests of the Petković Defence and the Stojić Defence,

PARTIALLY GRANTS the request of the Prosecution,

DECIDES that it is appropriate to admit into evidence the Proposed Exhibits P 11119, P 11152, P 11153, P 11159, P 11160, P 11164 and P 11193 solely in that they go to casting doubt on the credibility of Witness 4D-AA,

DECIDES that it is appropriate to admit into evidence the other Proposed Exhibits presented by the Stojić Defence, the Praljak Defence, the Petković Defence and the Prosecution indicated as “Admitted” in the Annex attached to this Order, **AND**

DENIES in all other respects the requests for admission of the Proposed Exhibits presented by the Prosecution for the reasons stated in the Annex attached to this Order,

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this thirtieth day of March 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number (preferably in numerical order)	Party Proposing Admission of the Exhibit	Admitted/Not Admitted/Marked for Identification (MFI)
P 00376	Prosecution	Not admitted (Reason: the Prosecution did not demonstrate exceptional circumstances within the meaning of the Decision of 27 November 2008).
P 01901	Prosecution	Not admitted (Reason: the Prosecution did not demonstrate exceptional circumstances within the meaning of the Decision of 27 November 2008).
P 11119	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11152	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11153	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11159	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11160	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11164	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
P 11193	Prosecution	Admitted solely in that it goes to challenge the credibility of Witness 4D-AA.
4D 01034	Prosecution	Admitted.
3D 03692	Praljak Defence	Admitted under seal.
4D 00623	Petković Defence	Admitted.
4D 01033	Petković Defence	Admitted.
4D 01078	Petković Defence	Admitted.
4D 01082	Petković Defence	Admitted.