



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-05-87-T
Date: 23 March 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 23 March 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

**DECISION ON PROSECUTION'S THIRD REQUEST
FOR ADMISSION OF DOCUMENTS FROM THE BAR TABLE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS TRIAL 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”) is seised of the “Prosecution’s Third Request for Admission of Exhibits From the Bar Table”, filed on 16 March 2007 (“Request”), and hereby renders its decision thereon.

1. In its Request, the Prosecution seeks to have exhibits P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P549, P550, P551, P552, P553, P554, P555, P828, P831, P845, P846, P955, P962, P1906, P1912, P1939, P1940, P1941, P1996, P2419, P2428, P2429, P2431, P2433, P2572, P2604, P2605, P2606, P2607, P2608, P2609, P2610, P2611, P2808, P2821, P2822, P2827, P2828, P2842, P2843, P2844, P2848, P2849, P2850, P2851, P2852, P2853, P2854, P2855, P2856, and P2857 admitted into evidence from the bar table, pursuant to Rule 89(C).¹ The Prosecution makes submissions regarding the relevance and the probative value of each of the above mentioned exhibits.² The Prosecution also notes that all these exhibits have been disclosed to the Defence but that, as of yet, no English translations of exhibits P2849, P2850, P2851, P2852, P2853, P2854, and P2857 are available. Nevertheless, the relevance and probative value of these exhibits, as well as their late arrival, justify their admission or, at the very least, provisional admission until the English translation are submitted.³

2. On 21 March 2007, three of the Accused responded to the Request, namely Milan Milutinović,⁴ Nebojša Pavković,⁵ and Sreten Lukić,⁶ challenging the admissibility of certain exhibits. Milutinović takes issue with exhibits P2822, P2827, P2828, P2842, P2843, and P2844 on the basis that they are irrelevant to the Indictment and are of no probative value.⁷ Pavković objects to exhibits P828, P846, P955, P2808, P2821, P2822, P2827, and P2828 challenging their reliability and probative value.⁸ In addition, Pavković objects to P2572, P2842, P2849, P2850, P2851, P2852, P2853, and P2854 on the basis that no English translation is available and that, as a result, a complete determination regarding the relevance and probative value of these exhibits cannot be

¹ Request, para. 1.

² Request, paras. 2–34.

³ Request, para. 36. The Chamber notes that it would appear that exhibit P2572 (excerpts of the war diary of the 15th Motorized Brigade) has also not been translated, but that the Prosecution has failed to note this fact in its Request.

⁴ Response by Mr. Milan Milutinović to the Prosecution’s Third Request for Admission of Exhibits From the Bar Table, 21 March 2007 (“Milutinović Response”).

⁵ Pavković Response to Prosecutor’s Third Request for Admission of Exhibits From the Bar Table, 21 March 2007 (“Pavković Response”).

⁶ Sreten Lukić’s Response and Objection to the Prosecution’s Third Request for Admission of Exhibits From the Bar Table, 21 March 2007 (“Lukić Response”).

⁷ Milutinović Response, paras. 2–8.

⁸ Pavković Response, paras. 3–11.

made.⁹ Finally, Lukić objects to exhibits P215, P216, P828, P831, P845, P846, P2849, P2850, P2851, P2852, P2853, P2854, P2855, P2856, and P2857 on the basis that they are unreliable, lack probative value, and contain evidence contrary to the Prosecution case.¹⁰

3. Rule 89 provides the requirements for the admission of evidence and states as follows, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

4. The Chamber has considered the authenticity, probative value, and relevance of each of the documents tendered and is satisfied that, where no objection has been taken, they should be admitted.

5. As far as the documents that were objected to are concerned, the Chamber finds that all but one, namely P828, should be admitted into evidence. The Chamber considers that they are relevant and have probative value. In addition, the Chamber is of the view that the Defence objections fall into two categories: (a) challenges to the Prosecution's interpretation of the exhibits, rather than arguments about their admissibility; or (b) matters that in fact go to the weight the Chamber should attribute to the exhibits.

6. As stated above, however, the Chamber has decided to deny the admission of exhibit P828. P828 is a Report of the Humanitarian Law Centre in Belgrade entitled "Violations of rights for a just trial in criminal proceedings against Kosovo Albanians in Serbia in the period 1998-2000". The reason for the decision to deny admission of P828 relates to its reliability and, therefore, its probative value.¹¹ The Trial Chamber is not satisfied of the authenticity and reliability of this report for several reasons. First, the report does not provide a list of sources used by the Humanitarian Law Centre to compile the information nor does it footnote such sources when referring to specific cases of violations of rights. Second, it does not explain the methods by which the collection of data was achieved nor does it address the manner in which this data was analysed. Finally, the very first page of the report provides that it is to be used for internal purposes of the organisation only, implying that it is not an official publication. Accordingly, the Chamber is unable to assess the reliability of this document and is therefore of the view that the report lacks

⁹ Pavković Response, paras. 2, 12.

¹⁰ Lukić Response, paras. 4-32.

¹¹ *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, para. 24.


probative value. The Chamber would have to hear more about the circumstances in which the document was compiled before it were in a position to finally assess the document's reliability.

7. The Chamber rejects Pavković's objection to exhibit P2842 on the basis that there is no English translation available, as the relevant translation can be found in e-Court. As far as the untranslated documents are concerned, namely, P2572, P2849, P2850, P2851, P2852, P2853, P2854, and P2857, they shall be marked for identification pending the Prosecution's provision of translations. The Prosecution shall submit the official English translations of these documents by 10 April 2007 at the latest, and will notify the Chamber and the parties in a written filing accordingly. Once the translations are received, the Defence will have until 16 April 2007 to respond, after which the Chamber will issue a decision on their admission.¹²

8. For the foregoing reasons and pursuant to Rules 54 and 89, the Trial Chamber hereby GRANTS the Request in part and ORDERS as follows:

- a) The following exhibits shall be admitted into evidence: P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P549, P550, P551, P552, P553, P554, P555, P831, P845, P846, P955, P962, P1906, P1912, P1939, P1940, P1941, P1996, P2419, P2428, P2429, P2431, P2433, P2604, P2605, P2606, P2607, P2608, P2609, P2610, P2611, P2808, P2821, P2822, P2827, P2828, P2842, P2843, P2844, P2848, P2855, and P2856.
- b) Exhibits P2572, P2849, P2850, P2851, P2852, P2853, P2854, and P2857 shall be marked for identification pending further order of the Chamber.
- c) Exhibit P828 shall not be admitted into evidence.

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



Judge Iain Bonomy
Presiding

Dated this twenty-third day of March 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² See Order on Procedure and Evidence, 11 July 2006, para. 8.