



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: 9 August 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

Order of: 9 August 2007

PROSECUTOR

v.

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

PUBLIC

**ORDER REGARDING CONSTITUTIONS OF FEDERAL REPUBLIC OF YUGOSLAVIA
AND REPUBLIC OF SERBIA**

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”) *ex proprio motu* issues this order regarding a number of exhibits, namely P855, P856, P986, P1021, and 1D139.

1. It has come to the attention of the Trial Chamber that original BCS versions of exhibits P855 and P856 do not correspond to their English translations. The original BCS version of P855 consists of the Proclamation of the Constitution of the Republic of Serbia and the Serbian Constitution itself, both copied from the Official Gazette of the Republic of Serbia. The original BCS version of P856 consists of the Proclamation of the Constitution of the Federal Republic of Yugoslavia (“FRY”) and the FRY Constitution itself, both also copied from the Official Gazette of the FRY.

2. However, the English versions of these documents are not complete. The English version of P856 consists of the Proclamation of the FRY Constitution only. It is for that reason that, on 6 August 2007, the Defence tendered, and the Chamber admitted, 1D139, which is the complete translation of P856.

3. As far as P855 is concerned, the English translation, as it stands now, consists of the Constitution of the Republic of Serbia only and does not contain the Proclamation. In addition, it has come to the attention of the Chamber that, originally, the translation consisted of the Proclamation only, which was, it appears, later removed, and 27 pages of the Constitution uploaded in its stead. This substitution appears to have taken place on 31 May 2007, and this without putting the Chamber on notice. The Chamber here recalls its earlier decisions regarding similar issues where the Prosecution was requested not to change the record without asking for leave first¹ and, once again, reminds both the Prosecution and the Defence that they have no authority to make such substitutions without prior leave of the Chamber. As a result, the Chamber hereby expresses its dissatisfaction with this state of affairs and orders the Prosecution to explain, in a written filing, the reasons behind the apparent removal of one translation and the substitution of it with another, without any notice to the Chamber.

4. To complicate matters even further, the Chamber notes that, pursuant to its decision on 10 October 2006, it admitted into evidence exhibit P986, which is the FRY Constitution, the English version of which has been sourced from a reference textbook on the constitutions of the world.² On the same day, exhibit P1021 was admitted, which is the Constitution of the Republic of Serbia, the

¹ Decision on Prosecution Request for Substitution of Redacted Rule 70 Exhibits, 1 March 2007, para. 2; Order on Prosecution Notice Regarding Exhibit P2643, 13 March 2007, para. 2.

² Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 52(II).

English version of which has been sourced from another reference textbook.³ The Trial Chamber found that portions of these exhibits were illegible due to the highlighting made on the hard copies of the two documents. As a result, on 2 August 2008, the Chamber informed the Prosecution (on notice to the Defence) of this problem and instructed it to re-scan clean hard copies of the English version of the two Constitutions. The Prosecution emailed clean versions to the Chamber and the Defence as instructed, on 3 August 2007. However, the clean English version of the Serbian Constitution was sourced from another textbook. As a result, the Prosecution was informed to seek agreement from the Defence, before being allowed to substitute the original English version of the Serbian Constitution with the one sourced from yet another textbook. These negotiations are ongoing.

5. For all the above given reasons, the Chamber considers that it is appropriate and in the interests of justice to give some directions and guidelines to the parties in these matters.

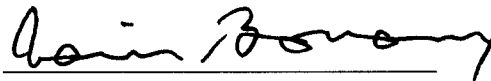
6. Pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal, the Chamber hereby ORDERS as follows:

- (a) Given the duplication of the above mentioned exhibits, the Prosecution and the Defence shall endeavour to agree, in a joint filing, as to what the official versions of the two Constitutions, for the purposes of the record in this case, are. Preferably, these should be 1D139 for the FRY Constitution and P855 for the Serbian Constitution.
- (b) As far as P855 is concerned, the English version of the same should be complete and, thus, should contain not only the Serbian Constitution but also the Proclamation of that Constitution. The Prosecution shall inform the Chamber and the Defence once the exhibit has been translated in its entirety and uploaded as such into the eCourt system, at which point it shall be deemed to have been admitted into evidence.
- (c) Also with respect to P855, the Prosecution shall explain, in a written filing, the reasons behind the apparent change of the exhibit record on 31 May 2007.

³ Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 52(nm).

- (d) Finally, the parties shall continue to coordinate with respect to exhibit P1021, as explained, and shall inform the Chamber, via a joint, written filing, of the outcome of those communications.

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



Judge Iain Bonomy
Presiding

Dated this ninth day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]