



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: 28 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

Decision of: 28 August 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION RECONSIDERING ADMISSION OF
EXHIBITS 3D119, 3D120, 3D183, AND 3D184**

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”) issues this order *ex proprio motu* reconsidering its admission of exhibits 3D119, 3D120, 3D183, and 3D184, which the Ojdanić Defence put to Sabri Popaj during cross-examination and which purportedly pertain to the presence of the KLA in Kosovo and the killing of certain individuals by the KLA.¹

1. In the Trial Chamber’s “Order on Procedure and Evidence,” issued 11 July 2006,² the Chamber stated as follows:

8. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Chamber or denied admission into evidence. Documents, regardless of translation, that have not been dealt with during the testimony of the witness through whom they are sought to be admitted shall, in general, be denied admission into evidence, unless they are admissible without being spoken to by a witness.

2. The witness could say nothing regarding 3D183 and 3D184, and they are not translated. Exhibits 3D119 and 3D120 were not put to the witness in terms, and the witness could say nothing positive about the documents. The questions purporting to be based upon the documents were interpreted in court. The Chamber finds it unnecessary for any of these four documents to be translated and admitted into evidence. The Chamber therefore decides to *ex proprio motu* reconsider its decision on their admission and deny them admission.³

3. The Defence may seek to tender these documents during its case, provided they are tendered as evidence along with their translations. In the case of a voluminous document, the Defence may wish to consider only having the relevant portion of the document translated in order not to overburden the Conference Languages and Services Section with superfluous translation

¹ T. 5697–5701 (1 November 2006).

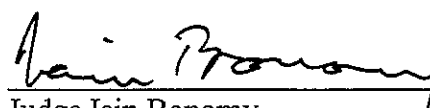
² The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007.

³ The Appeals Chamber recently has clarified that the definitive articulation of the legal standard for reconsideration of a decision is as follows: “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’” *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle,” 14 June 2006, para. 2.

requests, but should request enough of the document be translated in order for its context to be understood by the Chamber and the other parties in these proceedings.⁴

4. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby RECONSIDERS its decision to admit into evidence exhibits 3D119, 3D120, 3D183, and 3D184 and ORDERS that they be marked as not admitted in eCourt.

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


Judge Iain Bonomy
Presiding

Dated this twenty-eighth day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ See Order on Procedure and Evidence, 11 July 2006, para. 6 (“In general, books (and other similarly lengthy documents) will not be admitted into evidence in their entirety, but only those parts will be admitted that the Trial Chamber considers it appropriate to admit in light of the submissions of the parties. Those will generally be the portions referred to in testimony.”)