



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: 19 September 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: 19 September 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON MILUTINOVIĆ REQUEST FOR
ADMISSION OF DOCUMENTS FROM 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 “Mr. Milutinović’s Request for the Admission of Exhibits from the Bar Table”, filed on 16 August 2007 (“Request”), and “Mr. Milutinović’s Supplementary Bar Table Request”, filed on 23 August 2007 (“Supplementary Request”), and hereby renders its decision thereon.

1. In its Request and Supplementary Request, Milutinović (“Accused”) seeks to have exhibits 1D18, 1D35, 1D92, 1D197, 1D214, 1D598, 1D599, 1D605, 1D607, 1D608, 1D609, 1D636, 1D637, 1D638, 1D640, 1D690, 1D755, 1D763, 1D764, 1D765, and 1D766 admitted into evidence from the bar table, pursuant to Rule 89(C).¹ The Accused argues that the exhibits are relevant and probative, and that there are sufficient indicia of their reliability to meet the requirements for their admission into evidence.²

2. On 23 August 2007, the “Prosecution’s Response to Mr. Milutinović’s Request for the Admission of Exhibits from the Bar Table” (“Prosecution Response”) was filed, challenging the admissibility of certain exhibits, namely 1D35, 1D197, 1D214, 1D598, 1D599, 1D605, 1D607, 1D608, 1D609, 1D636, 1D637, 1D638, 1D640, and 1D690.³ Specifically, the Prosecution objects to exhibits 1D35 and 1D197 on the basis that they are not reliable and should not be admitted without a sponsoring witness.⁴ In addition, the Prosecution objects to exhibits 1D598, 1D599, 1D605, 1D607, 1D608, 1D609, and 1D690, challenging their reliability, probative value, and relevance, and arguing that the admission of these documents without a sponsoring witness would permit the Accused to testify without being subject to cross-examination.⁵ The Prosecution also objects to exhibits 1D214, 1D636, 1D637, and 1D640, challenging their probative value and relevance, and to exhibit 1D638 on the basis of relevance.⁶

3. After a preliminary perusal of the documents tendered by the Accused, the Chamber noted that, with respect to exhibits 1D598, 1D599, 1D605, 1D607, 1D608, 1D609, 1D638, and 1D690, there seemed to be insufficient indicia of their reliability or that their relevance to the case was not immediately manifest. On 12 September 2007, during the court session, the Chamber invited the

¹ Request, para. 1; Supplementary Request, para 1.

² Request, para. 1.

³ Prosecution Response, paras. 4–9.

⁴ Prosecution Response, para. 4.

⁵ Prosecution Response, para. 5.

⁶ Prosecution Response, paras. 6–8.

Accused to make a supplementary filing providing further information about the authenticity, source, and relevance of these exhibits, as follows:

There is an application for the admission of exhibits from the bar table filed on the 16th of August and a supplementary application filed on the 23rd of August. We wish you to try to provide further information in relation to certain of these items, and rather than do it formally through a written order we'll extend that request to you here and hope that you did can comply with it. There are a number of press releases which are 1D598 and 599, 605, 607, 608, and 609. We would invite you to try to provide further information as to the authenticity, including the source, of these documents. There is a BBC press release which appears to have been obtained by them from *Tanjung*, and therefore it's second-hand even on the face of it. It's 1D690 and we would like you to provide further information, if possible, as to the authenticity of that document, including its source.... And finally, there are a number of documents – I think they're all decisions – no, mostly decisions, but also enactments which fall under 1D638. We would invite you to explain what issues in the trial these documents are relevant to and their significance.⁷

4. On 17 September 2007, “Mr. Milutinovic’s Supplemental Submission in Support of His Bar Table Submissions Dated 16 August 2007 and 23 August 2007” (“Supplemental Submission”), was filed, providing supplementary information on the documents referred to in the previous paragraph. The Accused explains that exhibits 1D598, 1D599, 1D605, 1D607, 1D608, 1D609, and 1D638 were obtained through the Accused, himself. Moreover, he explains that exhibit 1D690 was originally P836 and was therefore provided by the Prosecution as one of the exhibits listed in the Prosecution’s pre-trial brief.⁸

5. Specifically, with respect to exhibit 1D598, the Accused explains that the document is a press release following a meeting with Yevgeny Primakov on 17 March 1998 and that Primakov testified in the *Milošević* trial and confirmed the existence of such a meeting, and therefore the Chamber should take judicial notice of that fact according to Rule 94(B).⁹ Regarding exhibit 1D599, the Accused explains that this document is a press release following a meeting between the Accused, Hubert Védrine, and Klaus Kinkel, and that such meeting was mentioned on the front page on Belgrade’s daily *Politika* on 20 March 1998, which demonstrates the authenticity and reliability of the exhibit.¹⁰ With respect to exhibit 1D605, the Accused explains that the document is a press release following a meeting concerning the political framework for self-government in Kosovo, and that such meeting was mentioned on the front page on Belgrade’s daily *Politika* on 10 December 1998, which shows the authenticity and reliability of the exhibit.¹¹ Regarding exhibit 1D607, the Accused explains that the document is a statement following a meeting with Ibrahim

⁷ T. 15426–15427 (12 September 2007).

⁸ Supplemental Submission, paras. 4–9.

⁹ Supplemental Submission, para. 4, Annex A.

¹⁰ Supplemental Submission, para. 5, Annex B.

¹¹ Supplemental Submission, para. 6, Annex C.

Rugova, and that the evidence given by Adnan Merovci in relation to this meeting provides indicia of the reliability of the exhibit.¹² With respect to exhibits 1D608 and 1D609, the Accused explains that both documents refer to calling early elections in Serbia, and that the evidence of Goran Svilanović and Zoran Đinđić, as well as the expert report and testimony in court of Ratko Marković, provide indicia of the reliability of these documents.¹³ Regarding exhibit 1D690, the Accused explains that the document is a press report of Milutinović's visit to Priština/Prishtinë on 5 November 1998, and that there is already evidence in the case indicating that the Accused in fact visited Priština/Prishtinë on that date.¹⁴ Finally, with respect to exhibit 1D638, the Accused argues that the decisions contained in this exhibit are relevant "for the sake of completeness of the view of the Trial Chamber in relation to [the] Law on Internal Affairs".¹⁵

6. On 17 September 2007, the Prosecution informed the parties and the Trial Chamber that it would not respond to the Supplemental Submission.

7. Rule 89 of the Rules of Procedure and Evidence of the Tribunal 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.

(E) A Chamber may request verification of the authenticity of evidence obtained out of court.

8. The Chamber notes that exhibits 1D35 and 1D197 were tendered through expert witness Ratko Marković via his Rule 92 *ter* statement and were admitted into evidence on 6 August 2007, and that page 350 of exhibit 1D18 was also admitted into evidence on 15 August 2007. The Trial Chamber therefore dismisses as moot the Motion in so far as it relates to these three exhibits.

9. With respect to exhibits 1D755, 1D763, 1D764, 1D765, and 1D766, the Chamber has considered the authenticity, probative value, and relevance of each of these documents—as well as the fact that no objections to their admission have been lodged by the Prosecution—and is satisfied that they should be admitted into evidence.

¹² Supplemental Submission, para. 7.

¹³ Supplemental Submission, para. 8, referring to exhibits 1D687 and 1D688.

¹⁴ Supplemental Submission, para. 9.

¹⁵ Supplemental Submission, para. 10.

10. As far as some of the documents that were objected to are concerned, having considered their authenticity, probative value, and relevance in light of all the information submitted to it, including the additional information in the Supplemental Submission, the Chamber finds that exhibits 1D92, 1D214, 1D605, 1D607, 1D608, 1D609, 1D636, 1D637, 1D640, and 1D690 should also 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 Prosecution's objections fall into two categories: (a) challenges to the Accused'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.

11. However, the Chamber has decided to deny the admission of exhibits 1D598, 1D599, and 1D638. 1D598 is a press release from the Office of the President of the Republic of Serbia dated 17 March 1998 regarding a meeting between Milutinović, as the President of the Republic of Serbia, and Yevgeny Primakov, the then Minister of Foreign Affairs of the Russian Federation. The Chamber is not satisfied with the authenticity and reliability of this press release for two reasons: first, the document lacks any signature or stamp; second, the Accused has failed to provide the Chamber with any evidence that Milutinović attended the meeting. The Chamber notes that the Accused has provided a copy of the transcript of Mr. Primakov's testimony in the *Milošević* trial purportedly confirming the meeting described in the press release. However, after a careful review of said transcript, the Chamber considers that Primakov is referring to a meeting between himself and Milošević, and that Milutinović is not mentioned as being present at the meeting, but just as being the one responsible for issuing a statement in relation to the meeting.¹⁶ Accordingly, the Chamber is unable to assess the reliability of this document and is therefore of the view that the press release lacks the requisite probative value for admission.

12. Regarding 1D599, the Chamber notes that the document is a press release from the Office of the President of the Republic of Serbia dated 19 March 1998 regarding a meeting between Milutinović, as the President of the Republic of Serbia; Hubert Védrine, the then Minister of Foreign Affairs of France; and Klaus Kinkel, the then Minister of Foreign Affairs of Germany. The Chamber is not satisfied with the authenticity and reliability of this press release for two reasons: first, the document lacks any signature or stamp; second, the Accused has failed to provide the Chamber with any evidence that Milutinović was involved in the meeting. The Chamber notes that the Accused has attached a copy of the front page of the 20 March 1998 issue of Belgrade's daily *Politika* to its Supplemental Submission, purportedly relating to the meeting

¹⁶ Supplemental Submission, Annex A.

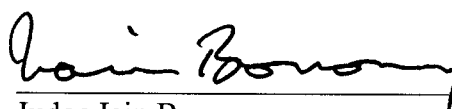
referred to in the press release; however, after a careful review of this front page, the Chamber notes that the newspaper refers to a meeting between Milošević, Védrine, Kinkel, and Jovanović, and that Milutinović is not mentioned as being present at the meeting.¹⁷ Accordingly, the Chamber is unable to assess the reliability of this document and is therefore of the view that the press release lacks the requisite probative value for admission.

13. Finally, with respect to exhibit 1D638, the Chamber notes that this exhibit includes the following documents: the Decision of the Federal Constitutional Court on Assessing the Accordance of Provisions of Article 55, paragraph 2 of the Law on Internal Affairs with the Law on Basic Labour Relations, dated 16 May 2000; the Decision of the Federal Constitutional Court on Assessing the Constitutionality of the Provisions of Articles 11, 13, 14, and 15 of the Law on Internal Affairs, dated 6 February 2001; and an Enactment of the Constitutional Court of the Republic of Serbia, dated 17 January 2001. The documents in the exhibit are copies from the Official Gazette of the FRY and the Official Gazette of the Republic of Serbia, and therefore seem to bear sufficient indicia of reliability for admission. However, even though the documents seem to relate to certain articles of the Law of Internal Affairs, they were issued in 2000 and 2001, and the Chamber is not satisfied that they are relevant to the case or have the requisite probative value for admission.

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

- a) The following exhibits shall be admitted into evidence: 1D92, 1D214, 1D605, 1D607, 1D608, 1D609, 1D636, 1D637, 1D640, 1D690, 1D755, 1D763, 1D764, 1D765, and 1D766.
- b) Exhibits 1D598, 1D599, and 1D638 shall not be admitted into evidence.

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



Judge Iain Bonomy
Presiding

Dated this nineteenth day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ Supplemental Submission, Annex B.