



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: 20 March 2008
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: 20 March 2008

PROSECUTOR

v.

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

PUBLIC

DECISION ON OJDANIĆ NOTICE REGARDING 3D1122

Office of the Prosecutor

Mr. Thomas Hannis
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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 confidential “Ojdanić Renewed Motion to Admit Exhibits from the Bar Table and Notice regarding MFI Document”, filed on 29 February 2008 (“Motion”), requesting the admission of various documents from the bar table, along with their translations. The Chamber hereby issues this decision on the admission of 3D1122, which is the Law on the Border Belt.

1. In the Motion, the Ojdanić Defence informs the Chamber and the parties that the English translation of 3D1122, has been received and uploaded into eCourt. It tenders the document in its entirety, on the basis that it sets out the legal framework governing movement in and out of the border belt.¹ The Prosecution has indicated that it does not intend to respond to the Motion.

2. At the outset, it should be noted that the Ojdanić Defence closed its case on 19 October 2007, subject to the filing of motions regarding exhibits and the issue of a handwriting expert.² The Chamber communicated to the Ojdanić Defence on 7 February 2008 with respect to outstanding document issues, stating:

On 13 September 2007, the Chamber wrote to the Ojdanic Defence, requesting that it advise whether it intended to tender 3D1122 (“Law on Border Crossing and Movement in the Border Belt”) as evidence. On the same day, [the Ojdanić Defence] replied that 3D1122 would be included in a motion for the admission of exhibits from the bar table, “in the following period”. Since that correspondence, the Chamber has not received a motion for the admission of 3D1122. Additionally, no English translation is attached to 3D1122 in eCourt. Please inform the Chamber in the 15 February 2008 filing whether you intend to tender this document and its English translation for admission. For the avoidance of doubt, the filing on 15 February 2008 must deal with all outstanding documentary matters in relation to the Ojdanic Defence case.

3. The Ojdanić Defence wrote back to the Chamber on 14 February 2008, stating that the deadline for the translation of 3D1122 was 25 February 2008 and that it would tender the document upon receiving the translation.

4. Rule 89 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) sets out the requirements for the admission of evidence, stating:

(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.

¹ Motion, para. 3.

² T. 17352–17353 (19 October 2007).

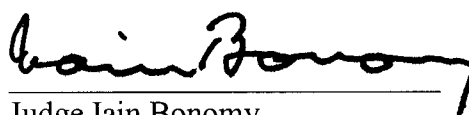
(E) A Chamber may request verification of the authenticity of evidence obtained out of court.

5. Despite the fact that 3D1122 was not tendered in the motions filed by the Ojdanić Defence on 14 February 2008, which concerned the combat reports and briefings of the Supreme Command Staff, the Chamber is prepared to admit this document and its translation. This is on the exceptional basis that 3D1122 was the specific subject of the exchange referred to above, and the relevance of 3D1122, which has been referred to during trial proceedings subsequent to the email exchange between the Ojdanić Defence and the Chamber.³

6. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motion, in part, and ORDERS as follows:

- (a) The Chamber admits 3D1122 and its translation into evidence, in accordance with the terms of this decision.
- (b) The Ojdanić Defence shall, within seven days of the date of this decision, re-file a public version of the Motion, in so far as it relates to 3D1122.

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



Judge Iain Bonomy
Presiding

Dated this twentieth day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

³ T. 23323 (27 February 2008).