



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: 3 April 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: 3 April 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON JOINT OJDANIĆ AND LUKIĆ REQUEST TO CALL
ŽIVOJIN ALEKSIĆ AND DUŠAN MLADENOVSKI**

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 “Joint (Ojdanić and Lukić) Request for Leave to Call Handwriting Expert Professor Živojin Aleksić, Motion to Admit Additional Exhibits, and Motion to Amend Rule 65 *ter* Witness and Exhibit List”, filed on 29 February 2008 (“Motion”), and hereby issues this decision thereon.

1. In the Motion, the Ojdanić and Lukić Defences request the Chamber to admit expert and lay testimony in order to contest the reliability and authenticity of a report, written by the Accused Pavković and addressed to the “Supreme Command Staff–Chief of Staff in person” (“the 25 May 1999 report”), which is an exhibit in the case.¹ The Motion states that the issue in dispute is whether the 25 May 1999 report was presented to or seen by the Accused Ojdanić, around the time that it was produced.² In the Motion, it is noted that the Ojdanić Defence closed its case subject to the possibility of calling a handwriting expert and that no objection was taken at that time by the various co-Accused or the Prosecution.³ The Ojdanić and Lukić Defences request that they be permitted to call Živojin Aleksić, a permanent court expert on documents and handwriting in Belgrade, on the basis that he has examined a number of documents connected to the issue on which he would testify.⁴ The Motion seeks the admission of these documents, which are colour copies of documents that are already exhibits or have been marked for identification in the case.⁵ The Motion further requests that the following exhibits “may be tendered into evidence”: the expert report of Aleksić, and the curriculum vitae of Aleksić.⁶

2. The Motion seeks leave of the Chamber to call an additional witness, Dušan Mladenovski, who is a former archivist of the VJ.⁷ It is argued that the testimony of Mladenovski is so closely related to the issue of the reliability and authenticity of the 25 May 1999 report, that this evidence should be heard in the interests of justice, and that, even if it is considered a re-opening of the case,

¹ Motion, para. 1; P1459 (Report on the non-compliance of the MUP organs, dated 25 May 1999).

² Motion, para. 2.

³ Motion, para. 6.

⁴ Motion, para. 7; 3D1130 (The VJ Archive List, colour copy of 3D1108); 3D1131 (The Record Log Book of the Office of the Chief of the Supreme Command Staff, colour copy of 3D1109); 3D1132 (Third Army Report on Resubordination of MUP Units, colour copy of 3D1106); 3D1133 (Third Army Report on Resubordination of MUP Units, colour copy of P1459); and 3D1134 (Conclusion of Government of Serbia relating to Aleksić, dated 14 February 2008).

⁵ Motion, para. 20.

⁶ Motion, paras. 19–20; 3D1140 (expert report of Aleksić); 3D1141 (Curriculum vitae of Aleksić).

⁷ Motion, para. 18. The Motion states that it seeks the addition of Mladenovski to the Lukić Defence witness list. However, the Chamber considers that, as his evidence is interlinked with that of the handwriting expert, it is appropriate that he should be added to the Ojdanić Rule 65 *ter* witness list.

this would be appropriate in light of the prevailing circumstances.⁸ In connection with this proposed testimony, the Motion requests that three documents be added to the Rule 65 *ter* list.⁹

3. Additionally, the Motion seeks the admission of two documents intended to show that another report from the Third Army, of 4 June 1999, on a similar topic, “was not logged into the [General Staff/Supreme Command Staff of the VJ] logbook.”¹⁰ These documents are conclusions from the National Council for Cooperation of the Government of Serbia, relating to the entry of the 4 June 1999 report into the VJ logbook.

4. In its response to the Motion (“Response”), filed 13 March 2008, the Pavković Defence argues that the relief requested in the Motion should be denied.¹¹ The Pavković Defence argues that the Ojdanić Defence case is now closed.¹² It argues that the proposed additional evidence is moot, as the information contained in the 25 May 1999 report was conveyed to Ojdanić through a variety of other modes, which are in evidence in the case.¹³ In relation to two of the documents proposed to be used with the handwriting expert, the Pavković Defence argues that they have been altered, so as to be lacking in probative value.¹⁴ Finally, the Pavković Defence urges that the Chamber refuse the request to lead evidence concerning P1725, and in connection with Mladenovski, on the basis that there are no cogent reasons to re-open the Ojdanić Defence case.¹⁵

5. The Prosecution has indicated that it does not intend to respond to the Motion.

6. At the outset, it should be noted that the Ojdanić Defence closed its case on 19 October 2007, expressly subject to the filing of motions regarding exhibits and the issue of a handwriting expert.¹⁶ On that occasion, the Pavković Defence was asked if it opposed the closing of the Ojdanić case on that basis, and it stated that it had no objection.¹⁷ Consequently, the Ojdanić Defence retained the option of applying to call a handwriting expert. The issue of the receipt of the

⁸ Motion, paras. 14–17.

⁹ Motion, para. 19; 3D1130 (The VJ Archive List, colour copy of 3D1108); 3D1135 (witness statement of Mladenovski); 3D1139 (Conclusion of the Government of Serbia relating to Mladenovski).

¹⁰ Motion, paras. 11–12, 20; 3D1136 (Conclusion of Government of Serbia, dated 27 December 2007); 3D1138 (Ministry of Defence notice regarding request of Ojdanic Defence, dated 4 January 2005). The Third Army report (P1725) is an admitted exhibit in the case.

¹¹ Pavković Objection to Joint (Ojdanić and Lukić) Request for Leave to Call Handwriting Expert Professor Zivojin Aleksić, Motion to Admit Additional Exhibits, and Motion to Amend Rule 65 *ter* Witness and Exhibit List (13 March 2008). The Response seeks leave to exceed the word limit set out in the Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7; Response, para. 3.

¹² Response, para. 6.

¹³ Response, paras. 7–20.

¹⁴ Response, para. 31; 3D1130 (The VJ Archive List, colour copy of 3D1108); 3D1131 (The Record Log Book of the Office of the Chief of the Supreme Command Staff, colour copy of 3D1109).

¹⁵ Response, paras. 22–31.

¹⁶ T. 17352–17356 (19 October 2007).

25 May 1999 report has been advanced by the Prosecution on prior occasions,¹⁸ and it is appropriate in these circumstances to allow the Ojdanić Defence to lead relevant evidence on the matter. The Chamber considers that the proposed testimonial evidence as to the authenticity of the 25 May 1999 report is potentially relevant to the issue. Furthermore, the Chamber considers that the documents that relate to the proposed evidence of Aleksić (3D1130, 3D1131, 3D1132, 3D1133, 3D1134, 3D1140, 3D1141) have a bearing on the issue of Ojdanić's receipt of the 25 May 1999 report. On that basis, the Chamber allows these documents to be added to the Ojdanić Defence 65 *ter* list.

7. Additionally, the Chamber considers the proposed evidence of Mladenovski, and the documents related thereto (3D1130, 3D1135, 3D1139), to be sufficiently related to the live issue (Ojdanić's receipt of the 25 May 1999 report) to fall within the qualification made by the Ojdanić Defence when closing its case. On that basis, the Chamber is prepared to allow Mladenovski and the related documents to be added to the Ojdanić Rule 65 *ter* list.

8. In relation to the documents concerning the entry of the 4 June 1999 report into the VJ logbook, the Chamber allows these documents to be added to the Ojdanić Rule 65 *ter* list.

9. On 18 March 2008, the Ojdanić and Lukić Defences filed a reply to the Response from the Pavković Defence.¹⁹ The Order on Procedure and Evidence of 11 July 2006 directs that the "request for leave to file a reply should not include the substance of the reply, which should await the decision of the Chamber upon whether to grant such leave."²⁰ The reply of 18 March does not accord with this direction, and therefore leave to file the reply is denied.

10. Accordingly, the Trial Chamber, pursuant to Rules 54, 89, and 94 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motion, in part, permits the Pavković Defence to exceed the word limitation, and ORDERS as follows:

- (a) Živojin Aleksić shall be added to the Ojdanić Defence's Rule 65 *ter* witness list and may be called as a witness in his defence.
- (b) Dušan Mladenovski shall be added to the Ojdanić Defence's Rule 65 *ter* witness list and may be called as a witness in his defence.

¹⁷ T. 17356 (19 October 2007).

¹⁸ See, for example, the Prosecution arguments on the Defence Rule 98 *bis* application, T. 12628–12631 (4 May 2007).

¹⁹ Ojdanić and Lukić Response to Pavković Objection to Joint (Ojdanić and Lukić) Request (18 March 2008).

- (c) The following documents shall be added to the Ojdanić Defence's Rule 65 *ter* exhibit list: 3D1130; 3D1131; 3D1132; 3D1133; 3D1134; 3D1135; 3D1136; 3D1138; 3D1139; 3D1140; and 3D1141.
- (d) The Parties shall file any objections to the expert report of Živojin Aleksić (3D1140) by 11 April 2008.
- (e) The Ojdanić and Lukić Defences shall not be granted leave to file a reply.

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

Judge Iain Bony
Presiding

Dated this third day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁰ Order on Procedure and Evidence, 11 July 2006, para. 11 (as modified by Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence, 16 August 2006).