



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: 2 June 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: 2 June 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON LAZAREVIĆ RENEWED MOTION 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 the “Defence Third Motion Requesting Admission of Exhibits from the Bar Table”, filed on 19 May 2008 (“Third Motion”), requesting the admission of various documents from the bar table, and the admission of the translations of these documents, and hereby issues this decision thereon.

1. In the Third Motion, the Lazarević Defence requests the admission of 76 documents from the bar table.¹ The Lazarević Defence had previously requested admission of these documents pursuant to Rule 89(C) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) in its “Defence Second Motion Requesting Admission of Exhibits from the Bar Table” (“Second Motion”), arguing that they are all reliable and relevant, and therefore have probative value.² It had also addressed each document, or group of documents, in some detail and outlined the issues with which they are concerned.³ On 21 February 2008, the Prosecution filed its “Prosecution’s Response to Lazarević’s Second Motion Requesting Admission of Documents from the Bar Table” (“Response”), in which it objected to any untranslated documents being admitted into evidence and reserved the right to oppose their admission when the translations were received. The Prosecution also objected to a number of other documents either because they had already been admitted into evidence or because they were duplicates of other exhibits.⁴

2. With the exception of 5D529, none of the 76 documents referred to above had been translated into the English language.⁵ Given the Chamber’s policy in relation to admission of untranslated documents,⁶ the Chamber did not find it appropriate at the time to admit into evidence the untranslated documents.⁷ 5D529 was not admitted because the Chamber required further information as to its relevance, probative value, and reliability.⁸

¹ Defence Third Motion Requesting Admission of Exhibits from the Bar Table, 19 May 2008 (“Third Motion”), para. 1.

² Defence Second Motion Requesting Admission of Exhibits from the Bar Table, 15 February 2008 (“Second Motion”), paras. 1–2.

³ Second Motion, paras. 7–172.

⁴ Response, paras. 3, 5.

⁵ Second Motion, pp. 33–39.

⁶ Order on Procedure and Evidence, 11 July 2006, para. 8. The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007. The lack of translations of these documents was also discussed at the hearing held on 18 October 2007. *See also* Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007, para. 1.

⁷ Decision on Lazarević Second Motion for Admission of Exhibits from the Bar Table, 2 April 2008 (“Decision”), para. 16(b).

⁸ Decision, para. 16(f).

3. In the Third Motion, the Lazarević Defence notifies the Chamber that the translations of the aforementioned documents into English are now available in eCourt.⁹ In addition, the Lazarević Defence provides further information as to the relevance, probative value, and reliability of 5D529.¹⁰ On 23 May 2008, the Prosecution indicated that it did not intend to respond to the Third Motion. The Trial Chamber now addresses the Third Motion, which is effectively a renewal of the Second Motion, and takes account of the submissions in relation to the relevance, probative value, and reliability set forth in the Second Motion.

4. Rule 89 of the Rules sets out the requirements for the admission of evidence, providing, in part, as follows:

- (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.

5. With respect to 5D529, the Chamber recalls its request for clarification of its relevance and probative value in an earlier decision.¹¹ The document originates from the 175th Infantry Brigade and pertains to the dissemination of excerpts of the criminal code of the FRY to subordinate units. Having received the Defence's clarification in the Third Motion,¹² the Chamber is now satisfied that this document has the requisite relevance, probative value, and reliability.

6. The remaining documents are combat reports or orders of the Supreme Command Staff, 3rd Army Command, Priština Corps Command, Priština Corps' various Brigades, or Military District and Department Commands, which were produced in the period relevant to the Indictment. Thus, the Chamber considers that the Lazarević Defence has established the relevance, probative value, and reliability of the following documents, which are all available in original and in English translation in eCourt:

- (a) Supreme Command Staff document: 5D321.
- (b) 3rd Army documents: 5D716, 5D717, 5D1075, 5D1409, 5D1441.

⁹ Third Motion, para. 6.

¹⁰ Third Motion, para. 7.

¹¹ Decision, para. 16(f).

¹² Third Motion, para. 7.

- (c) Priština Corps Command documents: 5D223, 5D224, 5D233, 5D718, 5D720.
- (d) Priština Military District Command Documents: 5D44, 5D719, 5D721, 5D722, 5D724, 5D982, 5D987, 5D990, 5D996, 5D1001, 5D1006, 5D1015, 5D1077.
- (e) Priština Defence Administration document: 5D310.
- (f) Peć Military Department document: 5D1078.
- (g) Kosovska Mitrovica Military Department Command documents: 5D976, 5D977, 5D1008.
- (h) 125th Motorised Brigade documents: 5D470, 5D694, 5D696, 5D702, 5D703, 5D704, 5D705, 5D710, 5D715, 5D746, 5D748, 5D750, 5D752, 5D772, 5D776, 5D777, 5D778, 5D779, 5D836, 5D1283.
- (i) 243rd Mechanised Brigade document: 5D672.
- (j) 252nd Armoured Brigade documents: 5D962, 5D969.
- (k) 549th Motorised Brigade document: 5D886.
- (l) 15th Armoured Brigade documents: 5D929, 5D1437, 5D1440.
- (m) 58th Light Infantry Brigade documents: 5D1111, 5D1113, 5D1115, 5D1119, 5D1120, 5D1122, 5D1123, 5D1125, 5D1128, 5D1130, 5D1134, 5D1135, 5D1136, 5D1140, 5D1279, 5D1281.
- (n) 202nd Logistics Base document: 5D1188.
- (o) 57th Border Battalion Command documents: 5D1212, 5D1232.

7. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, hereby GRANTS the Motion and ORDERS that the following documents and their translations shall be admitted into evidence: 5D44, 5D223, 5D224, 5D233, 5D310, 5D321, 5D470, 5D529, 5D672, 5D694, 5D696, 5D702, 5D703, 5D704, 5D705, 5D710, 5D715, 5D716, 5D717, 5D718, 5D719, 5D720, 5D721, 5D722, 5D724, 5D746, 5D748, 5D750, 5D752, 5D772, 5D776, 5D777, 5D778, 5D779, 5D836, 5D886, 5D929, 5D962, 5D969, 5D976, 5D977, 5D982, 5D987, 5D990, 5D996, 5D1001, 5D1006, 5D1008, 5D1015, 5D1075, 5D1077, 5D1078, 5D1111, 5D1113, 5D1115, 5D1119, 5D1120, 5D1122, 5D1123, 5D1125, 5D1128, 5D1130, 5D1134, 5D1135, 5D1136, 5D1140, 5D1188, 5D1212, 5D1232, 5D1279, 5D1281, 5D1283, 5D1409, 5D1437, 5D1440, and 5D1441.

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



Judge Iain Bonomy
Presiding

Dated this second day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]