



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: 11 June 2008

Original: English

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**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:** 11 June 2008

**PROSECUTOR**

v.

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

**PUBLIC**

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**DECISION ON LUKIĆ DEFENCE MOTIONS FOR  
ADMISSION OF DOCUMENTS FROM BAR TABLE**

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**Office of the Prosecutor**

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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 (1) the partially confidential “Sreten Lukic’s Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit for Filing with Confidential Annex A,” filed 7 May 2008 (“**Motion**”); (2) the “Corrigendum to Sreten Lukic’s Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit for Filing with Confidential Annex A,” filed 8 May 2008 (“**Corrigendum**”); (3) the partially confidential “Motion of the Defence of the Accused Sreten Lukic Relative to Exhibit 6D614 – Portions Used with Defence Witnesses (With Confidential Annex A),” filed 13 May 2008; (4) the partially confidential “Motion to Enlarge Time and to File Supplement to Original Motion of the Defence of the Accused Sreten Lukic Relative to Exhibit 6D614 – Portions Used with Defence Witnesses (With Confidential Annex A),” filed 20 May 2008; and (5) the partially confidential “Sreten Lukić’s Second Motion for Admission of Exhibits from the Bar Table (With Confidential Annex “A”) (“**Second Motion**”) (collectively “**Motions**”), and hereby renders its decision thereon.

## **I. Submissions and Procedural matters**

### *A. Motions and Responses*

1. On several occasions, the Trial Chamber, due to the large number of documents upon the Lukić Defence’s Rule 65 *ter* exhibit list, raised with the Lukić Defence the most ideal timing of its heralded motion for admission of documents from the bar table and encouraged the Lukić Defence to make filings throughout its case in stages, rather than waiting until the very end of the defence case.<sup>1</sup> Despite reassurances from the Lukić Defence that it would submit motions of this kind in stages,<sup>2</sup> the current Motion has been lodged, comprehensively listing all the documents the Lukić Defence would like admitted into evidence from the bar table.

2. In the Motions, the Lukić Defence requests that a large number of documents be admitted into evidence from the bar table and sets forth various arguments as to their relevance, probative value, and reliability. On 20 and 21 May 2008, the Pavković Defence and the Prosecution

<sup>1</sup> *E.g.*, T. 21840 (7 February 2008).

<sup>2</sup> *E.g.*, T. 23662 (4 March 2008).

(respectively) responded to the Motion, objecting to the admission of many of these documents.<sup>3</sup> On 20 May 2008, the Lazarević Defence joined the Pavković response.<sup>4</sup>

3. On 2 June 2008, the Chamber ordered that any responses to outstanding exhibit matters be filed by no later than 5 June 2008.<sup>5</sup> The Prosecution filed a response to the Second Motion on 3 June 2008.<sup>6</sup>

*B. Objections based upon non-inclusion in Rule 65 ter exhibit list*

4. No objections have been taken on grounds that documents were not included in the Rule 65 *ter* exhibit list, including to documents recently received by the Lukić Defence. As a result, the Chamber has not conducted its own independent cross-reference of the documents with the initial Rule 65 *ter* exhibit list<sup>7</sup> or the multiple amendments to the list,<sup>8</sup> and has assumed that any objections based upon this basis have been waived.

*C. Request to exceed word limit*

5. The Lukić Defence argues that it has been necessary to exceed the word limitation in the Motion, due to the large number of documents that it seeks to tender.<sup>9</sup> The Chamber considers that it is appropriate for the word limitation to be augmented, as similarly has been done for other motions of this kind by other parties in these proceedings.<sup>10</sup>

*D. Requests for enlargement of time*

6. In its “Decision on Lukić Defence (1) First, Second, Third, and Fourth Motions for Further Enlargement of Time in Relation to Motions for Admission of Documents from Bar Table and (2) Motion for Leave to File Replies,” issued 2 June 2008, the Chamber dealt with a number of

<sup>3</sup> Pavković Objection to “Sreten Lukic’s Motion for Admission of Documents from the Bar Table”, 20 May 2008 (“Pavković Response”); Prosecution Response to Sreten Lukić’s Motion for Admission of Documents from the Bar Table, 21 May 2008 (“Prosecution Response”). The Chamber notes that the Prosecution response may have been considered to be due on 20 May 2008; however, due to the piecemeal manner in which the Lukić Defence has litigated this matter, the Chamber will deem the Prosecution Response as having been filed on time. It would have even been open to the Prosecution to tie its response to the date upon which the Lukić Defence finally complied with the deadline set by the Chamber, which was 20 May 2008, 15 days after the initial deadline.

<sup>4</sup> Defence Motion: Joining Pavković Objection to “Sreten Lukic’s Motion for Admission of Documents from the Bar Table,” 20 May 2008. Throughout this decision, the Pavković arguments, which simply have been joined by Lazarević, will be designated as Pavković arguments.

<sup>5</sup> Order Setting Time Limit for Responses to Outstanding Exhibit Motions, 2 June 2008.

<sup>6</sup> Prosecution Response to Sreten Lukić’s Second Motion for Admission of Exhibits from the Bar Table, 3 June 2008.

<sup>7</sup> Confidential Sreten Lukić’s Defence Rule 65*ter* Submission – Annex B “Exhibit List”, 15 June 2007.

<sup>8</sup> E.g., T. 24719 (1 April 2008).

<sup>9</sup> Motion, paras. 1–5.

<sup>10</sup> Practice Direction on the Length of Briefs and Motions, Section 7.

procedural issues in relation to the Motions, including four requests for enlargement of time and for leave to file replies. On 10 June 2008, the Chamber denied a motion for reconsideration of this decision.<sup>11</sup>

## II. Applicable Law

7. Rule 89 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.<sup>12</sup>

8. The Appeals Chamber has held that “evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C).”<sup>13</sup> Once the requirements of the Rule are satisfied, the Chamber maintains discretionary power over the admission of the evidence.<sup>14</sup>

9. The Trial Chamber considers that reliability of a hearsay statement is a necessary prerequisite for probative value under Rule 89(C).<sup>15</sup> Subject to the jurisprudence of the Tribunal, hearsay is in general admissible under Rule 89(C). Moreover, the Appeals Chamber has held that

[i]t is well settled in the practice of the Tribunal that hearsay evidence is admissible. . . . Since such evidence is admitted to prove the truth of its contents, a Trial Chamber must

<sup>11</sup> Decision on Lukić Defence Motion for Reconsideration of Denial of Extension of Time and Leave to File Replies, 10 June 2008.

<sup>12</sup> See also Order on Procedure and Evidence, 11 July 2006, para. 4 (as modified by Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence, 16 August 2006); Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006; Decision on Prosecution Motion for Admission of Evidence in Connection with Philip Co, 23 March 2007; Decision on Prosecution’s Third Request for Admission of Documents from the Bar Table, 23 March 2007; Decision on Milutinović Request for Admission of Documents from Bar Table, 19 September 2007; Decision on Šainović Motion Requesting Admission of Documents from Bar Table, 4 September 2007; Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007; Decision on Pavković First Renewed Motion for Admission of Documents from Bar Table, 27 September 2007; Decision on Lazarević Motion for Admission of Documents from Bar Table, 16 January 2008.

<sup>13</sup> *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002, para. 35.

<sup>14</sup> See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Admission of Evidence, 13 July 2006, p. 5; *Prosecutor v. Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, para. 14.

<sup>15</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996, para. 15 (holding that “if evidence offered is unreliable, it certainly would not have probative value”). This statement in *Tadić* thus indicates that evidence having probative value is necessarily reliable.

be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose; or, . . . the probative value of a hearsay statement will depend upon the context and character of the evidence in question. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first-hand" or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence.<sup>16</sup>

10. Finally, the Chamber finds it appropriate to recall its prior observations in its "Decision on Prosecution Motion to Admit Documentary Evidence," issued 10 October 2006, in which the Chamber articulated its approach to documents tendered from the bar table:

18. Given the depth and breadth of this case, the Trial Chamber is generally sympathetic to parties presenting documents from the bar table. However, if that is to be the case, the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case....

19. Whatever the number of documents the [party] seeks to have admitted through its Motion, it must satisfy the requirements of the rules governing the admission of evidence in relation to each one. The following decision seeks to strike a proper balance between ensuring a fair trial and not over-burdening the parties in regard to the admission of evidence.

11. The Chamber will now apply the above legal principles to the documents tendered from the bar table by the Lukić Defence in the Motions.

### III. Discussion

12. The Chamber has taken all the arguments of the parties into account in assessing the admissibility of the documents tendered as evidence in the Motions. The documents will be dealt with individually or by category below, with reference in this decision to the submissions of the parties being made where necessary and appropriate. Where the Chamber does not make explicit reference to an argument of one of the parties in relation to a particular document, this does not mean that all the relevant submissions were not considered before the Chamber reached a decision on that document's admissibility.

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<sup>16</sup> *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision On Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15 (citing *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996, paras. 15–19 and Separate Opinion of Judge Stephen on the Defence Motion on Hearsay, pp. 2–3; *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with No Inquiry as to Its Reliability, 21 January 1998, paras. 10, 12) (footnotes omitted).

*A. Laws, regulations, and decrees*

13. The Lukić Defence requests the admission into evidence of the following documents, which it characterises as laws, regulations, and decrees: 6D1337, 6D1345, 6D1346, 6D1347, 6D1354, 6D1359, 6D1361, 6D1362, 6D1365, 6D1369, 6D1370, 6D1371, 1D789, 1D794, 6D1412, 6D1424, 6D1322, 6D1305. It is argued that some of these documents are rules and regulations governing the Ministry of the Interior of the Republic of Serbia (“MUP”) during the time relevant to the Indictment and are more current versions than ones tendered by the Prosecution. These documents, as stated by the Lukić Defence, relate to the evidence of expert witnesses Simonović and Jokić and will aid the Chamber in its understanding of the case.<sup>17</sup>

14. The Chamber notes that the following documents have already been admitted in its “Order Regarding Admission of Documents Referenced in Expert Report of Branislav Simonović (Exhibit 6D668),” issued 13 May 2008 (“Simonović Decision”): 6D1337, 6D1345, 6D1346, 6D1347, 6D1354, 6D1361, 6D1369, 6D1370, 6D1371, 6D1424, 6D1412. The Motion is therefore moot in relation to these documents.

15. The Prosecution objects to the admission of 6D1365 on grounds of authenticity and probative value, on the basis that it is dated 2002. This document was marked for identification in the Simonović Decision, pending translation. A translation has now been uploaded to eCourt. Although the Lukić Defence states that this is the official Gazette version of the Law on Labour Relations in State Organs, this appears in fact not to be the case. Moreover, no attempt is made to specifically relate this document to issues in the trial. The Chamber therefore denies its admission.

16. Exhibits 6D1322 and 6D1305 are untranslated, and the Chamber is therefore unable to assess their admissibility. The Chamber therefore denies their admission.

17. Exhibit 6D1359 is an excerpt of a decree from the Official Gazette of the Republic of Serbia and complements the expert report of Branislav Simonović. The Chamber finds this document to have the requisite relevance, probative value, and reliability for admission into evidence, and will therefore admit it.

18. The Prosecution argues that 6D1362 (Law on Public Order), 1D789 (Law on Legal Position of Religious Communities), and 1D794 (Law on Cultural Heritage) are not relevant and lack probative value to any contested issue in the case. The Lukić Defence does not specifically relate

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<sup>17</sup> Motion, paras. 8–12.

these documents to issues in the trial. The Chamber therefore denies admission to 6D1362 and 1D789, but will admit 1D794 on an exceptional basis.

*B. MUP documents relating to "terrorist" activities*

19. The Lukić Defence tenders 117 documents, offering general arguments in relation to their relevance, probative value, and reliability.<sup>18</sup> For example, the Lukić Defence states that some of the documents contradict the evidence of witnesses called by the Prosecution, but then offers no specifics as to who these witnesses are or which parts of their evidence are at issue.<sup>19</sup> Such submissions are generally insufficient in order to render a document admissible.

20. The Prosecution does not object to the following: 6D321, 6D350, 6D400, 6D403, 6D506, 6D507, 6D510, 6D511, 6D515, 6D594, 6D597, 6D600, and 6D620. The Prosecution does, however, object to the remainder on grounds that they are irrelevant and/or lacking in probative value because they relate to murder and kidnapping that are primarily attributed to unknown perpetrators and standing alone do not indicate a sufficient link to the KLA to justify their admission into evidence. The Prosecution continues on to argue that the first thirteen items on the list relate to matters prior to March 1998 and are also too remote in time to have probative value for the grounds urged. Finally, the Prosecution objects to any document described as a "statement" because to admit such a document would circumvent "Rule 92".<sup>20</sup>

21. In respect of the argument of the Prosecution that the statements in this section are inadmissible, except through Rule 92 *bis* or 92 *ter*, the Chamber recalls the following from its "Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams" ("Mitchell Decision") issued at the very beginning of the trial on 1 September 2006:

12. There are four categories of documents, governed by Rules 89 and 92 *bis*, which are relevant to the Chamber's consideration of the submissions of the parties:

- (1) statements given to parties for the purposes of litigation before the Tribunal;
- (2) summaries, authored by parties, of statements by potential witnesses;
- (3) statements given to non-parties; and
- (4) summaries or reports, authored by non-parties, of statements made by persons who are neither witnesses nor potential witnesses.

Each of these categories is discussed below.

<sup>18</sup> Motion, paras. 13–17.

<sup>19</sup> Motion, paras. 14(g).

<sup>20</sup> Prosecution Response, paras. 5–6.

13. Written statements given to parties by potential witnesses—that is, statements prepared for the purposes of proceedings before the Tribunal—are admissible only under Rule 92 *bis* or Rule 89(F) [now, Rule 92 *ter*]. Statements made by individuals unable to testify may be susceptible to admission under Rule 92 *bis* (C). Statements given to other entities, such as domestic law enforcement agencies, for use in other courts are not included within this category, but may be admissible under Rule 89(C).

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15. If a hearsay declarant gives a statement to a non-party, the statement would not fall under Rule 92 *bis* because the declarant was not a potential witness for the purposes of the Rule. The statement could conceivably be admitted into evidence through a witness under Rule 89(C), provided that the witness through whom the statement is tendered can give evidence on the stand showing sufficient indicia of reliability. This principle is a function of the Tribunal's acceptance of hearsay evidence in general, and a Trial Chamber would subsequently decide how much weight to accord such a statement.<sup>21</sup>

22. The statements fall into the third category and thus are admissible under Rule 89(C). The Chamber takes this opportunity to note that the above holding in the Mitchell Decision pertained to a situation wherein a document was tendered through a witness, rather than from the bar table. However, the third category applies to both manners of tendering documentary evidence. The availability of a witness through whom to tender the document is not determinative of its admissibility, but rather is a factor relevant to the Chamber's determination as to the indicia of reliability surrounding the hearsay statement.

23. The Chamber considers, in the exercise of its discretion, that it would not be appropriate to admit these documents from the bar table. Such statements should have been introduced through a witness who could have spoken to the circumstances under which they were taken in order for them to have the requisite indicia of reliability for admission into evidence. The following documents are therefore denied admission: 6D78, 6D413, 6D419, 6D420, 6D421, 6D422, 6D423, 6D424, 6D425, 6D426, 6D427, 6D429, 6D430, 6D431, 6D432, 6D434, 6D437, 6D438, 6D439, 6D440, 6D441, 6D442, 6D444, 6D450, 6D451, 6D462, 6D481, 6D517, 6D518, and 6D1592. Exhibit 6D102 seems not to be in eCourt and thus is also denied admission.

24. In relation to the Peć/Peja documents, the Chamber finds the following documents to have the requisite relevance, probative value, and reliability for admission into evidence: 6D1582, 6D1585, 6D1587, 6D1589, 6D1591, 6D1599, and 6D1600. However, the Chamber declines to admit the following, because the Lukić Defence has failed to state a specific reason for their relevance: 6D1561, 6D1562, 6D1563, 6D1565, 6D1566, 6D1568, 6D1569, 6D1570, 6D1571, 6D1572, 6D1573, 6D1574, 6D1575, 6D1578, 6D1595, 6D1597, and 6D1598.

<sup>21</sup> Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006 (footnotes omitted).



25. In relation to the Suva Reka/Suhareka and Srbica/Skenderaj documents, the Chamber finds the following documents to have the requisite relevance, probative value, and reliability for admission into evidence: 6D361, 6D398, 6D400, 6D401, 403, 409, and 6D1616.
26. In relation to the Urosevac/Ferizaj documents, the Chamber finds 6D457 and 6D476 to have the requisite relevance, probative value, and reliability for admission into evidence. The Chamber declines to admit the following: 6D415, 6D416, and 6D456.
27. In relation to the Kačanik/Kaçanik documents, the Chamber finds 6D433, 6D435, and 6D436 to have the requisite relevance, probative value, and reliability for admission into evidence.
28. In relation to the Jezerce Sector document, the Chamber declines to admit 6D482.
29. In relation to the Dečani/Decane documents, the Chamber declines to admit 6D487 and 6D488.
30. In relation to the Orahovac/Rahovec documents, the Chamber finds 6D378, 6D393, and 6D394 to have the requisite relevance, probative value, and reliability for admission into evidence.
31. With regard to documents that relate to the extent of KLA activities in other municipalities, the Chamber finds 6D534, 6D542, 6D546, 6D598, 6D599, 6D600, 6D620, 6D637, 6D649, 6D650, and 6D651 to have the requisite relevance, probative value, and reliability for admission into evidence. The Chamber declines to admit 6D505, 6D506, 6D507, 6D510, 6D511, 6D515, 6D594, 6D595, 6D596, 6D597, 6D603, 6D605, and 6D1124. In addition, exhibit 6D602 is not translated and is thus denied admission.
32. Exhibit 6D1602 was withdrawn from consideration in the Corrigendum and need not be considered by the Chamber.
33. The Lukic Defence includes a number of documents in this section without providing explicit justification as to why they should be admitted. Therefore, the Chamber declines to admit 6D203, 6D204, 6D205, 6D304, 6D321, 6D350, 6D373, 6D377, 6D386, 6D390, 6D392, 6D1583, and 6D1601.

*C. Documents relating to the OSCE-KVM*

34. The Lukić Defence requests that six documents relating to the OSCE-KVM be admitted.<sup>22</sup> The Prosecution objects to their admission due to their lack of relevance and probative value.<sup>23</sup>

35. Exhibit 6D114 purports to be an official note of a conversation between witnesses Richard Ciagliniski and Duško Adamović. No specific proffer is made in relation to it, including no explanation as to who generated the document and why the document was not put to either witness when he came to give evidence or to witness Dušan Lončar (who is also mentioned in the document). It therefore will not be admitted.

36. Exhibit 6D1617 is a report from the Kosovska Mitrovica SUP that a named individual saw a representative of the OSCE photographing and measuring a bridge on 11 March 1999. The Lukić Defence argues that this tends to show that the OSCE-KVM had ulterior motives for being in Kosovo. The Chamber will admit this document as relevant to the proceedings and decide what weight to ascribe to it in its final deliberations.

37. The Lukić Defence makes no attempt to relate 6D513 and 6D673 to issues in the trial; they will therefore not be admitted.

38. The Lukić Defence makes no explanation as to who generated 6D794 and why it was not put to witness Miroslav Mijatović (who figures prominently in the report) when he came to give evidence before the Chamber. It therefore will not be admitted from the bar table.

39. Exhibit 6D199 is a letter from Vlastimir Đorđević to the United States Embassy in Belgrade, reporting that the MUP was cooperating in the removal of mines and that the KLA were planting them. The Chamber cannot discern the relevance or probative value of this document and therefore will not admit it.

*D. Official responses from the National Council for Cooperation with ICTY*

40. Exhibit 6D1490 is a response to a request from the Lukić Defence for information, which states, "The Ministry of the Interior has also stated that it has no information available regarding

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<sup>22</sup> Motion, paras. 28–32.

<sup>23</sup> Prosecution Response, para. 7.

whether the accused Sreten LUKIĆ was a member of the Special Police Units”.<sup>24</sup> The Prosecution does not object.<sup>25</sup> The document will be admitted.

41. The Lukić Defence filed a Corrigendum regarding the originals of maps of anti-terrorist actions, withdrawing exhibit 6D1644 (Response from the National Council for Cooperation to Defence Request re Decisions and Actions to Crush and Destroy STS, dated 31 October 2007) from consideration in the Motion, along with exhibits 6D1602 and 6D296. It is also requested that paragraph 35 of the Motion be deleted. On 17 October 2007, the Chamber asked the Lukić Defence to endeavour to obtain originals of the maps from the Government of the Republic of Serbia, but this has not proved possible. After having raised this issue again with the Lukić Defence during the hearing on 16 May 2008<sup>26</sup> and based upon the circumstances, the Chamber notes the withdrawal of the exhibits.

42. Exhibit 6D1645 is a response from the Republic of Serbia Office of the National Council for Cooperation with the ICTY in regards to documentation relating to the presence of Arkan’s Men, Drina Wolves, or “Legenda” Karašik on the territory of Kosovo during the Indictment period. The Chamber will admit this document into evidence.

43. Exhibit 6D1647 is a letter from the Serbian Ministry of the Interior to the Lukić Defence stating that “the Ministry does not have information that Sreten LUKIĆ was a member of the Special Police Units (PJP)”. A translation of this document has been uploaded to eCourt, and it shall be admitted into evidence.

44. Exhibit 6D1531 contains information from the MUP regarding the activities of the Accused Sreten Lukić in relation to the refrigerator truck incident. The Prosecution objects that it is an attempt to circumvent “Rule 92”. Based upon the fact that the document purports to furnish official information from a governmental organ of the Republic of Serbia about Lukić’s involvement in the incident, the Chamber finds that it is appropriate for admission into evidence. What weight will be given to the document is a matter for final deliberations, in light of all the evidence.

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<sup>24</sup> Motion, para. 37.

<sup>25</sup> Prosecution Response, para. 8.

<sup>26</sup> T. 26355–26356 (16 May 2008).

*E. Documents relating to the PJP*

45. The Lukić Defence tenders 13 documents that it says are relevant and essential to a full understanding of the PJP.<sup>27</sup> The Prosecution objects to all these documents.<sup>28</sup>

46. Exhibit 6D443 is said to relate to the formation of the “124<sup>th</sup> Int. brigade of the PJP, which comprised all of the Kosovo-indigent PJP companies”. 6D281 is said to be a report on the training of members of the PJP from the Sombar SUP and shows that the PJP had its own separate command structure unconnected to the MUP Staff in Priština. Similar proffers are made in respect of 6D282 and 6D286. The Prosecution argues that 6D281 and 6D282 should not be admitted because they relate to a date prior to the establishment of the MUP Staff for the Suppression of Terrorism. Furthermore, the Prosecution points out that 6D286 lacks any connection to the MUP Staff in Priština and thus lack probative value. The Prosecution’s arguments in relation to 6D286 are simply the “flip-side” of those advanced by the Lukić Defence, *i.e.*, the document’s lack of connection to the MUP Staff in Priština is precisely the reason that the Lukić Defence seeks its admission. The Chamber finds all these documents appropriate for admission into evidence.

47. The Lukić Defence generally states that the following documents “relate to further evidencing the matters expressed previously in the case about the structure and engagement of the PJP”: 6D523, 6D525, 6D530, 6D1041, 6D1118, 6D1120, and 6D287. The Chamber considers that an insufficient attempt to relate the documents to issues in the trial has been made by the Lukić Defence in order to justify their admission into evidence. However, the Chamber’s independent review of 6D567 and 6D1121 has revealed that they are appropriate for admission into evidence.

*F. Documents relating to “local security”*

48. The Lukić Defence tenders 6D448, 6D458, 6D484, and 6D972 to show that non-Serbs were employed by the MUP in Đakovica/Gjakova and Kačanik/Kaçanik and thus not discriminated against by the Serbian authorities.<sup>29</sup> The Prosecution objects to these documents as lacking probative value.<sup>30</sup>

49. The Chamber finds the 6D458 does not tend to show any sort of cooperation between non-Serbs of the local security and the MUP and therefore declines to admit it into evidence. Exhibits

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<sup>27</sup> Motion, paras. 40–45.

<sup>28</sup> Prosecution Response, para. 9.

<sup>29</sup> Motion, paras. 46–50.

<sup>30</sup> Prosecution Response, para. 10.

6D448, 6D484, and 6D972 are generally relevant to the Indictment and therefore will be admitted into evidence.

*G. Documents relating to structure and functioning of Serbian MUP and its subordinate organs*

50. The Lukić Defence tenders 70 documents, but only discusses 10 of them, the rest being offered in order to “provide an overview of the security situation on the ground throughout Kosovo-Metohia [*sic*] during the relevant time period”.<sup>31</sup> The Prosecution does not object to the ten discussed documents, but does object to the rest.<sup>32</sup>

51. The Lukic Defence simply lists 60 documents in a table—6D499, 6D541, 6D549, 6D550, 6D557, 6D573, 6D576, 6D580, 6D583, 6D606, 6D613, 6D619, 6D625, 6D626, 6D627, 6D628, 6D630, 6D632, 6D634, 6D641, 6D660, 6D672, 6D760, 6D771, 6D781, 6D804, 6D816, 6D861, 6D889, 6D925, 6D927, 6D935, 6D942, 6D943, 6D947, 6D991, 6D993, 6D1125, 6D1126, 6D367, 6D834, 6D857, 6D858, 6D859, 6D869, 6D886, 6D946, 6D948, 6D1335, 6D1336, 6D300, 6D312, 6D313, 6D315, 6D320, 6D328, 6D330, 6D331, 6D339, and 6D362—and then provides one sentence of argumentation in relation to all of them together. This is generally not a satisfactory way of proceeding. The Chamber will admit the ten documents to which the Prosecution has not taken objection and for which the Lukić Defence has made an effort to demonstrate to the Chamber how they fit into the case, *i.e.*, 6D128, 6D141, 6D385, 6D396, 6D463, 6D466, 6D468, 6D470, 6D471, and 6D474.

52. The Pavković Defence raises objection to exhibit 6D771 (Information on the mass departure of Albanian families as the Djeneral Jankovic border crossing), 6D816 (SUP Prizren, PO Zur, Official note), and 6D861 (SUP Pec, Dispatch to the MUP Staff regarding the rape of Albanian woman and measures taken to inform Vj [*sic*] organs about the perpetrators [*sic*] of the crime) in that no representations as to the exhibits’ relevance is given. Furthermore, the Pavković Defence challenges their authenticity.<sup>33</sup> The Lukić Defence claims that all its documents have been provided as official copies from the appropriate Serbian authorities, were provided to them by the Prosecution under Rule 68, or are otherwise documents from the *Slobodan Milošević* proceedings. The Chamber finds that, in addition to the poor approach taken by the Lukić Defence in tendering these documents, these three documents specifically are not admissible due to legitimate authenticity concerns by the Pavković Defence. Exhibits 6D771, 6D816, and 6D861 do not bear sufficient marks of authenticity. Therefore, they will not be admitted from the bar table.

<sup>31</sup> Motion, paras. 51–59.

<sup>32</sup> Prosecution Response, para. 11.

<sup>33</sup> Pavković Response, para. 4(r).

53. Similarly, no relevance argument is proffered by the Lukić Defence with respect to exhibit 6D613 (SUP Kos Mitrovica, case No A-II-226, Izbica). The Pavković Defense raises an objection regarding the fact that only select pages of the exhibit are translated. As to the translated portions, a total of four pages in a 674-page document, it raises no objection.<sup>34</sup> As to the untranslated portions, the Chamber is unable to assess their admissibility and therefore denies to admit them from the bar table. The Chamber will therefore admit the four translated pages of the exhibit—pages 665, 666, 667, and 668—and deny the remainder of the document. Moreover, due to the large amount of untranslated material, the Chamber will order the Lukić Defence to re-upload to eCourt another version of the BCS original of the document, only with portions corresponding to those that have been admitted into evidence.

54. As to the remainder of the documents listed in this section—exhibits 6D499 (SUP Prizren, KU 73-99, A-V-221, dated 15 May 1999), 6D541 (SUP Djakovica, KU 129-99, dated 27 March 1999), 6D549 (SUP Djakovica, KU 149-99, dated 5 April 1999), 6D550 (SUP Djakovica, KU 148-99, dated 5 April 1999), 6D557 (SUP Djakovica, KU 145-99, dated 9 April 1999), 6D573 (OUP Vucitrn, Dispatch No 493-99, 31 May 1998), 6D576 (OUP Vucitrn, Dispatch No 469-99, 18 May 1999), 6D580 (SUP Pristina No. 191-98, 17 December 1998), 6D583 (OUP Vucitrn, Dispatch No. 457-99, dated 10 May 1999), 6D606 (SUP Prizren, case No. A - V - 186 Bela Crkva), 6D613 (SUP Kos Mitrovica, case No A-II-226, Izbica), 6D619 (SUP Pristina, KU 81-99), 6D625 (SUP Pristina KU 448-99, 15 April 1999), 6D626 (SUP Pristina PU 343-99, 22 April 1999), 6D627 (SUP Pristina, KU 193-99, 15 April 1999), 6D628 (SUP Pristina, Official note 04-3-99, 18 April 1999), 6D630 (SUP Pristina, Dispatch No. 03-299-99, 20 April 1999), 6D632 (SUP Pristina, KU 509-99, 24 April 1999), 6D634 (SUP Pristina, KU 368), 6D641 (OUP Vucitrn, KU 139-99, 1 April 1999), 6D660 (SUP Prizren, Suva Reka, KR 43-99), 6D672 (MUP RJB, Information about the knowledge regarding the migration of population from municipalities of Podujevo and Kosovska Mitrovica), 6D760 (Numerical strength of the police by unit in AP), 6D771 (Information on the mass departure of Albanian families as the Djeneral Jankovic border crossing), 6D781 (MUP, Note to USA Embassy in Belgrade), 6D804 (SUP Pristina, Dispatch to MUP Staff), 6D816 (SUP Prizren, PO Zur, Official note), 6D861 (SUP Pec, Dispatch to the MUP Staff regarding the rape of Albanian woman and measures taken to inform Vj [*sic*] organs about the perpetrators [*sic*] of the crime), 6D889 (SUP Zrenjanin, Denunciation against Mirko Kalanj for criminal act of robbery, dated 2 September 1998, and Judgment of Higher Discipline court of MUP, Belgrade on appeal of the accused Mirko Kalanj), 6D925 (SUP Pristina, Decision, Dragan Stojkovic), 6D927 (SUP Pristina, Decision, Boban Djordjevic), 6D935 (OUK Kacanik, Criminal Denunciation, Dragisa Kecic),

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<sup>34</sup> Pavković Response, para. 4(s).

6D942 (OUP Orahovac, Case file regarding the criminal act of murder of Durgati Ismail), 6D943 (OUP Orahovac, Case file regarding the criminal act of murder, criminal denunciation against Boban Petkovic), 6D947 (SUP Kosovska Mitrovica, Criminal Denunciation, Dragisa Djusic), 6D991 (Case file), 6D993 (Case file for criminal act of murder in village of Runjevo, Kacanik), 6D1125 (Case file, Criminal act of murder against Tara Mihedin and Tara Minaver from Orahovac), 6D1126 (Case file "Bela Crkva" A/V-176, criminal act of Murder against Lushi Ramadani from village Rodost, Orahovac), 6D367 (Official note dated 6 April 1999, Lipljan Police Station), 6D834 (Case file G/III-49), 6D857 (SUP OKP Pec, Case file), 6D858 (OUP Orahovac, Official note), 6D859 (OUP Orahovac, Official note), 6D869 (SUP Urosevac, Dispatch), 6D886 (SUP Prizren, Criminal Denunciation), 6D946 (SUP OKP Kosovska Mitrovica, Criminal Denunciation), 6D948 (SUP OKP Pristina, Criminal Denunciation, Nebojsa Rajkovic), 6D1336 (Public Security dispatch no. 2323 re: Operation VALUTA), 6D1335 (Letter from NIS Jugopetrol to chief of Mitrovica SUP seeking release form police duty), 6D300 (SUP Kos Mitrovica, A-II-77 KTU 218-98, dated 6 April 1999), 6D312 (SUP Pec A III - 133, KU 213-99, 15 May 1999), 6D313 (SUP Pec KU 164-99, 5 April 1999), 6D315 (SUP Pec KU, 6 April 1999), 6D320 (SUP Pec KU, 10 April 1999), 6D328 (SUP Pec, A III 159, KU 166-99, dated 17 May 1999), 6D330 (SUP Pec KU 467-99, 17 May 1999), 6D331 (SUP Pec, A III, 162 KU 480-99, 4 June 1999), 6D339 (SUP Kos Mitrovica, A II - 54, KRI 36-99, 25 March 1999), and 6D362 (SUP Pristina, Request for consensual termination of employment regarding Afrima Haliti, 4 February 1999)—they will not be admitted.

#### *H. Documents relating to NATO bombing*

55. The Lukić Defence tenders 19 documents from the bar table that purportedly show that Kosovo Albanians left their homes, not due to the actions of the forces of the FRY and Serbia, but rather to escape the NATO bombing. These documents, as argued by the Lukić Defence, therefore refute the Prosecution allegations that there was a joint criminal enterprise whose aim was to expel the Kosovo Albanians and that the Accused Sreten Lukić could have had the relevant state of mind for the crimes with which he is charged.<sup>35</sup>

56. The Prosecution objects to these documents because all but one relate to bombings on or after 4 April 1999, a time by which the Prosecution says most of the alleged deportees had been expelled from Kosovo. Exhibits 6D172 through 6D177 are objected to because they circumvent the requirements of "Rule 92" for witness statements. Exhibit 6D543 refers to a bombing on

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<sup>35</sup> Motion, paras. 60–67.

31 March 1999, which the Prosecution states was a legitimate (not civilian) military target and thus not relevant to the case of the Lukić Defence.<sup>36</sup>

57. For the reasons stated above, the Chamber agrees with the Prosecution that it is not appropriate to admit 6D172, 6D173, 6D174, 6D175, and 6D177 from the bar table, seeing as they are statements taken from persons whose statements could have been presented under either Rule 92 *bis* or Rule 92 *ter*. In respect of the remainder of the documents, the Chamber has, in general, been anxious to have as a full a picture as possible of events on the ground, including the NATO bombing campaign. With this in mind, the Chamber will grant admission to 6D392, 6D540, 6D543, 6D552, 6D561, 6D574, 6D622, 6D629, 6D998, 6D1134, 6D296, 6D299, 6D317, and 6D323.

#### *I. Documents relating to daily overviews of security events*

58. There are 182 daily reports entitled “Overview of Security Events”, which purport to be reports from the SUPS to the MUP Staff in Priština. The Lukić Defence offers them to show the level of the Accused’s knowledge of what was happening on the ground in Kosovo, more specifically to show that the Accused was not on notice of the nature and scope of crimes that are alleged to have been perpetrated. As stated in the Motion, “[a]ll such documents within the possession of the defense are being tendered, even though not all are translated, as the defense has nothing to hide. The Chamber and OTP are free to make a selection and instruct CLSS to prioritize translations as they see fit.”<sup>37</sup>

59. The Prosecution expresses its concern that the vast majority of the documents has not yet been translated and declines the Lukić Defence’s suggestion that it make a selection of the documents for translation by the Conference and Language Services Section (“CLSS”).<sup>38</sup>

60. At a meeting between the parties and a representative of the Chamber on 23 February 2007, the Lukić Defence raised the possibility of tendering a representative sample of this collection of documents. On 27 February 2007, the Chamber encouraged the parties to embark upon this process, suggesting that it would be appropriate for collections of untranslated documents to be tendered provided that (a) the parties met in advance of the tendering of the documents to determine whether agreement could be reached upon the documents to be tendered; (b) enough of the documents constituting the collection were translated in order to make the sample

<sup>36</sup> Prosecution Response, para. 12.

<sup>37</sup> Motion, paras. 68–71.

<sup>38</sup> Prosecution Response, para. 13.



representative of the entire collection; and (c) the witness through whom their admission was sought could explain how the examples were selected. The Chamber also noted that this situation would constitute an exception to the "Order on Procedure and Evidence", to which the parties should still adhere, in the absence of any other such explicitly granted exceptions. On the same day, the Prosecution expressed its willingness to meet with the Lukić Defence in relation to this matter, the Lukić Defence asked the Prosecution to select a time period and locations for which reports would be relevant from its perspective, and the Prosecution responded that it was not able to do so based upon its lack of understanding of the documents and points for which the Lukić Defence would seek to tender them.

61. The Chamber followed-up with the Lukić Defence on 17 March 2007 to reiterate its support of this course of action for tendering a representative sample of the documents. However, it appears as though no further progress was made upon this matter beyond this point. At a further meeting on 7 December 2007 between the Lukić Defence, CLSS, and a representative of the Chamber, the Lukić Defence was again urged to utilise the three-point procedure outlined above in respect of this collection of documents.

62. The Lukić Defence now, in the Motion, tasks the Prosecution and the Chamber with selecting which of the documents should be submitted for translation. Moreover, the Lukić Defence does not even identify which are translated and which are not, and instead leaves this commodious task to the parties and the Chamber. This is not an appropriate way to proceed at this stage of the trial. Nevertheless, based upon the submissions of the Lukić Defence as to the content of the documents and the representation of the Prosecution that they seem relevant, the Chamber has taken it upon itself to review the documents and identify which are translated, and will admit those so identified. However, the Chamber notes that this has been done in order to safeguard the fair trial rights of the Accused, and the Chamber considers that the Lukić Defence has abused the generosity of the Chamber in this matter.

63. Only 48 of the documents are available in English translation in eCourt. The remaining 134 documents are not available in translation. The Chamber notes that translations of 6D1230 and 6D1232 are available in eCourt but are not linked to the original BCS version of the documents. The Chamber therefore requests that the Lukić Defence ensure that the translated versions are linked to the original documents in eCourt. The translated documents are MUP summaries of security-related events in Kosovo between July 1998 and June 1999. The Chamber is satisfied that they have the requisite relevance, probative value, and reliability.

64. Accordingly, the Trial Chamber finds that the following documents should be admitted into evidence: 6D1151, 6D1152, 6D1153, 6D1154, 6D1155, 6D1156, 6D1157, 6D1158, 6D1207, 6D1208, 6D1221, 6D1222, 6D1223, 6D1224, 6D1225, 6D1226, 6D1227, 6D1228, 6D1229, 6D1230, 6D1231, 6D1232, 6D1233, 6D1234, 6D1235, 6D1236, 6D1237, 6D1238, 6D1239, 6D1240, 6D1241, 6D1242, 6D1243, 6D1244, 6D1245, 6D1246, 6D1248, 6D1249, 6D1250, 6D1251, 6D1252, 6D1254, 6D1255, 6D1256, 6D1257, 6D1259, 6D1260, and 6D1261.

65. The Trial Chamber finds that the following documents should not be admitted due to lack of translation: 6D1159, 6D1160, 6D1161, 6D1162, 6D1163, 6D1164, 6D1165, 6D1166, 6D1167, 6D1168, 6D1169, 6D1170, 6D1171, 6D1172, 6D1173, 6D1174, 6D1175, 6D1176, 6D1177, 6D1178, 6D1179, 6D1180, 6D1181, 6D1182, 6D1183, 6D1184, 6D1185, 6D1186, 6D1187, 6D1188, 6D1189, 6D1190, 6D1192, 6D1193, 6D1194, 6D1195, 6D1196, 6D1197, 6D1198, 6D1199, 6D1200, 6D1201, 6D1202, 6D1203, 6D1204, 6D1205, 6D1206, 6D1209, 6D1210, 6D1211, 6D1212, 6D1213, 6D1214, 6D1215, 6D1216, 6D1217, 6D1218, 6D1219, 6D1220, 6D1247, 6D1253, 6D1258, 6D1262, 6D1263, 6D1264, 6D1265, 6D1266, 6D1267, 6D1268, 6D1269, 6D1270, 6D1271, 6D1272, 6D1273, 6D1274, 6D1275, 6D1276, 6D1277, 6D1278, 6D1279, 6D1280, 6D1281, 6D1282, 6D1283, 6D1284, 6D1285, 6D1286, 6D1287, 6D1288, 6D1289, 6D1290, 6D1291, 6D1292, 6D1293, 6D1294, 6D1295, 6D1296, 6D1297, 6D1298, 6D1299, 6D1300, 6D1301, 6D1302, 6D1303, 6D1375, 6D1376, 6D1377, 6D1378, 6D1379, 6D1380, 6D1381, 6D1382, 6D1383, 6D1384, 6D1385, 6D1386, 6D1387, 6D1388, 6D1389, 6D1390, 6D1391, 6D1392, 6D1393, 6D1394, 6D1395, 6D1396, 6D1397, 6D1398, 6D1399, 6D1400, 6D1401, 6D1402, 6D1403, and 6D1404.

#### *J. Military documentation*

66. The Lukić Defence tenders a variety of documents under this category, totalling 36 in all.<sup>39</sup> For some of the documents, a measure of explanation for how they fit into the case is proffered, but in a truncated manner. The Pavković Defence sets forth its objections to these documents being admitted into evidence;<sup>40</sup> the Prosecution joins these objections and sets forth additional ones of its own.<sup>41</sup>

67. For four of the documents, no specific argument is made, and they will therefore not be admitted. They are 6D735 (37 mtbr Command, Regular combat report), 6D1478 (PrK Command,

<sup>39</sup> The Lukić Defence has tendered 38 documents, two of which are duplicated (6D753 and 6D724), leaving only 36 documents for the Chamber to consider.

<sup>40</sup> Pavković Response, paras. 4(a)–(q).

<sup>41</sup> Prosecution Response, para. 14.

Combat report), 6D1129 (Supreme Staff of VJ, Decision issued by General Pavkovic), and 6D1643 (Map - Ratis).

68. Exhibit 6D1026 (PrK Command, Plan for urgent engagement of forces on control of territory [*sic*]) is untranslated. The corresponding document in eCourt seems to be a different document. Thus, the Chamber is unable to assess its admissibility and will therefore deny its admission.

69. Exhibit 6D1528 (MUP Staff, Refugees) regarding the measures to be undertaken by the 3<sup>rd</sup> Army via the MUP staff is offered by the Lukić Defence to demonstrate the nature and status of the communication and cooperation between the MUP and the VJ. Neither the Prosecution nor the Pavković Defence objects. The Chamber will admit this document.

70. The Prosecution objects to Exhibit 6D724 (3 Army Command - Order) in that it has already been admitted as Exhibit 4D203. The Chamber agrees with the Prosecution and will therefore not admit this document.

71. Exhibit 6D1468 (PrK Command, Combat report) is argued by the Lukić Defence to demonstrate the presence of hostile units and enemy forces in the Đakovica/Gjakova municipality, and is also said to corroborate the testimony of witness Radovan Zlatković. Neither the Prosecution nor the Pavković Defence objects. This document will be admitted.

72. Exhibits 6D1469 (58 lpbr Command, Order to crush and destroy STS in Bajgora-Bare region) and 6D1474 (37 mtbr Command, Order for establishing of control checkpoints) are argued by the Lukić Defence to demonstrate the interrelationship between the MUP and the VJ. Neither the Prosecution nor the Pavković Defence objects. These documents will be admitted.

73. Exhibits 6D751 (7 pbr Command, Order from Commander of 7 pbr, to crush and destroy the rests [*sic*] of STS, and establish control of territory [*sic*] in Izbica region) and 6D730 (Military district Command, Regular combat report) are argued by the Lukić Defence to establish "facts pertinent to the evidence led during the trial". That is the extent of the detail offered for how these documents relate to issues in these proceedings. Therefore, despite the fact that neither the Prosecution nor the Pavković Defence objects, these documents will not be admitted due to the failure of the Lukić Defence to explain how they relate to issues in the trial.

74. Exhibits 6D697 (PrK Command - Decision to destroy DT forces in Liponica region), 6D699 (PrK Command - Order to support MUP forces in destroying of DTS in region of Cicavica), 6D701 (PrK Command - Order to support MUP forces in order to destroy DTS in region of Jezerce), and 6D752 (15 okbr Command, Order to support MUP forces to crush DTS in region of villages Gornji

Ratis and Donji Ratis) are argued by the Lukić Defence to be positive evidence showing that no criminal orders were issued. The Lukić Defence also claims that this evidence demonstrates the situation on the ground. Neither the Prosecution nor the Pavković Defence objects. The Chamber will admit these documents.

75. Exhibits 6D705 (PrK Command - Order to crush [sic] and destroy STS in region Ogoste), 6D749 (3 Army Command, Order to engage MUP and VJ forces on battle control of territory [sic]), 6D136 (Order to break up and destroy STS in the Zig sector), and 6D137 (Map with decision [sic] to break up and destroy STS in Prekaze sector) are tendered by the Lukić Defence to show the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. Neither the Prosecution nor the Pavković Defence objects. The Chamber will admit these documents.

*Objections pursuant to Rule 90(H)(ii)*

76. The Pavković Defence has objected to several documents on the basis that to admit them would be in contravention of 90(H)(ii), which provides as follows:

In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness.

The Pavković Defence argues that this provision should bar the Lukić Defence from tendering a document from the bar table that it could have put to a witness during cross-examination.

77. The Chamber is of the view that Rule 90(H)(ii) does not create a *per se* bar to admission of documents from the bar table that could have been put to a witness during his or her examination. Where a document has been objected to specifically on this basis, the Chamber will exercise its discretion, on a case-by-case basis, regarding its admission: for a document that was authored by a witness on the stand, the burden of demonstrating the document's relevance, probative value, and reliability will be higher than for a document that simply *could* have been put to a non-author witness. The Chamber will also apply a high threshold of admissibility when a document is offered in this manner to impeach the credibility of a witness.<sup>42</sup> Parties may make any argument as to the weight the Chamber should ascribe to the evidence in their final trial briefs and closing arguments.

<sup>42</sup> See *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-AR73.7, Decision on the Interlocutory Appeal Against a Decision of the Trial Chamber, As of Right, 13 June 2002, pp. 3–4; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Order Setting Forth Guidelines for the Procedure Under Rule 90(H)(ii), 6 March 2007, paras. 2–3; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on “Motion to Declare Rule 90(H)(ii) Void to the Extent It is in

78. Exhibit 6D707 (Command of 549 brigade - Order on engaging of forces to destroy STS in wider region of Retimlje) is said to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. The Pavković Defence objects on the basis that this document fails to show that the VJ planned any such actions on its own and points out that this document was written by Božidar Delić and should have been shown to him when he appeared before the Chamber to give evidence. In this instance, the Chamber agrees with the Pavković Defence and finds that the Lukić Defence should have tendered this document earlier, at a point when Delić would have been able to give evidence relevant to the case pursuant to Rule 90(H)(ii). On this basis, the Chamber will not admit this document.

79. Exhibit 6D719 (PrK Command, Order for assanation of battlefield [*sic*]) was authored by Lazarević but was never presented to him when he testified in this case. The Lukić Defence presents this document as being pertinent to the evidence led during the trial. The Pavković Defence objects on the basis that it is being offered to impeach Lazarević. The Chamber will not admit this document.

80. Exhibit 6D733 (37 mtbr Command, Regular combat report to PrK Command) is offered by the Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. This document is authored by Ljubiša Diković and, as such, should have been tendered when he could have spoken to how it may have fit into the case. The Chamber will not admit this document.

81. Exhibit 6D738 (PrK Command, Order for engagement of Mup forces in zone of PrK) was authored by Lazarević but never presented to him when he testified. This exhibit is offered by the Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. The Pavković Defence argues that this document is misleading as it references exhibit 4D299 regarding the MUP's resubordination to the VJ; the Pavković Defence states that the orders under exhibit 4D299 (3rd Army Order re MUP Resubordination to PrK) did not take place due to the MUP's refusal to be resubordinated. The Chamber finds that, although this document was not put to Lazarević, it should be admitted as relevant and having probative value. The Chamber will decide upon what weight to give 6D738 in light of all the evidence.

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Violation of Article 21 of the Statute of the International Tribunal" by the Accused Radoslav Brđanin and on "Rule 90(H)(ii) Submissions" by the Accused Momir Talić, 22 March 2002, paras. 13–14, 17, 20; *Prosecutor v. Orić*, Case No. IT-03-68-T, Decision on Partly Confidential Defence Motion Regarding the Consequences of a Party Failing to Put Its Case to Witnesses Pursuant to Rule 90(H)(ii), 17 January 2006, pp. 1–2.

82. Exhibit 6D739 (PrK Command, Order) is a partially translated document, authored by Lazarević. The Pavković Defence objects to this document to the extent that it is being offered to impeach Lazarević. Lazarević was not confronted with this document, and it will not be admitted from the bar table.

83. Exhibit 6D740 (PrK Command, Order and plan of engagement of forces in combat control of territory [*sic*]), as authored by Lazarević, is offered by the Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. The Pavković Defence objects because this document was not offered during Lazarević's testimony. Further, the Pavković Defence points out that this document is dated 2 June 1999, which is said to be after the period relevant to the alleged crimes charged in the Indictment. The Chamber will not admit this document.

84. Exhibit 6D748 (125 mtbr Command, Regular combat report) is said by the Pavković Defence to be offered to impeach witness Dragan Živanović, who authored the document. The Chamber considers that the Lukić Defence should have confronted the witness with this document when he was on the stand and that it would not serve the interests of justice to admit this document without allowing Živanović to address it. This document will not be admitted.

85. Exhibit 6D753 (58 lpbr Command, Plan of engagement of 58 lpbr on battle control of territory [*sic*] and securing the communications), authored by witness Ljubomir Savić, is offered by Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. However, the Pavković Defence objects on the basis that this document was not offered during Savić's testimony. Further, the Pavković Defence points out that this document is dated 3 June 1999, which is said to be after the period relevant to the Indictment. The Chamber will not admit this document because of the Lukić Defence's failure to tender this document at a time when Savić could have spoken to it.

86. Exhibits 6D1028 (PrK Command, Order for engagement of VJ and MUP forces on control of territory) and 6D1092 (PrK Command, Order for engagement of VJ and MUP forces in battle control of territory [*sic*]) seem to be nearly identical in the English versions of the documents. Exhibit 6D1092 contains a map, whereas exhibit 6D1028 does not. Admitting one of the two documents is sufficient, and exhibit 6D1028 will therefore not be admitted. The Pavković Defence submits that Lazarević, who authored exhibit 6D1092, should have been confronted with this document during his testimony. Exhibit 6D1092 is offered by the Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. The Chamber is sympathetic to the Pavković Defence's 90(H)(ii) objection;

however, this document is an order from Lazarević to engage and control multiple MUP forces and thus is of potentially high relevance in this trial. The Chamber therefore will exercise its discretion and will, in this instance, admit 6D1092 from the bar table and will determine its weight in light of all the evidence.

87. Exhibit 6D1133 (Command of 549 Brigade, Daily combat report) is tendered by the Lukić Defence to impeach witness Božidar Delić. The Chamber will not allow its admission from the bar table as Delić was not confronted with this document.

88. Exhibit 6D1466 (243 mbr Command, Regular combat report) is argued by the Lukić Defence to demonstrate the interrelationship between the MUP and the VJ. The Pavković Defence objects on the basis that Krsman Jelić authored this document, but was not asked to testify about it when he was a witness. The Chamber has reviewed the situation and has determined that there was a not insignificant amount of discussion with witness Jelić about 6D1466 during his testimony, as under IC143.<sup>43</sup> Exhibit IC143 will therefore be admitted into evidence, along with its translation, as 6D1466.

89. Exhibit 6D710 (PrK Command - Order to crush and destroy STS in region of Lipovica) is offered by the Lukić Defence to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions. The Pavković Defence objects on the basis that this document should have been shown to Lazarević during his testimony. Despite the fact that Lazarević authored this document, the Chamber, having reviewed it, will exercise its discretion to admit it, due to its relevance and probative value.

90. In a similar fashion, exhibit 6D1123 (125 Command, Order for stabilisation measures) is said to demonstrate the manner of cooperation between the VJ and the MUP, including the Army's planning of anti-terrorist actions, as authored by Dragan Živanović. The Chamber notes that, although Živanović may have spoken broadly about the MUP, he was not given the opportunity to speak to this document in particular. However, the Chamber will admit this document based upon its relevance and probative value.

91. The Pavković Defence objects to exhibit 6D1467 (PrK Command, Military department, Official note) on the grounds that it is not clear enough to demonstrate what the Lukić Defence claims is the interrelationship between the MUP and the VJ. The Pavković Defence submits that

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<sup>43</sup> T. 18991–18999 (26 November 2007); *see also* Sreten Lukić's Request for Admission of Document 6D 1466 (IC 143), 29 May 2008.

the author, Stevan Đurović, should have been asked to testify on this matter in order to clarify.<sup>44</sup> The Chamber is of the view that the Lukić Defence has not adequately demonstrated how this document fits into the trial for it to be admitted into evidence.

92. Exhibit 6D1486 (Operational logbook [*sic*]) is a document that partially translates a chart, chronologically listing the operations in Kosovo. The Prosecution objects to this document on the basis that its source is unknown. The Chamber finds that this document would warrant a full translation. Therefore, the Chamber will order CLSS to prepare a full translation of the document, after which the Chamber will consider its admission.

#### *K. Miscellaneous documents*

93. Twenty documents are tendered as “miscellaneous” documents, including two in the confidential annex attached to the Motion.<sup>45</sup> The Prosecution objects to their admission.<sup>46</sup>

94. The arguments for admission of 6D1109, 6D1111, 6D1112, 6D1115, 6D1116, and 6D1117 consist solely of the statement that these “are all documents that speak for themselves and provide relevant material for the Trial Chamber”. The Prosecution argues that they are from the MUP website showing photos and personal information on MUP personnel killed during the conflict. There is no English translation and no reference to the supporting materials behind these postings. The Prosecution also opposes their admission as irrelevant and lacking in probative value. The Chamber agrees with the Prosecution that these documents are inappropriate for admission into evidence.

95. Exhibit 6D1646 is not translated. The Prosecution states that the BCS has punctuation marks instead of diacritical marks, thus raising an issue regarding authenticity of this document. The Chamber will not admit this document.

96. Exhibit 6D77 seems to be an order issued by the KLA about activities in the Pastrik Operational Zone. The Lukić Defence says that it shows KLA presence in villages central to the Indictment. The Prosecution argues that the document is typed in Cyrillic with no signature and thus it is of doubtful authenticity. The Chamber is of the view that the document is relevant and has the requisite probative value and reliability for admission into evidence, but will decide what weight to ascribe to it in its final deliberations.

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<sup>44</sup> Pavković Response, para. 4(c).

<sup>45</sup> Motion, paras. 81–90, Annex A.

<sup>46</sup> Prosecution Response, para. 15.



97. Exhibits 6D1323, 6D1457, 6D1648, and 6D1649 are not translated, and the Chamber is therefore unable to assess their admissibility. The Chamber therefore denies their admission into evidence.

98. Exhibit 6D611 is the Military Technical Agreement in Kumanovo on 9 June 1999 relating to the withdrawal of FRY and Serb forces from Kosovo, following the NATO bombing campaign. The Prosecution states that the document is not relevant. The Chamber disagrees and finds this document to be relevant to the manner in which the forces of the FRY and Serbia withdrew from Kosovo following the NATO bombing.

99. Exhibits 5D1235, 5D1236, and 5D1237 are judgements of German courts upon applications by Kosovo Albanians for refugee status. The Prosecution states that they are not relevant. The Chamber has already rejected admission of these documents as unnecessary, during the evidence of witness Petar Dujković on 28 February 2008<sup>47</sup> and declines to admit them in the manner proposed by the Lukić Defence.

100. Exhibit 6D135 is said to establish that the PJP and the OPG are the same thing and that they existed since the 1980s. The Prosecution argues that this document lacks authenticity, is only an excerpt, and standing alone lacks probative value. The Chamber is of the view that this document would have been better tendered through a witness who could have spoken to its relevance and provenance. The Chamber will order the Lukić Defence to obtain a full CLSS translation of the document and re-tender it with a more adequate explanation of whence it came and how it relates to issues in the trial, after which the Chamber will decide upon its admission.

101. The Chamber notes the reasons set forth in confidential annex to the Motion for admission of 6D179, and has reviewed the relevant portions of the transcript relating to the issue to which this document related. (Specifics are not given herein in order to protect the identity of the witness.) The Prosecution has not objected to the document. However, the document seems to be macaronic and incomplete in eCourt and has only been translated in part. The Chamber will therefore order the Lukić Defence to obtain a better copy of 6D179 and re-tender it with a full CLSS translation, after which the Chamber will decide upon its admission. In the event that the document is admitted, the Chamber notes that it should probably be under seal. The Lukić Defence should address this issue in its subsequent filing on this matter.

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<sup>47</sup> T. 23389–23392 (28 February 2008).

*L. Maps of anti-terrorist actions conducted by the army and police*

102. The Lukić Defence tenders from the bar table seven maps that it says are relevant to anti-terrorist actions planned by the army and conducted by both the army and the police.<sup>48</sup> The Prosecution avers that the maps should have been tendered through a witness in order to have the requisite probative value and reliability for admission into evidence.<sup>49</sup>

103. The Lukić Defence makes no attempt to describe the locations, dates, or other details of the actions to which the maps purport to relate, and no explanation is given for why they could not be tendered through a witness during the Defence case. The Chamber therefore is of the view that the Lukić Defence has not demonstrated how the maps relate to an issue in the trial and declines to admit into evidence 6D1622, 6D1623, 6D1624, and 6D1625.

104. Exhibits 6D1618, 6D1620, and 6D1621 were introduced through witness Milan Đaković and are already admitted as exhibits. The Motion is therefore moot in relation to these documents.

*M. Cables from the United States of America – Rule 70 material*

105. In the Motion, the Lukić Defence offers as evidence five cables provided by the United States of America pursuant to Rule 70, and also indicates that it is awaiting another four documents.<sup>50</sup> The Prosecution contends that the documents lack probative value.<sup>51</sup>

106. Exhibit 6D1635 is a US-KDOM report from February 1999 about the KLA taking advantage of the October cease fire and preparing for the anticipated spring offensive by the forces of the FRY and Serbia. The document gives a fairly detailed description of the structure of the KLA (as well as KLA personnel) and reports that the 2 February 1999 meeting of the General Staff of the KLA, which decided in favour of KLA participation at Rambouillet, was the first time the General Staff had assembled together in the same place. The Chamber will admit it into evidence.

107. Exhibit 6D1637 is a US-KDOM report from April 1999 about KLA engagements, flow of people into Albania, and provision of humanitarian assistance. The Chamber will admit it into evidence.

108. Exhibit 6D1638 is a US-KDOM report from April 1999 about the flow of weapons from Albania to the KLA; the flow of people into Albania; engagements between the KLA and the VJ in

<sup>48</sup> Motion, paras. 91–93.

<sup>49</sup> Prosecution Response, para. 16.

<sup>50</sup> Motion, paras. 94–96.

<sup>51</sup> Prosecution Response, para. 17.

Đakovica/Gjakova, Istok/Istog, Peć/Peja, and Kačanik/Kaçanik; and the NATO bombing. The Chamber will admit it into evidence.

109. Exhibit 6D1639 is a US-KDOM report from April 1999 about the political and military developments in Kosovo, including fighting between the VJ and KLA in Đakovica/Gjakova and the humanitarian situation in Priština/Prishtinë. The document also includes brief information about NATO bombardments of Uroševac/Ferizaj, Kosovska Mitrovica/Mitrovica, and Kotlovac. The Chamber will admit it into evidence.

110. Exhibit 6D1640 is a US-KDOM report from April 1999 about engagements between the VJ and the KLA, as well as the KLA's assessment of "the effectiveness of NATO airstrikes". The documents also includes a report of the discovery on 24 April 1999 of a massacre of 71 Kosovo Albanians in Podujevo. The Chamber will admit this document into evidence.

111. In the Second Motion, the Lukić Defence tenders four more cables from the United States. The Prosecution does not object to the first three of these documents.<sup>52</sup>

112. Exhibits 6D1668 and 6D1669 are US-KDOM reports from October and November 1998 about events on the ground in Kosovo following the October Agreement, including the interaction between the forces of the FRY and Serbia and US-KDOM and the return of people to their homes. Moreover, the latter document specifically mentions the Accused Nikola Šainović and Sreten Lukić. The Prosecution does not object to these documents. They will be admitted into evidence.

113. Exhibit 6D1670 is a February 1999 report from the United States/NATO regarding the activities of United States Secretary of State Madeleine Albright at the Rambouillet negotiations, specifically mentioning the Accused Milan Milutinović and Nikola Šainović. The Prosecution does not object to its admission, but asks that the pages for 6D1669 be re-uploaded to eCourt in the correct order. The Lukić Defence has subsequently rectified the document in eCourt, in the manner proposed by the Prosecution. This document will be admitted.

114. Exhibit 6D1671 is a document provided to the Lukić Defence by the United States under conditions, pursuant to Rule 70, that it only be admitted into evidence under seal and discussed in closed session. The Prosecution objects to the document on the basis that it is offered to impeach the credibility of a witness to which the document was not put.<sup>53</sup> The Chamber finds the document to be admissible. To the extent that it may be contrary to the testimony of a witness in this case, the

<sup>52</sup> Prosecution Response to Sreten Lukić's Second Motion for Admission of Exhibits from the Bar Table, 3 June 2008.

<sup>53</sup> *Ibid.*

parties may address these points in their final trial briefs and/or closing arguments, in a confidential manner.

*N. Exhibit 6D614 – police logs*

115. Exhibit 6D614 is a 789-page document said to be an overview of registered criminal offences and measures undertaken on the territory of Kosovo between 1 July 1998 and 20 June 1999 (“police logs”). Numerous portions of the document were put to several witnesses during the course of the case. On 26 February 2008, the Chamber made it clear that the entire document would be marked for identification, pending a comprehensive decision as to the entire document at a later stage of the proceedings; this was done in order to avoid doubt as to which portions of the document were tendered and in light of the fact that the Lukić Defence intended to call a witness to speak to the methodology by which it was generated.<sup>54</sup> On 16 April 2008, the Prosecution objected to admission of portions of the document as not relevant, and the Chamber reiterated its instruction to the Lukić Defence that it should make submissions inviting admission of the document, and it was at that point that the Prosecution should make any objections.<sup>55</sup> On 21 April 2008, the Chamber ordered the Lukić Defence, in its submissions on 6D614, to identify the pages that were used with each witness, including the transcript and date references, and to set forth the relevance and probative value of the portions sought to be admitted.<sup>56</sup>

116. In the Motion, the Lukić Defence requests that exhibit 6D614 be admitted in full, in that that it

is the only method of efficiently and accurately presenting a [*sic*] overview of all relevant facts pertaining to crimes, prosecution of crimes, and classification of crimes during the Kosovo War. As such, the document is essential to give the trial chamber a full and

<sup>54</sup> T. 23218–23219 (26 February 2008):

JUDGE BONAMY: Mr. Lukic, this is the document where I indicated before that we would admit portions of it, and you indicated that there are still translations ongoing in relation to parts of it.

MR. LUKIC: Yes, Your Honour.

JUDGE BONAMY: On reflection, the best plan I think is to simply mark for identification each passage as it comes and deal with the thing in one all-encompassing order in due course to keep things under control and there will be no doubt in anybody’s mind about what has been admitted, rather than that piecemeal suggestion I made. So --

MR. LUKIC: Have one witness at the end --

JUDGE BONAMY: Yes.

MR. LUKIC: -- who took part in this --

JUDGE BONAMY: And that’s yet another reason why we should leave the final disposition of any part of this until that stage.

MR. LUKIC: Thank you, Your Honour.

JUDGE BONAMY: And for the avoidance of doubt in the transcript, that comment refers to 6D614 and not to the exhibit you’re now calling up.

*See also, e.g.,* T. 22253–22254 (13 February 2008).

<sup>55</sup> T. 25510–25511 (16 April 2008).

<sup>56</sup> T. 25756–25757 (21 April 2008).

accurate and complete picture of the same, particularly in light of difficulties getting all underlying documents from the Serbian authorities, and the capability limitations of CLSS which make it impossible to otherwise present original source documents to cover the same scope as that covered by 6D614. Various comments and inquiries made by the Trial Chamber during the course of the trial can only be answered by reference to 6D614, and thus this document is essential and necessary to preserve the Accused's right to a fair trial and to presentation of a full defense.<sup>57</sup>

117. The Lukić Defence submits that the authenticity of the document is demonstrated, *inter alia*, by 6D1647, which is a letter from the Serbian Ministry of the Interior to the Lukić Defence stating, in a general fashion, that 6D614 "was compiled on the basis of documents in the KiM Dossier, formed as part of the documentation fund of this Ministry".<sup>58</sup> The Chamber already has decided to admit 6D1647, in another context (see above).

118. The Prosecution reasserts the challenges previously made to this document in open court and argues as follows:

The evidence concerning the purpose, the timing, and the manner in which this survey document was collected and organized raises concerns as to its completeness and reliability. In addition, there has been no adequate showing to justify admission of the entire document. If any of it is to be admitted, it should be limited to those entries about which we have heard evidence from persons with knowledge adequate to at least partly corroborate this document. To the extent that this document is offered as evidence of the substance of allegations listed within it, or as being evidence of the totality of crimes committed by MUP or VJ perpetrators in 1998-99 in Kosovo, it should be rejected as being no more reliable than the accounts of crimes in the earlier-rejected Prosecution Exhibits P-438 ("Under Orders") and P-473 ("As Seen As Told").<sup>59</sup>

119. The Prosecution is referring to the Chamber's "Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams," issued on 1 September 2006, whence the Chamber recalls the following:

12. There are four categories of documents, governed by Rules 89 and 92 *bis*, which are relevant to the Chamber's consideration of the submissions of the parties:

- (1) statements given to parties for the purposes of litigation before the Tribunal;
- (2) summaries, authored by parties, of statements by potential witnesses;
- (3) statements given to non-parties; and
- (4) summaries or reports, authored by non-parties, of statements made by persons who are neither witnesses nor potential witnesses.

Each of these categories is discussed below.

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<sup>57</sup> Motion, paras. 97-101.

<sup>58</sup> Motion, para. 99.

<sup>59</sup> Prosecution Response, para. 18.

16. The admission of summaries and reports created by non-parties is not affected by the rule against admitting summaries prepared by parties of statements given by potential witnesses, so such materials may be admitted pursuant to Rule 89(C). These documents, however, are hearsay in nature, and thus would have to possess the necessary indicia of reliability in order to be admissible. *As Seen, As Told* and *Under Orders* are examples of this type of document. Indeed, the OSCE report was explicitly considered by the Trial Chamber in the *Milošević* case to be distinguishable from a summary of witness statements prepared by the Prosecution, and the *Milošević* Chamber concluded that the report was admissible under Rule 89(C) and not subject to the bar against admitting party-prepared summaries of statements.<sup>60</sup>

The Chamber is of the view that the statements fall into the fourth category and thus are admissible under Rule 89(C). The Chamber will now discuss whether it should exercise its discretion to admit 6D614, or parts thereof, into evidence in the above-captioned proceedings.

120. *As Seen, As Told* and *Under Orders* are reports, prepared by international humanitarian organisations, which contain hearsay accounts of events in Kosovo during the indictment period. The reports are based on statements given by unidentified Kosovo Albanians to the organisations' field workers, who took the statements and submitted them to supervisors who edited and summarised the material for inclusion in the reports. After deciding that *As Seen, As Told* and *Under Orders* were admissible, the Chamber went on to deny their admission into evidence, based upon the fact that the Prosecution had not adequately demonstrated sufficient indicia of reliability for the Chamber to exercise its discretion in favour of their admission as hearsay documentary evidence. Reasons for this lack of reliability included (a) statements in the documents themselves as to inconsistencies in the information therein, (b) non-identification of people who were interviewed as sources of information in the reports, and (c) the testimony of the witnesses through whom the documents were sought to be tendered, to the effect that they either had not conducted the interviews or could not determine which information in the reports came from which interview.<sup>61</sup> As the Trial Chamber ruled,

these organisations' careful methods can at best assure the *accuracy* of the process for recording the information contained in the eventual report[s], not the *reliability* of the material contents . . . . Not having had the opportunity of hearing any of the persons upon whose statements these [reports] are based, the Chamber is not in a position to assess the reliability of the factual contentions contained therein.<sup>62</sup>

The Chamber also noted that material in the reports was based upon other documents that were a better and more direct source of information, some of which were to be tendered during the trial.<sup>63</sup>

<sup>60</sup> Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006 ("Mitchell Decision") (footnotes omitted).

<sup>61</sup> Mitchell Decision, paras. 19–25.

<sup>62</sup> Mitchell Decision, para. 21 (emphasis in original).

<sup>63</sup> Mitchell Decision, para. 25.

121. In assessing the reliability of the police logs, the Chamber finds that it would be useful to examine the evidence of the witness called by the Lukić Defence to testify as to the method by which they were generated. After having spoken at length about the Kosovo and Metohija Dossier (“KiM Dossier”), witness 6D2 stated that the police logs resulted from the work on the KiM Dossier and that they were digests of security-related events related to crimes committed and activities of the police. According to this witness, all registered incidents from 1 July 1998 to 20 June 1999 were included,<sup>64</sup> but he did not clarify when precisely 6D614 was compiled. 6D2 testified that some documents were already in the possession of the MUP at the time that the work on the KiM Dossier began, while copies of other documents had been gathered from elsewhere<sup>65</sup> or at later stages.<sup>66</sup>

122. Witness 6D2 was shown a specific entry in 6D614 concerning an incident in Podujevo on 28 March 1999 (page 8, item no. 14), but he could not recall who the person was who wrote this summary—although he explained that in each case file there is information concerning its content and the person who dealt with it.<sup>67</sup> The witness was also questioned about an incident mentioned in 6D614 (page 9) regarding the SAJ reserve police force’s use of fire-arms against a group of civilians in the Podujevo area. He explained that this document was written by policemen from the Priština SUP and that it was possible that they did not receive all the relevant information.<sup>68</sup> Witness 6D2’s testimony concerning the relationship between the full KiM Dossier and the police logs is therefore indeterminate; however, it appears that 6D614 constitutes summaries of individual crime events, created on the basis of the original documents contained in the KiM Dossier. The date upon which the police logs were compiled is also not apparent.

123. The Chamber notes similarities between the police logs and *As Seen, As Told* and *Under Orders*, namely the following: the primary sources of the information summarised in the documents are largely unknown to the Chamber; testimony of a witness called by the party tendering the documents actually undermined to some extent the reliability thereof; the method by which information was included and excluded from the documents is not known; and the primary documentation upon which the documents were based exists already, but has not been identified and placed before the Chamber.

<sup>64</sup> T. 25473 (16 April 2008); 6D1631 (witness statement dated 12 April 2008), para. 114.

<sup>65</sup> 6D1631 (witness statement dated 12 April 2008), para. 107.

<sup>66</sup> 6D1631 (witness statement dated 12 April 2008), para. 116.

<sup>67</sup> T. 25477–25478 (16 April 2008).

<sup>68</sup> T. 25479–25481 (16 April 2008).

124. Based upon the foregoing, the Chamber will not admit 6D614 into evidence in these proceedings. The testimony of the witnesses to whom portions of the police logs were put will be taken into account by the Chamber in its final deliberations.

#### IV. Disposition

125. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, 70, 75, 79, 89, 90, 126 *bis*, and 127 of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

- a. The request to exceed the word limitation is GRANTED.
- b. Exhibit **1D789** shall **not** be admitted into evidence.
- c. Exhibit **1D794** shall be admitted into evidence.
- d. Exhibit **IC143** shall be admitted into evidence, along with its translation, as exhibit **6D1466**.
- e. The withdrawal of the tender of exhibits 6D296, 6D1602, and 6D1644 is CONFIRMED.
- f. The Lukić Defence, by no later than Friday, 13 June 2008, shall upload to eCourt another version of the BCS original of exhibit **6D613** with only the portions corresponding pages 665, 666, 667, and 668, and shall inform the Chamber and the parties in a written filing, after which the exhibit and its translation shall be deemed admitted into evidence.
- g. Exhibits **6D1230** and **6D1232** shall be admitted into evidence, and the Chamber requests that the Lukić Defence ensure that the translated versions are linked to the original documents in eCourt.
- h. CLSS shall prepare a full translation of exhibit **6D1486**, and inform the Chamber when it is available to be uploaded to eCourt, after which the Chamber shall issue a further order on its admission into evidence.
- i. Exhibits **5D1235**, **5D1236**, and **5D1237** shall **not** be admitted into evidence.



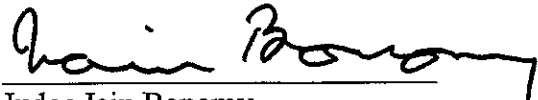
- j. The Lukić Defence, within seven days of the date of this Decision, shall obtain a full CLSS translation of **6D135** and re-tender it with a more adequate explanation of whence it came and how it relates to issues in the trial, after which the Chamber will decide upon its admission.
- k. The Lukić Defence, within seven days of the date of this Decision, shall obtain a better copy of **6D179** and re-tender it with a full CLSS translation, after which the Chamber will decide upon its admission.
- l. Exhibit **6D1671** shall be admitted into evidence under seal and only referred to in these proceedings in a non-public manner.
- m. The following documents shall be admitted into evidence: 6D77, 6D128, 6D136, 6D137, 6D141, 6D281, 6D282, 6D286, 6D296, 6D299, 6D317, 6D323, 6D361, 6D378, 6D385, 6D392, 6D393, 6D394, 6D396, 6D398, 6D400, 6D401, 6D403, 6D409, 6D433, 6D435, 6D436, 6D443, 6D448, 6D457, 6D463, 6D466, 6D468, 6D470, 6D471, 6D474, 6D476, 6D484, 6D534, 6D540, 6D542, 6D543, 6D546, 6D552, 6D561, 6D567, 6D574, 6D598, 6D599, 6D600, 6D611, 6D620, 6D622, 6D629, 6D637, 6D649, 6D650, 6D651, 6D697, 6D699, 6D701, 6D705, 6D710, 6D738, 6D749, 6D752, 6D972, 6D998, 6D1092, 6D1121, 6D1123, 6D1134, 6D1151, 6D1152, 6D1153, 6D1154, 6D1155, 6D1156, 6D1157, 6D1158, 6D1207, 6D1208, 6D1221, 6D1222, 6D1223, 6D1224, 6D1225, 6D1226, 6D1227, 6D1228, 6D1229, 6D1231, 6D1233, 6D1234, 6D1235, 6D1236, 6D1237, 6D1238, 6D1239, 6D1240, 6D1241, 6D1242, 6D1243, 6D1244, 6D1245, 6D1246, 6D1248, 6D1249, 6D1250, 6D1251, 6D1252, 6D1254, 6D1255, 6D1256, 6D1257, 6D1259, 6D1260, 6D1261, 6D1359, 6D1468, 6D1469, 6D1474, 6D1490, 6D1528, 6D1531, 6D1582, 6D1585, 6D1587, 6D1589, 6D1591, 6D1599, 6D1600, 6D1616, 6D1617, 6D1635, 6D1637, 6D1638, 6D1639, 6D1640, 6D1645, 6D1647, 6D1668, 6D1669, and 6D1670.
- n. The following documents shall **not** be admitted into evidence: 6D78, 6D102, 6D114, 6D172, 6D173, 6D174, 6D175, 6D177, 6D199, 6D203, 6D204, 6D205, 6D287, 6D300, 6D304, 6D312, 6D313, 6D315, 6D320, 6D321, 6D328, 6D330, 6D331, 6D339, 6D350, 6D362, 6D367, 6D373, 6D377, 6D386, 6D390, 6D392, 6D413, 6D415, 6D416, 6D419, 6D420, 6D421, 6D422, 6D423, 6D424, 6D425, 6D426, 6D427, 6D429, 6D430, 6D431, 6D432, 6D434, 6D437, 6D438, 6D439, 6D440, 6D441, 6D442, 6D444, 6D450, 6D451, 6D456, 6D458, 6D462, 6D481,

6D482, 6D487, 6D488, 6D499, 6D505, 6D506, 6D507, 6D510, 6D511, 6D513, 6D515, 6D517, 6D518, 6D523, 6D525, 6D530, 6D541, 6D549, 6D550, 6D557, 6D573, 6D576, 6D580, 6D583, 6D594, 6D595, 6D596, 6D597, 6D602, 6D603, 6D605, 6D606, 6D619, 6D625, 6D626, 6D627, 6D628, 6D630, 6D632, 6D634, 6D641, 6D660, 6D672, 6D673, 6D707, 6D719, 6D724, 6D730, 6D733, 6D735, 6D739, 6D740, 6D748, 6D751, 6D753, 6D760, 6D771, 6D781, 6D794, 6D804, 6D816, 6D834, 6D857, 6D858, 6D859, 6D861, 6D869, 6D886, 6D889, 6D925, 6D927, 6D935, 6D942, 6D943, 6D946, 6D947, 6D948, 6D991, 6D993, 6D1026, 6D1028, 6D1041, 6D1109, 6D1111, 6D1112, 6D1115, 6D1116, 6D1117, 6D1118, 6D1120, 6D1124, 6D1125, 6D1126, 6D1129, 6D1133, 6D1159, 6D1160, 6D1161, 6D1162, 6D1163, 6D1164, 6D1165, 6D1166, 6D1167, 6D1168, 6D1169, 6D1170, 6D1171, 6D1172, 6D1173, 6D1174, 6D1175, 6D1176, 6D1177, 6D1178, 6D1179, 6D1180, 6D1181, 6D1182, 6D1183, 6D1184, 6D1185, 6D1186, 6D1187, 6D1188, 6D1189, 6D1190, 6D1192, 6D1193, 6D1194, 6D1195, 6D1196, 6D1197, 6D1198, 6D1199, 6D1200, 6D1201, 6D1202, 6D1203, 6D1204, 6D1205, 6D1206, 6D1209, 6D1210, 6D1211, 6D1212, 6D1213, 6D1214, 6D1215, 6D1216, 6D1217, 6D1218, 6D1219, 6D1220, 6D1247, 6D1253, 6D1258, 6D1262, 6D1263, 6D1264, 6D1265, 6D1266, 6D1267, 6D1268, 6D1269, 6D1270, 6D1271, 6D1272, 6D1273, 6D1274, 6D1275, 6D1276, 6D1277, 6D1278, 6D1279, 6D1280, 6D1281, 6D1282, 6D1283, 6D1284, 6D1285, 6D1286, 6D1287, 6D1288, 6D1289, 6D1290, 6D1291, 6D1292, 6D1293, 6D1294, 6D1295, 6D1296, 6D1297, 6D1298, 6D1299, 6D1300, 6D1301, 6D1302, 6D1303, 6D 1305, 6D1322, 6D1323, 6D1335, 6D1336, 6D1362, 6D1365, 6D1375, 6D1376, 6D1377, 6D1378, 6D1379, 6D1380, 6D1381, 6D1382, 6D1383, 6D1384, 6D1385, 6D1386, 6D1387, 6D1388, 6D1389, 6D1390, 6D1391, 6D1392, 6D1393, 6D1394, 6D1395, 6D1396, 6D1397, 6D1398, 6D1399, 6D1400, 6D1401, 6D1402, 6D1403, 6D1404, 6D1457, 6D1467, 6D1478, 6D1561, 6D1562, 6D1563, 6D1565, 6D1566, 6D1568, 6D1569, 6D1570, 6D1571, 6D1572, 6D1573, 6D1574, 6D1575, 6D1578, 6D1583, 6D1592, 6D1595, 6D1597, 6D1598, 6D1601, 6D1622, 6D1623, 6D1624, 6D1625, 6D1643, 6D1646, 6D1648, and 6D1649.

- o. Exhibits 6D1337, 6D1345, 6D1346, 6D1347, 6D1354, 6D1361, 6D1369, 6D1370, 6D1371, 6D1424, 6D1412 6D1618, 6D1620, and 6D1621 have already been admitted into evidence. The Motion is therefore moot in relation to these documents.

p. Exhibit **6D614** shall **not** be admitted into evidence.

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



Judge Iain Bony  
Presiding

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

[Seal of the Tribunal]