



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: 17 November 2006
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: 17 November 2006

PROSECUTOR

v.

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

DECISION ON ADMISSION OF EXHIBITS P103–P107 AND P110–P112

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 a motion by the Prosecution, made orally on 13 October 2006, requesting the admission of various exhibits allegedly connected to the Mala Kruša/Krushë e Vogel crime site, and hereby renders its decision thereon.

1. The Prosecution requests the Chamber to admit from the bar table exhibits P100, P102, P103, P104, P105, P106, P107, P110, P111, and P112. These exhibits are described as reports from the anti-terrorist branch of the British Metropolitan Police, concerning exhumation operations at different locations in the vicinity of the Drin River, including photographs of gravesites on the escape route from Batusha cowshed and descriptions of skeletal remains found at these sites.¹

2. The Lukić Defence objected to the Prosecution’s motion, on the basis that, without the testimony of a forensic expert on the matter, the exhibits cannot have any probative value. In addition, these exhibits do not comprise the entire corpus of exhumation material for Mala Kruša/Krushë e Vogel; and, therefore, either all the material should be admitted for context and completeness or none of it.²

3. The Trial Chamber postponed its decision on admission, giving the Prosecution the opportunity to discuss this matter with the defence and instructing the parties to raise the matter again before Thursday 19 September 2006 so that a decision could be taken at that time.³ On 27 October 2006, because the parties had not responded to the Chamber’s instruction, the legal staff e-mailed the Prosecution and the Lukić Defence to remind them of their obligation to raise this matter again, after discussing it, so that a decision could be taken, and inviting them to make a joint filing. During the hearing on 2 November 2006, the Chamber raised the matter once more, because still no answer from the parties had been received.⁴ On that same day, the Lukić Defence transmitted an e-mail to both the Chamber and the Prosecution maintaining its objection to the exhibits, and adding that, if the Chamber rejected its objection, the following material, part of the same forensic package for Mala Kruša/Krushë e Vogel, should be admitted: Site Photo Log Mala Kruša,⁵ Site Handover form Mala Kruša,⁶ and nineteen Autopsy Summary Reports.⁷

¹ T. 4882–4883 (13 October 2006).

² *Ibid.*

³ T. 4883 – 4884 (13 October 2006).

⁴ T. 5782 (2 November 2006).

⁵ ERN K0189602-K0189606.

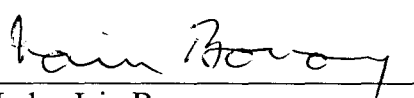
⁶ ERN K0249589-90.

4. On 14 November 2006, the Prosecution filed via e-mail its response, arguing that it had tendered all exhumation material related to Mala Kruša/Krushë e Vogel relevant to the killings that witnesses John Sweeny, Mehmet Krasniqi, and Lutfi Ramadani referred to during their evidence. With specific reference to Lukić's objection, the Prosecution argues that the reports are self-explanatory and that further inferences will be drawn from the exhumation material in the final submissions of the Prosecution at the end of the case. Moreover, the Prosecution clarifies that it does not wish to tender the remaining material since it is unclear to which specific exhumation site it actually refers.

5. The Chamber considers that the exhibits tendered by the Prosecution are relevant to the indictment and have probative value. The Chamber notes that the material referred to by the Defence was not used on cross-examination. The Defence may present these documents as part of its case, when their relevance and probative value can be determined. Finally, the Chamber notes that P100 and P102 have already been admitted on 28 and 29 September 2006.

6. Pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence, the Trial Chamber hereby REPELS the objection of the Lukić Defence and ORDERS that the following exhibits shall be admitted into evidence: P103, P104, P105, P106, P107, P110, P111, and P112.

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


Judge Iain Bonomy
Presiding

Dated this seventeenth day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ ERN K0206038-K0206050, K0206104-K0206112, K0206061-K0206072, K0206113-K0206121, K0206093-K0206103, K0206142-K0206151, K0206122-K0206131, K0206084-K0206092, K0206075-K0206083, K0206238-K0206247, K0206228-K0206237, K0206215-K0206226, K0206162-K0206172, K0206132-K0206141, K0206152-K0206161, K0206052-K0206060, K0206193-K0206214, K0206173-K0206182, K0206183-K0206192.