



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-95-13/1-T  
Date: 21 November  
2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christine Van Den Wyngaert  
Judge Krister Thelin

**Registrar:** Mr Hans Holthuis

**Decision:** 21 November 2006

**PROSECUTOR**

v.

**MILE MRKŠIĆ  
MIROSLAV RADIĆ  
VESELIN ŠLJIVANČANIN**

---

**DECISION ON MILE MRKŠIĆ'S MOTION FOR ADMISSION  
OF DOCUMENTS**

---

**The Office of the Prosecutor:**

Mr Marks Moore  
Mr Philip Weiner  
Mr. Vincent Lunny  
Ms Meritxell Regue  
Mr Alexis Demirdjian

**Counsel for the Accused:**

Mr Miroslav Vasić and Mr Vladimir Domazet for Mile Mrkšić  
Mr Borivoje Borović and Ms Mira Tapušković for Miroslav Radić  
Mr Novak Lukić and Mr Momčilo Bulatović for Veselin Šljivančanin

**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 (“International Tribunal”),

**BEING SEIZED OF** “Mr. Mile Mrkšić’s Defence Motion for Admission of Documents” filed confidentially on 28 September 2006 (“Mrkšić Defence” and “Motion”), seeking the admission, pursuant to Rules 54 and 89(C) of the Rules of Procedure and Evidence (“Rules”), of 20 documents from the Defence’s Rule 65*ter*(G) exhibit list, set out in Annex A to the Motion (“proposed documents”);

**NOTING** the “Prosecution Response to Mile Mrkšić’s Defence Motion for Admission of Documents” filed on 6 October 2006 (“Response”) whereby the Prosecution did not oppose the admission of 11 of the proposed documents but objected to the admission of the remaining nine of the proposed documents;<sup>1</sup>

**NOTING** “Mr. Mile Mrkšić’s Motion in Response to the Prosecution’s Response Motion filed on 6 October 2006 for Admission of Documents” filed confidentially on 17 October 2006 (“Reply”), in which the Mrkšić Defence withdrew its request with regard to the admission of one of the remaining nine of the proposed documents (1D37);<sup>2</sup>

**NOTING**, therefore, that the Prosecution opposes the admission into evidence of documents identified by the Rule 65*ter* numbers as 1D13, 1D21, 1D22, 1D35, 1D39, 1D41, 1D43 and 1D48, on the basis of their lack of relevance and probative value in the present case;<sup>3</sup>

**NOTING** the Defence’s submission that the proposed documents are relevant to the charges regarding the joint criminal enterprise pleaded in the Indictment against the Accused and the role and tasks of the JNA in Vukovar and in Croatia; that 1D13, 1D21 and 1D22 are relevant for the determination of the reasons behind the outbreak of the conflict in Vukovar and the role and aim of the JNA;<sup>4</sup> and that 1D35 and 1D39 are from the critical period of the armed conflict and show the role and the aim of the JNA in Slavonia as well as the information that the “top JNA security” had at their disposal regarding the situation in Vukovar and at the hospital;<sup>5</sup>

<sup>1</sup> Response, paras 2-3 and 8. The Prosecution notes that six of the proposed documents were already admitted into evidence in the present case, *i.e.* 1D09 (exhibit 731); 1D15 (exhibit 734); 1D16 (exhibit 758); 1D30 (exhibit 735); 1D31 (exhibit 736) and 1D36 (exhibit 730), and further did not oppose the admission of 1D17, 1D23, 1D26, 1D29 and 1D38.

<sup>2</sup> Reply, para 14.

<sup>3</sup> Response, paras 6-7.

<sup>4</sup> Reply, paras 7-11.

<sup>5</sup> Reply, paras 7, 12-13.

**NOTING** further the Mrkšić Defence's submission that 1D41 deals with many events relevant to the present case; that the admission of 1D43 is "highly important" for the Mrkšić Defence and that 1D48 is the "most comprehensive statement which encompasses the entire period relevant to the Indictment";<sup>6</sup>

**NOTING** that the Prosecution submits that 1D13, 1D21, 1D22, and 1D41 lack in relevance as they refer to background information related to Slovenia's and Croatia's secession, crimes committed by Croatian armed forces, activities of the HDZ and issues related to discrimination against Serbs; that they do not relate to the events surrounding the killing at Ovčara and are repetitious of evidence already given; that 1D43 and 1D48 contain information provided by an individual who has not given evidence even though the Mrkšić Defence sought to secure his attendance in The Hague to testify; and whose intended evidence has earlier been evaluated by the Chamber and found not to be shown to be of potential significant importance in the case;<sup>7</sup>

**CONSIDERING** that pursuant to Rule 89(C) of the Rules, a Chamber may admit any relevant evidence which it deems to have probative value;

**CONSIDERING** that "evidence is admissible only if it is relevant and it is relevant only if it has probative value"<sup>8</sup> and that reliability of a hearsay statement is a necessary prerequisite for probative value under Rule 89(C)";<sup>9</sup>

**CONSIDERING** that 1D13, 1D21 and 1D22 are apparently military documents, dated 27 June 1991, 1 July 1991 and 7 January 1991, respectively, addressed to units (when identified) under the command of the 1<sup>st</sup> Military District or to the Federal Secretariat for National Defence/Political Administration and neither indicate the position of the JNA in general, nor do they concern the 1<sup>st</sup> Motorised Brigade, at the time relevant to the Indictment; that a number of witnesses, some of whom belonged to the 1<sup>st</sup> Motorized Brigade, who came to testify before the Tribunal apparently could have provided information as to the circumstances in which these documents were issued but there was no attempt by the Mrkšić Defence to put these documents to any of those witnesses;

---

<sup>6</sup> Reply, paras 7 and 15-18.

<sup>7</sup> Response, paras 6 and 7.

<sup>8</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>9</sup> *Prosecutor v. Milutinović & al*, Case No. IT-05-87-T, Decision on Prosecution's Motion to Admit Documentary Evidence, 10 October 2006, para 10 quoting *Prosecutor v. Tadić*, Case No. IT-94-1-T Decision on the Defence Motion on Hearsay, 5 August 1996, para 15 in which the Trial Chamber held that "if evidence offered is unreliable, it certainly would not have probative value".

**CONSIDERING** therefore that it has not been demonstrated that these documents are of sufficient relevance or probative value to the issues in the present case to justify their admission into evidence;

**CONSIDERING** that 1D39 and 1D35 have already been admitted into evidence;<sup>10</sup>

**CONSIDERING** that 1D41 is a book prepared some years after the relevant events and is, to a substantial degree, based on hearsay evidence, the sources of which are not sufficiently identified and are untested;

**CONSIDERING** however that 1D41 focuses in part on events that occurred in Vukovar during late summer and autumn of 1991, just prior to the outbreak of the conflict and during its early stages and, therefore, might be of some limited relevance to the background of this case; and that there are some quite limited indicia of the reliability of this document despite the inadequately identified sources of its hearsay content;

**CONSIDERING** that 1D43 is apparently a letter from an individual who has not appeared as a witness in the proceedings and who appears also to have provided 1D48, a statement containing no information as to the addressee or the circumstances in which this statement was taken; that both documents purport to concern generally the conduct of members of Croatian forces in the broad context of the political and security situation in the Vukovar municipality at various times; that while, in part, each appear to make reference to events of some potential relevance to the issues in this case, the reliability of the information and of the individual who is the purported author has not been tested in the proceedings and the Chamber has no other basis on which it can make a reliable evaluation of these matters; and that, therefore, neither of these documents have been shown to be of sufficient probative value or relevance to justify their admission into evidence;

**CONSIDERING** further that 1D41 gives emphasis and entirely reproduces 1D43 which the Chamber has separately resolved is not admissible;

**NOTING** that the admission into evidence of any of these documents does not determine the reliability or weight which the Chamber will eventually be persuaded to attach to it;

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rules 54 and 89 of the Rules,

**DECIDES** as follows:

---

<sup>10</sup> 1D39 has been admitted as one of the documents under exhibit 824 and 1D35 has been admitted as exhibit 853.

- (1) Leave to file a reply is granted to the Defence of Mile Mrkšić;
- (2) The Motion is moot regarding the admission of the documents identified by the *65ter* numbers, 1D09, 1D15, 1D16, 1D30, 1D31, 1D35, 1D36 and 1D39 as they have already been admitted into evidence, and 1D37 as it has been withdrawn from the Motion.
- (3) The proposed documents identified by the *65ter* numbers 1D17, 1D23, 1D26, 1D29 and 1D38 will be admitted into evidence.
- (4) The proposed document identified by the *65ter* number 1D41 will be admitted, except for pages 1D03-007 and 1D03-0008.
- (5) The proposed documents identified by the *65ter* numbers 1D13, 1D21, 1D22, 1D43 and 1D48 are not admitted into evidence.

**REQUESTS** the Registry to assign exhibit numbers to the received documents and inform the Chamber and the parties in writing as soon as practicable.

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



---

Judge Parker  
Presiding

Dated this twenty-first day of November 2006  
At The Hague  
The Netherlands

[Seal of the Tribunal]