



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: 4 September 2007  
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:** 4 September 2007

**PROSECUTOR**

v.

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

**DECISION ON ŠAINOVIĆ MOTION REQUESTING ADMISSION OF  
DOCUMENTS FROM BAR TABLE**

**Office of the Prosecutor**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić  
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Motion Requesting Admission of Exhibits from the Bar Table”, filed by the Šainović Defence on 9 August 2007 (“Motion”), and hereby renders its decision thereon.

1. In its Motion, Šainović (“Accused”) seeks to have exhibits 2D25, 2D26, 2D30, 2D32, 2D33, 2D40, 2D48, 2D53, 2D54, 2D55, 2D56, 2D57, 2D60, 2D61, 2D63, 2D64, 2D67, 2D68, 2D70, 2D71, 2D72, 2D74, 2D77, 2D78, 2D79, 2D80, 2D81, 2D83, 2D85, 2D87, 2D88, 2D89, 2D90, 2D92, 2D99, 2D102, 2D103, 2D105, 2D106, 2D109, 2D112, 2D117, 2D119, 2D120, 2D122, 2D123, 2D138, 2D144, 2D153, 2D155, 2D156, 2D162, 2D163, 2D169, 2D179, 2D180, 2D181, 2D182, 2D183, 2D191, 2D196, 2D204, 2D206, 2D209, 2D216, 2D217, 2D218, 2D220, 2D221, 2D228, 2D239, 2D241, 2D242, 2D244, 2D245, 2D247, 2D253, 2D259, 2D260, 2D261, 2D265, 2D268, 2D280, 2D281, 2D285, 2D287, 2D288, 2D289, 2D293, 2D294, 2D295, 2D296, 2D299, 2D300, 2D301, 2D303, 2D304, 2D313, 2D318, 2D321, 2D323, 2D324, 2D326, 2D330, 2D332, 2D346, 2D347, 2D354, 2D356, 2D359, 2D362, 2D363, 2D364, 2D365, 2D366, 2D367, 2D370, 2D371, 2D372, 2D373, 2D374, 2D375, 2D376, 2D377, 2D378, 2D379, 2D382, and 2D383 admitted into evidence from the bar table, pursuant to Rule 89(C).<sup>1</sup> The Accused argues that the admission of the exhibits will considerably contribute to the expeditiousness of the presentation of the Defence case and will aid the cause of judicial economy,<sup>2</sup> and makes submissions regarding the relevance and the probative value of each of the above mentioned documents.<sup>3</sup> The Accused also notes that the largest portion of the exhibits was obtained from competent state organs of Serbia, that all the exhibits have been disclosed to the parties, and that “the great majority of the [English] translations have been completed and uploaded”.<sup>4</sup>

2. On 22 August 2007, the Prosecution filed its “Response to Šainović’s Defence Motion Requesting Admission of Exhibits from the Bar Table”, in which it does not oppose the admission of the exhibits, but notes, with respect to exhibit 2D383 (Excerpts from the first part of BBC Documentary “The Fall of Milošević”), that the Accused has failed to identify the exact portions of the video that it seeks to tender into evidence, and requesting the Accused to clarify the matter. On 23 August 2007, the Accused filed his “Defence Notice regarding Exhibit 2D383”, identifying the relevant excerpts he wishes to admit into evidence. The Chamber notes that the surrogate sheet in

<sup>1</sup> Motion, paras. 1–2, 7–8.

<sup>2</sup> Motion, para. 3.

<sup>3</sup> Motion, paras. 9–88.

<sup>4</sup> Motion, para. 36.

eCourt for this exhibit indicates that only the relevant excerpts of the video-recording have been tendered by the Accused and that this is in accordance with the practice of the Chamber. Moreover, as ordered by the Chamber, the Accused will need to tender as evidence CLSS translations of the transcript of the relevant portions of the videorecording.<sup>5</sup>

3. After a preliminary perusal of the documents tendered by the Accused, the Chamber noted that, with respect to exhibits 2D63, 2D204, 2D265, 2D268, 2D280, 2D281, 2D285, 2D287, 2D288, 2D289, 2D295, 2D300, and 2D304, there seemed to be insufficient indicia of their reliability. On 31 August 2007, during the court session, the Chamber invited the Accused to make a supplementary filing providing further information about the source of these documents and any features indicating their reliability, as follows:

We would invite you to make a supplementary filing providing such further information as you can about the source of these documents and any features indicating reliability and anything else you can think of. . . . [T]here are certain weaknesses about the form of these documents that cause us to seek a little more clarification about their exact role, and therefore their authenticity as what you claim them to be. So if you could give attention to that, it would be of assistance. We're obviously anxious to admit from the bar table all that you wish us to admit that's relevant to your case, particularly where there's no objection to this taken by the Prosecution. But there are limits to how much leeway there can be about documents that -- about which questions might be asked. So please do what you can to assist.<sup>6</sup>

4. On 3 September 2007, the Accused filed his "Submission Regarding Its 'Defence Motion Requesting Admission of Exhibits from the Bar Table'" ("Submission"), providing supplementary information on the documents referred to in the previous paragraph. The Accused explains that these exhibits were located in the state archive and were provided by the National Council for Cooperation with the ICTY.<sup>7</sup> Specifically, with respect to exhibit 2D63, he argues that the document's reliability

should be considered within the context of the evidence that was presented during this trial in relation to the session of the Serbian National Assembly dated 28 September 1998, and especially within the context of [exhibit] 1D202, that represents the conclusions from the session in which the late President of the Serbian Government Mr. Mirko Marjanović gave an introductory presentation whose stenographic notes the Defence wishes to have admitted into evidence.<sup>8</sup>

<sup>5</sup> T. 6886–6887 (20 November 2007) ("So, Mr. Petrovic, if this -- if -- and this applies to everyone. If there's going to be another occasion when this programme or any other of a similar nature is to be used as part of the evidence, then we will require a CLSS translation of the dialogue to be -- to accompany the viewing of the film, otherwise there is going to be this ongoing difficulty with interpretation. And so far as this one is concerned, the Trial Chamber orders you to get a CLSS translation of the two clips that you've actually shown so that we can then reflect the witness's answers against what was actually said in the documentary.").

<sup>6</sup> T. 14648–14649 (30 August 2007).

<sup>7</sup> Submission, paras. 6–7.

<sup>8</sup> Submission, para. 6.

5. With respect to exhibits 2D204, 2D265, 2D268, 2D280, 2D281, 2D285, 2D287, 2D288, 2D289, 2D295, 2D300, and 2D304, the Accused argues that they are announcements from the sessions of the FRY's Federal Government, similar to two documents tendered through witness Momir Bulatović.<sup>9</sup> He explains that he intended to tender all of the documents through witness Bulatović, but that, due to the cumbersome number of documents, he was only able to show Bulatović two of the announcements, one of which was described by the witness as “a *communiqué* from a session of the federal cabinet”, and as “the usual way in which the federal cabinet communicated with the public and informed it of its political standpoints and its decisions.”<sup>10</sup> Finally, the Accused explains that the announcements he intends to tender from the bar table are in harmony with the documents admitted through Mr. Bulatović in terms of form, content, and in the manner in which they were generated.<sup>11</sup>

6. Rule 89 of the Rules of Procedure and Evidence of the Tribunal provides the requirements for the admission of evidence and states as follows, in relevant part:

(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.

7. The Chamber notes that exhibits 2D25, 2D32, 2D48, 2D53, 2D55, 2D56, 2D57, 2D67, 2D71, 2D72, 2D77, 2D78, 2D81, 2D87, 2D88, 2D103, 2D105, 2D106, 2D119, 2D120, 2D169, 2D179, 2D181, 2D183, 2D196, 2D206, 2D217, 2D218, 2D221, 2D228, 2D241, 2D242, 2D261, 2D294, 2D299, 2D301, 2D303, 2D318, 2D321, 2D323, 2D330, 2D346, 2D347, 2D356, 2D363, 2D364, 2D365, 2D367, 2D371, 2D372, 2D373, 2D375, 2D382, and 2D383 have already been admitted into evidence and therefore dismisses the Motion in so far as it relates to these exhibits.

8. With respect to exhibits 2D26, 2D33, 2D40, 2D54, 2D60, 2D61, 2D64, 2D68, 2D70, 2D74, 2D79, 2D80, 2D83, 2D85, 2D89, 2D90, 2D92, 2D99, 2D102, 2D109, 2D112, 2D117, 2D122, 2D123, 2D138, 2D144, 2D153, 2D155, 2D156, 2D162, 2D163, 2D180, 2D182, 2D191, 2D209, 2D216, 2D220, 2D239, 2D244, 2D245, 2D247, 2D253, 2D259, 2D260, 2D293, 2D296, 2D313, 2D324, 2D326, 2D332, 2D354, 2D359, 2D362, 2D366, 2D370, 2D374, 2D376, 2D377, 2D378, and 2D379, the Chamber has considered the authenticity, probative value, and relevance of each of

<sup>9</sup> Submission, para. 7; 2D301, 2D303.

<sup>10</sup> Submission, para. 7; T. 13849 (17 August 2007).

<sup>11</sup> Submission, para. 7.

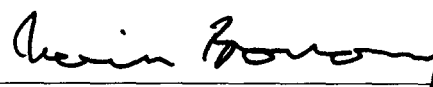
the documents tendered—as well as the fact that no objections to their admission have been lodged by the Prosecution—and is satisfied that they should be admitted.

9. Finally, with respect to exhibits 2D63, 2D204, 2D265, 2D268, 2D280, 2D281, 2D285, 2D287, 2D288, 2D289, 2D295, 2D300, and 2D304, having considered their authenticity, probative value, and relevance in light of all the information submitted to it, including the additional information in the Submission, the Chamber is also satisfied that these documents should be admitted.

10. For the foregoing reasons and pursuant to Rules 54 and 89, the Trial Chamber hereby GRANTS the Motion in part, permits the Accused to exceed the word limitation, and ORDERS as follows:

- a) The following exhibits shall be admitted into evidence: 2D26, 2D33, 2D40, 2D54, 2D60, 2D61, 2D63, 2D64, 2D68, 2D70, 2D74, 2D79, 2D80, 2D83, 2D85, 2D89, 2D90, 2D92, 2D99, 2D102, 2D109, 2D112, 2D117, 2D122, 2D123, 2D138, 2D144, 2D153, 2D155, 2D156, 2D162, 2D163, 2D180, 2D182, 2D191, 2D204, 2D209, 2D216, 2D220, 2D239, 2D244, 2D245, 2D247, 2D253, 2D259, 2D260, 2D265, 2D268, 2D280, 2D281, 2D285, 2D287, 2D288, 2D289, 2D293, 2D295, 2D296, 2D300, 2D304, 2D313, 2D324, 2D326, 2D332, 2D354, 2D359, 2D362, 2D366, 2D370, 2D374, 2D376, 2D377, 2D378, and 2D379.
- b) Exhibit 2D383 shall be marked for identification pending further order of the Chamber when/if the Accused tenders the CLSS transcript of the relevant portions of the video-recording.

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



Judge Iain Bonomy  
Presiding

Dated this fourth day of September 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]