



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: 25 October 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: 25 October 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON OJDANIĆ MOTION FOR ADMISSION OF
DOCUMENTS FROM BAR TABLE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

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

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of “General Dragoljub Ojdanic’s Motion Requesting Admission of Exhibits from the Bar Table,” filed 16 October 2007 (“Motion”), requesting the admission into evidence of 149 documents from the bar table,¹ and hereby renders its decision thereon.

1. The Chamber first turns to a number of documents that are not translated. The Prosecution states that it is unable to indicate its position in relation to the documents that have not yet been translated.² In the “Order on Procedure and Evidence,” issued 11 July 2006, the Chamber stated as follows:

8. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Chamber or denied admission into evidence. Documents, regardless of translation, that have not been dealt with during the testimony of the witness through whom they are sought to be admitted shall, in general, be denied admission into evidence, unless they are admissible without being spoken to by a witness.³

The Chamber does not find it appropriate to admit into evidence these untranslated documents at the current time. The Ojdanić Defence is at liberty to make written submissions as to the relevance, probative value, and reliability of these documents if/when they are translated, and the Chamber will further consider their admission at that time. However, the Chamber requires the Ojdanić Defence to give further careful consideration to the documents to determine which they consider to be relevant to issues in the trial and to submit, within seven days of the date of this Decision, a “priority list” of these documents, *i.e.*, a list of the documents in order of priority for translation, to the Registry’s Conference and Language Services Section (“CLSS”) in order to facilitate the process. When making any further submissions, the Ojdanić Defence should relate each tendered document (or relevant portion thereof) to issues in the trial and address issues of provenance where necessary and appropriate.

2. In respect of the group of documents referred to in paragraph 7 of the Motion—namely briefings to the Chief of Staff of the Supreme Command held between 24 March and 8 June

¹ See also Corrigendum to General Dragoljub Ojdanic’s Motion Requesting Admission of Exhibits from the Bar Table, 19 October 2007.

² Prosecution’s Response to Ojdanić’s Motion Requesting the Admission of Exhibits from the Bar Table, 19 October 2007.

³ The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007. The lack of translations of these documents was also discussed at the hearing held on 18 October 2007.

1999—the Chamber considers that, despite the lack of Prosecution objection,⁴ the Ojdanić Defence should file further written submissions as to the tendered documents' relevance, probative value, and reliability.⁵ In doing so, the Ojdanić Defence should only seek to tender the briefings (or relevant portions thereof) that it can specifically relate to issues in the trial and should essay to avoid unnecessary duplication. Two documents in the group referred to in paragraph 16—3D799 and 3D806—also warrant further submissions along these lines. Finally, the Chamber expresses its concern over the apparent lack of authenticity of documents such as the following, which seem not to bear contemporaneous, official seals or signatures: 3D578, 3D579, 3D583, and 3D585. This is not an exhaustive list.

3. The Chamber notes that, because exhibit 3D737 was already denied admission via the Chamber's "Decision on Ojdanić Motion for Admission of Exhibits 3D735 and 3D737," issued 18 October 2007, the Ojdanić Defence withdraws the Motion in relation to this document.⁶

4. Exhibit 3D848 seems not to be in the eCourt system; the Chamber therefore will not admit it into evidence at this time and invite the Ojdanić Defence to make further submissions upon it.

5. Exhibit 3D988 appears to be a duplicate of 3D1110, which has already been admitted; it therefore is unnecessary to admit 3D988 into evidence.

6. Because there does not seem to be a translation for exhibit 3D1008 in eCourt, the Chamber will not admit it into evidence at this time and invite the Ojdanić Defence to make further submissions upon it when the translation is uploaded to eCourt.

7. The Ojdanić Defence argues that exhibit 3D1072 "is a document from January 1999 presenting Chief of Army General Staff Agenda for the meeting with International Military Representatives" and "indicates General Ojdanić's devotion to peace and cooperation with international bodies".⁷ The Prosecution objects to the admission of 3D1072 on grounds of lack of authenticity and reliability, seeing as it bears no stamp or signature. The Chamber notes that the title of the document is "Aide Mémoire of the Chief of the VJ /Yugoslav Army/ GŠ /General Staff/ for a meeting with the VDK /military diplomatic corps/ Friday, 29 January 1999 ck /Central Club/ of the vj". As such, the document seems to be Ojdanić's notes for an address he gave to the VJ

⁴ Prosecution's Response to Ojdanić's Motion Requesting the Admission of Exhibits from the Bar Table, 19 October 2007.

⁵ Decision on Pavković First Motion for Admission of Documents from Bar Table, 30 August 2007, paras. 2–3 (denying admission of documents without prejudice and inviting Pavković to re-apply for admission of those documents in accordance with terms of that decision, *i.e.*, relating each tendered document to pertinent issues in trial and addressing issues of provenance where necessary and appropriate).

⁶ General Dragoljub Ojdanić's Motion for Withdrawal of Exhibit 3D737 from the Bar Table, 23 October 2007.

⁷ Motion, para. 23.

Central Club, a description that is not entirely consistent with that given by the Ojdanić Defence in its Motion. The Chamber also notes that the Ojdanić Defence could have sought to authenticate the document through at least two different witnesses who, according to the document itself, seem to have been present at the address. The Chamber therefore does not find it appropriate to admit the document into evidence. Should the Ojdanić Defence wish to make further submissions regarding the document's authenticity, it may do so in a further application.

8. The Chamber considers that the Ojdanić Defence has not adequately identified exhibits 3D1080 and 3D1081. The Chamber has reviewed the documents and cannot discern what they are; moreover, the Chamber considers that they do not bear an official stamp or signature. The Chamber will not admit them into evidence at this time and invite the Ojdanić Defence to make further submissions upon them.

9. The Chamber considers that the following documents are relevant, have sufficient probative value, and bear sufficient indicia of reliability, so as to be admissible into evidence in these proceedings: 3D678, 3D686, 3D687, 3D708, 3D747, 3D776, 3D990, 3D992, 3D1049, 3D1054, 3D1073, 3D1076, 3D1079, 3D1086, and 3D1087.

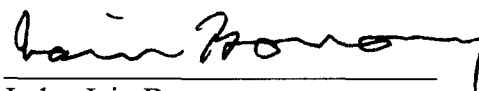
10. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motion, in part, and ORDERS as follows:

- (a) The following untranslated documents shall not be admitted into evidence at this time and the Ojdanić Defence is invited to make further submissions in relation to them in accordance with the terms contained within this Decision: 3D689, 3D800, 3D801, 3D802, 3D803, 3D804, 3D805, 3D809, 3D810, 3D811, 3D812, 3D813, 3D814, 3D815, 3D816, 3D817, 3D818, 3D819, 3D820, 3D821, 3D822, 3D823, 3D824, 3D825, 3D826, 3D827, 3D828, 3D829, 3D830, 3D831, 3D832, 3D833, 3D834, 3D835, 3D836, 3D837, 3D838, 3D839, 3D840, 3D841, 3D842, 3D843, 3D844, 3D845, 3D846, 3D847, 3D849, 3D850, 3D851, 3D852, 3D853, 3D854, 3D855, 3D856, 3D857, 3D858, 3D859, 3D860, 3D861, 3D862, 3D863, 3D864, 3D865, 3D866, 3D867, 3D868, 3D869, 3D870, 3D871, 3D872, 3D873, 3D874, 3D875, and 3D876.
- (b) The Ojdanić Defence shall submit, within seven days of the date of this Decision, a "priority list" to CLSS in accordance with the terms of this Decision.
- (c) The following documents referenced in paragraph 7 of the Motion shall not be admitted into evidence at this time and the Ojdanić Defence is invited to make further

submissions in relation to them in accordance with the terms contained within this Decision: 3D578, 3D579, 3D583, 3D585, 3D588, 3D590, 3D591, 3D594, 3D595, 3D596, 3D597, 3D598, 3D599, 3D601, 3D602, 3D603, 3D604, 3D605, 3D608, 3D609, 3D610, 3D611, 3D612, 3D613, 3D614, 3D615, 3D616, 3D617, 3D618, 3D619, 3D620, 3D621, 3D622, 3D623, 3D624, 3D625, 3D626, 3D627, 3D628, 3D629, 3D630, 3D631, 3D632, 3D634, 3D635, 3D636, 3D637, 3D638, 3D719, 3D722, and 3D730.

- (d) The following documents referenced in paragraph 16 of the Motion shall not be admitted into evidence at this time and the Ojdanić Defence is invited to make further submissions in relation to them in accordance with the terms contained within this Decision: 3D799 and 3D806.
- (e) The withdrawal of the Motion in respect of 3D737 is hereby CONFIRMED.
- (f) Exhibit 3D988 shall not be admitted into evidence.
- (g) Exhibits 3D1072 and 3D1008 shall not be admitted into evidence at this time and the Ojdanić Defence is invited to make further submissions in relation to them in accordance with the terms contained within this Decision.
- (h) The following documents shall not be admitted into evidence at this time and the Ojdanić Defence is invited to make further submissions in relation to them in accordance with the terms contained within this Decision: 3D848, 3D1080, and 3D1081.
- (i) The following documents shall be admitted into evidence: 3D678, 3D686, 3D687, 3D708, 3D747, 3D776, 3D990, 3D992, 3D1049, 3D1054, 3D1073, 3D1076, 3D1079, 3D1086, and 3D1087.

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



Judge Iain Bonomy
Presiding

Dated this twenty-fifth day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]