



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: 21 November 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: 21 November 2007

PROSECUTOR

v.

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

PUBLIC

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

Office of the Prosecutor

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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 Ojdanić’s Renewed Motion Requesting Admission of Exhibits From the Bar Table and Defence Motion Requesting Leave to Exceed Word Limit”, filed on 1 November 2007 (“Motion”), requesting the admission of various documents from the bar table, along with their translations, and hereby issues this decision thereon.

Untranslated Documents

1. On 16 October 2007, the Ojdanić Defence filed a motion requesting the admission of 149 documents from the bar table.¹ On 25 October 2007, the Chamber issued a decision granting that motion in part but denying the admission of a number of documents.² The Chamber denied the admission of a first group of documents, on the basis that they were untranslated.³ In its renewed request, the Ojdanić Defence indicates that this group of documents contains combat reports and that, in accordance with the Chamber’s decision of 25 October 2007, they have been arranged into a priority list and submitted to the Registry’s Conference and Language Services Section (“CLSS”) for translation.⁴ The Chamber takes cognisance of the Ojdanić Defence indication that, upon translation of these documents, it will file an additional renewed motion in respect of these documents.⁵ In that regard, the Chamber recalls and repeats the passages of its decision of 25 October 2007 relating to these untranslated documents, specifically, “[t]he 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 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.”⁶

2. In its decision of 25 October 2007, the Chamber requested further submissions on exhibits 3D799 and 3D806.⁷ The Ojdanić Defence has indicated that these documents are combat reports and seeks leave to file further submissions on them in conjunction with its putative renewed motion

¹ General Dragoljub Ojdanić’s Motion Requesting Admission of Exhibits from the Bar Table, 16 October 2007.

² Decision on Ojdanić Motion for Admission of Documents from the Bar Table, 25 October 2007 (“First Decision”).

³ First Decision, para. 1.

⁴ Motion, para. 2.

⁵ Motion, para. 2.

⁶ First Decision, 25 October 2007, para. 1.

⁷ First Decision, para. 2.

to admit exhibits from the bar table, on the grounds that those documents being translated are also combat reports.⁸ The Chamber considers it appropriate to deal with exhibits of a similar nature concurrently and therefore grants leave to the Ojdanić Defence to file further submissions relating to 3D799 and 3D806 in its anticipated, additional renewed motion.

Briefings to the Chief of Staff of the Supreme Command

3. In its decision of 25 October 2007, the Chamber denied admission of a second group of documents—namely briefings to the Chief of Staff of the Supreme Command held between 24 March and 8 June 1999—and allowed for further written submissions as to the tendered documents’ relevance, probative value, and reliability.⁹ These documents are 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. Further, the Chamber expressed concern over the authenticity of a number of the documents, including, but not restricted to, 3D578, 3D579, 3D583, and 3D585.¹⁰

4. Rule 89 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) sets out the requirements for the admission of evidence, stating:

(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.

5. In the Motion, the Ojdanić Defence submits that the briefings to the Chief of Staff of the Supreme Command are reliable, on the basis that they are typed excerpts in chronological order from the “Book of Briefings”, document 3D1094, which contains the original handwritten notes with stamps and signatures. The Ojdanić Defence submits that the authenticity of 3D1094 was confirmed by Spasoje Mučibabić, during his testimony of 27 and 28 September 2007.¹¹ In this regard, the Chamber recalls that on 26 October 2007, it confirmed the Ojdanić Defence motion to

⁸ Motion, para. 2.

⁹ First Decision, para. 2.

¹⁰ First Decision, para. 2.

¹¹ Motion, para. 4.

withdraw its request for the admission of 3D1094, on the basis that a more complete version is expected to be provided to the Ojdanić Defence by the Government of the Republic of Serbia.¹² To date, no formal notification of the receipt of a replacement “Book of Briefings” has been provided to the Chamber, and no motion has been filed for the admission of such. Consequently, the Chamber is not in a position to reassess the authenticity of the tendered documents related thereto.

Documents Purporting to Relate to Witness Lakić Đorović

6. In its decision of 25 October 2007, the Chamber noted that documents 3D1080 and 3D1081 bore no stamps or signatures and requested further submissions as to their identity and authenticity.¹³ The Ojdanić Defence informs the Chamber that these documents form part of an exchange between the Office of the Prosecutor of the Tribunal (“Prosecution”) and the Government of the Republic of Serbia, concerning the witness Lakić Đorović.¹⁴ The Ojdanić Defence submits that the authenticity of these documents is supported by the lack of objection to the authenticity of these documents on the part of the Prosecution.¹⁵ The Chamber notes that the Prosecution had not objected to the authenticity of these documents when the Chamber requested further information as to their nature and reliability and that, even in the absence of an objection, the Chamber must be satisfied as to whether the documents satisfy the criteria of Rule 89 before it can exercise its discretion to admit them into evidence. In its previous decision, the Chamber stated that it had reviewed the documents and could not discern what, in fact, they are. The Ojdanić Defence has made no progress in this regard and has still not identified the documents, but rather speaks of its “belief” of their identity.¹⁶ The Chamber therefore denies their admission for a second time.

Exhibit 3D1008

7. In its decision of 25 October 2007, the Chamber did not admit exhibit 3D1008, on the basis that there was no translation for it in eCourt, and invited the Ojdanić Defence to make further submissions upon it when the translation was uploaded to eCourt.¹⁷ Now that the translation is available in eCourt, the Chamber finds that the Ojdanić Defence has adequately demonstrated the relevance, probative value, and reliability of this document.

¹² Order re exhibits 3D639, 3D724, 3D725, 3D758, 3D1009, 3D1040, 3D1041, 3D1044, 3D1045, 3D1046, 3D1048, 3D1075, 3D1094, and 3D1109, 26 October 2007, paras. 6–7; General Dragoljub Ojdanić’s Motion to Withdraw the Request for the Admission of MFI Documents 3D1094 and 3D1109 into Exhibits, 22 October 2007.

¹³ First Decision, para. 10(h).

¹⁴ Motion, para. 48.

¹⁵ Motion, para. 48.

¹⁶ Motion, para. 48.

¹⁷ First Decision, para. 10(g).

Request to Exceed Word Limitation

8. The Chamber notes that, according to The Practice Direction on the Length of Briefs and Motions, a motion shall not exceed ten pages or 3,000 words, whichever is greater, and that the Motion exceeds the limit by 1,351 words.¹⁸ A party seeking authorisation to exceed this limit must do so in advance and “provide an explanation of the exceptional circumstances that necessitate this oversized filing.”¹⁹ The Chamber notes that no advance notification was received from the Ojdanić Defence in relation to exceeding the prescribed word limit. Nonetheless, the Chamber grants the request to exceed the word limit, on an exceptional basis, in light of the large number of documents subject to the request and the need for individualised treatment thereof, and—noting that the Ojdanić Defence has concluded the presentation of its defence case—in the interests of an expeditious trial.

Lack of Prosecution Objection

9. The Prosecution has indicated that it does not intend to oppose the Motion.

Disposition

10. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, hereby GRANTS the Motions, in part, permits the Ojdanić Defence to exceed the word limitation, and ORDERS as follows:

- (a) The Ojdanić Defence may file further submissions in relation to the untranslated documents identified in paragraph 10(a) of the 25 October 2007 decision when the translations are received, and also in relation to 3D799 and 3D806, via a renewed motion to admit documents from the bar table.
- (b) 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: 3D578, 3D579, 3D583, 3D585, 3D588, 3D590, 3D591, 3D594, 3D595, 3D596, 3D597, 3D598, 3D599, 3D601, 3D602, 3D603, 3D604, 3D605, 3D608, 3D609, 3D610, 3D611, 3D612,

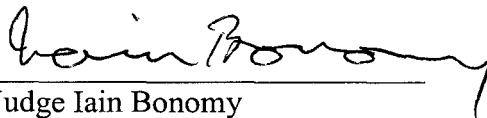
¹⁸ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7; Motion, para. 50.

¹⁹ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7.

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.

- (c) 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: 3D1080 and 3D1081.
- (d) Exhibit 3D1008 and its translation shall be admitted into evidence.

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


Judge Iain Bonomy
Presiding

Dated this twenty-first day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]