



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: 28 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: 28 November 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PAVKOVIĆ SECOND 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 the “Pavković Second Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit”, filed on 9 November 2007 (“Motion”), requesting the admission of various documents from the bar table, and the admission of the translations of these documents, and hereby issues this order thereon.

Submissions

1. On 26 October 2007, the Pavković Defence closed its case, subject to its intention to file a motion for admission of documents from the bar table upon the translation of a number of outstanding documents.¹ The Chamber indicated its acceptance of this course of action, on the condition that the Pavković Defence provide the Chamber with a list of the numbers of the documents intended to be tendered from the bar table.² Later that day, the Pavković Defence indicated the documents that had not been translated and were possible candidates for the bar table motion.³ Subsequently, on 9 November 2007, the Pavković Defence filed the current Motion. In the Motion, the Pavković Defence requests the admission of 64 documents from the bar table and sets out specific submissions relating to each of the documents, in order to demonstrate the required relevance, probative value, and reliability.⁴ The Motion refers to only seven of the 36 documents included in the list of 26 October 2007, and includes an additional 57 documents that were not included in that list. Nonetheless, on the basis of the lack of objection to the means by which the documents have been tendered, the Chamber will entertain the motion in its entirety.

2. The Prosecution opposes the admission of 4D393, on the basis of an insufficient showing of reliability. The Prosecution points out that 4D393 lacks sufficient indicia of reliability and that the Pavković Defence has not furnished the Chamber with information regarding its provenance.⁵ The Prosecution does not oppose the admission of any of the remaining documents, but points out that 4D439 and 4D415 have already been admitted into evidence.⁶

¹ T. 17726–17727 (26 October 2007).

² T. 17727 (26 October 2007).

³ Email from Pavković Defence to Court Officer, 26 October 2007.

⁴ Motion, para. 2.

⁵ Prosecution’s Response to Pavković Second Motion for Admission of Documents from the Bar Table, 21 November 2007 (“Prosecution Response”), para. 2.

⁶ Prosecution Response, para. 3. Exhibits 4D439 and 4D415 were admitted during the hearings held on 14 November and 19 November 2007, respectively.

3. The Ojdanić Defence opposes the admission of 4D406, on the basis that it is a newspaper article and thus admissible when used in-court as a foundation to test a witness's knowledge of events reported therein but inadmissible to prove the truth of its contents *per se*.⁷

4. The Lukić Defence also opposes the admission of 4D406, on the same grounds as presented by the Ojdanić Defence.⁸ In addition, the Lukić Defence opposes the admission of 4D421, on the basis that it is only the first page of a complete document (6D237) and that the authenticity of the additional handwritten note on 4D421, which is not included on 6D237, has not been sufficiently explained.⁹ Finally, the Lukić Defence opposes the admission of 4D452, on the bases that it lacks probative value and that the authenticity of additional handwritten notes on this typed document have not been sufficiently explained.¹⁰

Assessment of Documents

5. Rule 89 of the Rules of Procedure and Evidence of the Tribunal 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.

6. In respect of 4D406, the Pavković Defence indicates that this document is an article from the *Politika* newspaper, which it tenders to show that the Accused Pavković and Lukić reported the commission of serious crimes within Kosovo to the superior levels of the chain of command in the Army of the Federal Republic of Yugoslavia (“*Vojaska Jugoslavije*” or “VJ”).¹¹ The Chamber has previously indicated that it will not generally consider newspaper articles admissible solely to prove the truth of their contents.¹² This approach was taken in respect of P1696, a newspaper

⁷ Ojdanić Response to Pavković Second Motion for Admission of Documents from the Bar Table, 15 November 2007, (“Ojdanić Response”), paras. 1–2.

⁸ Lukić Response to Pavković Second Motion for Admission of Documents from the Bar Table, 19 November 2007, (“Lukić Response”), para. 2.

⁹ Lukić Response, para. 3.

¹⁰ Lukić Response, para. 4.

¹¹ Motion, para. 31.

¹² T. 16104–16111 (21 September 2007).

article concerning the same subject matter as 4D406.¹³ The Chamber notes that 4D406 is not tendered through a witness, nor is it indicated in the Motion that the document will be used to test any witness's knowledge of the events reported therein. Accordingly, the Chamber denies the admission of 4D406 from the bar table.

7. In relation to 4D421, the Chamber notes that the additional handwritten note on 4D421 is referred to by the Pavković Defence as the reason for its relevance, but that the “authenticating signature” of Sreten Lukić does not accompany the handwritten note.¹⁴ The Chamber considers that the Pavković Defence has not provided sufficient indicia of reliability, particularly in relation to the handwritten note, and so invites further submissions as to the authenticity and provenance of the document.

8. In relation to 4D393, the Pavković Defence acknowledges that this appears to be a “crudely typewritten document with no stamps or signature.”¹⁵ The Chamber considers that the Pavković Defence has not provided sufficient indicia of the reliability of this document and on this basis denies its admission.

9. In relation to 4D452, the Pavković Defence simply states that 4D452 has “an appearance of authenticity”.¹⁶ The Chamber notes that there is no translation available in eCourt. Consequently, the Chamber is not in a position to assess the document, but invites further submissions as to the provenance and authenticity thereof, at such a time as the document is translated.

10. In relation to 4D382, the Chamber is not in a position to assess its admissibility as it does not appear in eCourt, but invites further submissions as to the provenance and authenticity thereof, at such a time as the document is uploaded to eCourt.

11. Given the previous admission of 4D415 and 4D439, the Chamber disregards the Motion with respect to these exhibits.

12. In relation to the remaining documents, the Chamber considers that the authenticity, relevance, and probative value of the following documents have been sufficiently established: 4D84, 4D87, 4D185, 4D186, 4D187, 4D188, 4D191, 4D219, 4D223, 4D225, 4D235, 4D238, 4D239, 4D257, 4D258, 4D261, 4D265, 4D277, 4D310, 4D311, 4D323, 4D325, 4D333, 4D347,

¹³ T. 16104–16111 (21 September 2007).

¹⁴ Motion, para. 35.

¹⁵ Motion, para. 29.

4D352, 4D359, 4D362, 4D363, 4D364, 4D384, 4D387, 4D389, 4D390, 4D391, 4D394, 4D395, 4D396, 4D397, 4D398, 4D399, 4D401, 4D402, 4D403, 4D407, 4D410, 4D411, 4D414, 4D417, 4D422, 4D423, 4D428, 4D432, 4D433, 4D439, 4D454, and 4D460.

13. The Chamber considers that the Pavković Defence has not adequately demonstrated the relevance and probative value of 4D400. This document is a telegram submitted to show that the VJ combat units at Gornje Obrinje had no information regarding a massacre of civilians. However, the telegram does not specify to which unit it refers. Accordingly, the Chamber denies the admission of 4D400 and invites further submissions as to its relevance and probative value.

Request to Exceed Word Limitation

14. 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 486 words.¹⁷ According to the practice direction, 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.”¹⁸ The Chamber notes that no advance notification was received from the Pavković 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 number of documents subject to the request and the need for individualised treatment thereof, and, given that the Pavković Defence has concluded the presentation of its evidence, in the interests of a fair and expeditious trial.

Disposition

15. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motions, in part, permits the Pavković Defence to exceed the word limitation, and ORDERS as follows:

- (a) Exhibits 4D406, 4D421, 4D393, 4D452, and 4D382 shall not be admitted into evidence at this time, and the Pavković Defence is invited to make further

¹⁶ Motion, para. 39.

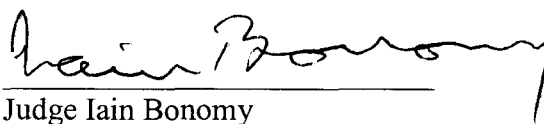
¹⁷ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7; Motion, p. 15.

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

submissions in relation to them in accordance with the terms contained within this Decision.

- (b) The following documents and their translations shall be admitted into evidence: 4D84, 4D87, 4D185, 4D186, 4D187, 4D188, 4D191, 4D219, 4D223, 4D225, 4D235, 4D238, 4D239, 4D257, 4D258, 4D261, 4D265, 4D277, 4D310, 4D311, 4D323, 4D325, 4D333, 4D347, 4D352, 4D359, 4D362, 4D363, 4D364, 4D384, 4D387, 4D389, 4D390, 4D391, 4D394, 4D395, 4D396, 4D397, 4D398, 4D399, 4D401, 4D402, 4D403, 4D407, 4D410, 4D411, 4D414, 4D417, 4D422, 4D423, 4D428, 4D432, 4D433, 4D439, 4D454, and 4D460.
- (c) Exhibit 4D400 shall not be admitted into evidence at this time, and the Pavković Defence is invited to make further submissions in relation to it in accordance with the terms contained within this Decision.
- (d) The Chamber DISMISSES as moot the Motion with respect to 4D439 and 4D415.

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


Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]