



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 ŠAINOVIĆ SECOND MOTION FOR ADMISSION OF
DOCUMENTARY EVIDENCE FROM BAR TABLE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

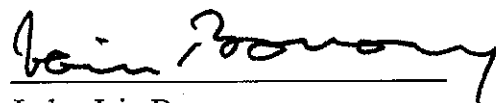
Counsel for the Accused

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 a “Defence Second Motion Requesting Admission of Exhibits from the Bar Table,” filed by the Šainović Defence on 27 November 2007 (“Motion”), and hereby renders its decision thereon.

1. In its Motion, the Šainović Defence requests the admission of exhibit 2D391, namely “Correspondence from the National Council for the Co-operation with ICTY regarding certain documents.” The Šainović Defence submits arguments in favor of the document’s authenticity, reliability, and relevance in relation to other documents in evidence, specifically P1468—“Minutes of meetings of the Joint Command for Kosovo and Metohija”—and P2862—“Extract from the working notebook of Aleksandar Vasiljević.”
2. The Trial Chamber considers that the Šainović Defence’s case is now closed; thus, before any additional evidence could be adduced, the Šainović Defence case should be re-opened.¹ Because the Šainović Defence fails to address this issue in the Motion and because the Chamber is reluctant under the present circumstances to *ex proprio motu* re-open the case, the Motion in its present form is incompetent.²
3. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 85 of the Rules of Procedure and Evidence of the Tribunal, hereby **DISMISSES** the Motion without prejudice.

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]

¹ The primary consideration in determining an application for re-opening a case to allow for the admission of fresh evidence is the question of whether, with reasonable diligence, the evidence could have been identified and presented in the case in chief of the party making the application. This burden “rests squarely” on the party seeking to adduce the evidence. Decision on Šainović Motions re Exhibit P1468, 21 November 2007, para. 14; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Application for a Limited Re-Opening of the Bosnia and Kosovo Components of the Prosecutor’s Case with Confidential Annex, 13 December 2005, para. 11.

² Furthermore, the Chamber notes that the Defence only requested the document from the Republic of Serbia on 20 September 2007, well after the close of its case.