



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: 16 January 2008
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: 16 January 2008

PROSECUTOR

v.

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

PUBLIC

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

Office of the Prosecutor

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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 “Lazarević Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit”, filed on 5 December 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 decision thereon.

Submissions

1. In the Motion, the Lazarević Defence requests the admission of 143 documents from the bar table.¹ The Lazarević Defence has divided the documents into ten groups and for each group has set out reasons in support of the relevance, authenticity, and probative value of the documents therein.

2. In its response to the Motion, the Prosecution objects to the admission of 5D693 on the basis that it lacks indicia of authenticity and that its substance relates to matters that occurred after the period relevant to the Indictment.² The Prosecution also objects to 5D1355, on the basis that the relevance of this list of non-disposed military conscripts of the Priština military district is not explained.³ The Prosecution submits that only a partial English translation of 5D302 has been provided and that a full translation should be uploaded to eCourt, prior to the admission of this document.⁴ The Prosecution does not oppose the admission of any of the remaining documents, but points out that 5D150, 5D151, 5D153, 5D261, 5D375, 5D448, 5D646, 5D1085, 5D1088, and 5D1351 have already been admitted into evidence, and that 5D419 is a duplicate of P1458, which is already in evidence.⁵

Assessment of Documents

3. Rule 89 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) sets out the requirements for the admission of evidence, providing, in part, as follows:

¹ Lazarević Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit, 5 December 2007, p. 3.

² Prosecution Response to Lazarević Motion for Admission of Documents from the Bar Table, 13 December 2007, (“Prosecution Response”), para. 2.

³ Prosecution Response, para. 3.

⁴ Prosecution Response, para. 5.

⁵ Prosecution Response, para. 4.

- (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.

4. The Chamber firstly points out that 5D150, 5D151, 5D153, 5D261, 5D325, 5D352, 5D375, 5D448, 5D646, 5D1023, 5D1034, 5D1035, 5D1039, 5D1085, 5D1086, 5D1088, and 5D1351 have already been admitted into evidence, and that 5D419 is a duplicate of P1458, which has already been admitted into evidence.

5. The Chamber has assessed the documents that have not yet been admitted, according to the criteria of relevance, authenticity, and probative value. In that regard, the relevance and probative value of 5D459, which is a short report from the Priština Corps command on unexploded cluster bombs in the village of Gračanica, dated 2 June 1999, are not immediately apparent. Consequently, the Chamber requires further information as to the relevance and probative value of this document, if the Lazarević Defence intends to persist in seeking its admission.

6. In relation to 5D1355, which is a detailed list of the non-disposed conscripts of the Priština military district of the Army of the Federal Republic of Yugoslavia (“*Vojska Jugoslavije*” or “VJ”), the Chamber notes that the document lack a signature or stamp and, furthermore, that there is no date on the document. Similarly, 5D1295, which is a chart containing statistical information on the personnel levels of the Priština Corps, has no date. In relation to 5D693, which is a coloured map, purportedly showing the activity of the KLA, the Chamber notes that there are no indicia of authenticity. Further, the map appears to depict the Russian and American KFOR zones of control in Kosovo after the conflict of 1999, and thus the document does not appear to be relevant to an issue in the case. Consequently, information as to the provenance, relevance, and probative value of these documents must be provided before their admissibility can be assessed.

7. The Chamber notes that 5D456, which is a cover letter attached to an order of the Civilian Protection Staff of Former Republic of Yugoslavia, concerning the cleaning up of the battlefield, does not have the actual order attached. The Chamber requires clarification as to the relevance and probative value of this document and whether the cover sheet is tendered on its own, or whether the regulation to which it refers has been inadvertently omitted.

8. In relation to 5D302, which is a short report on the NATO bombing in Kosovo on 24 and 25 April 1999, only a partial translation into English is provided, and the Lazarević Defence has not indicated whether the rest of the information in this document relates to the issues for which it is tendered. The Prosecution has pointed out that a full translation of this document is available in eCourt, under the document number P525.⁶ Unless it has objections to the English translation thereto, the Lazarević Defence should tender P525 for admission.

9. The Chamber notes that, apart from its objections to a small number of documents, as indicated above, the Prosecution takes no objection to the admission of the various other documents.

10. In relation to the remaining documents, the Chamber considers that the authenticity, relevance, and probative value of the following documents have been sufficiently established (grouped under the headings set out in the Motion):

- a) The appointment of Lazarević – 5D1320, 5D1321, 5D1325;
- b) 1998 Combat Reports – 5D53, 5D55, 5D56, 5D60, 5D63, 5D88, 5D89, 5D1308;
- c) Organisation of the Priština Corps – 5D1252, 5D1255, 5D1262, 5D1278;
- d) Reports on interactions with OSCE and KLA – 5D51, 5D98, 5D632, 5D648, 5D649, 5D650, 5D651, 5D652, 5D653;
- e) Application of international humanitarian law – 5D66;
- f) Activities of the KLA in early 1999 – 5D638;
- g) Preparations taken by the Priština Corps and Knowledge of KLA activities – 5D243, 5D250, 5D255, 5D258, 5D262, 5D263, 5D266, 5D1282, 5D1360;
- h) Activities of NATO, Priština Corps, and the KLA during the bombing – 5D2, 5D190, 5D191, 5D193, 5D206, 5D209, 5D210, 5D214, 5D216, 5D217, 5D220, 5D225, 5D226, 5D230, 5D283, 5D288, 5D301, 5D303, 5D304, 5D306, 5D312, 5D314, 5D364, 5D403, 5D406, 5D409, 5D418, 5D429, 5D430, 5D432, 5D433,

⁶ Prosecution Response, para. 5.

5D437, 5D439, 5D440, 5D442, 5D451, 5D452, 5D453, 5D455, 5D457, 5D465, 5D481, 5D499, 5D500, 5D503, 5D504, 5D545, 5D552, 5D570, 5D615, 5D618, 5D794, 5D796, 5D899, 5D908, 5D933, 5D935, 5D938, 5D939, 5D944, 5D945, 5D951, 5D954, 5D955, 5D961, 5D972, 5D979, 5D986, 5D1005, 5D1054, 5D1055, 5D1056, 5D1082, 5D1087, 5D1118, 5D1137, 5D1179, 5D1201, 5D1205, 5D1354; and

- i) The VJ military justice system – 5D1280, 5D1342, 5D1348, 5D1350.

Request to Exceed Word Limitation

11. 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 1,701 words.⁷ 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.”⁸ The Chamber notes that no advance notification was received from the Lazarević Defence in relation to exceeding the prescribed word limit. Furthermore, the Chamber notes that, despite the Motion exceeding the word limit, in certain instances it lacked clarity and specificity. In that regard, the Chamber encourages the parties, when addressing documents in groups, to ensure that the reasons provided apply to each of the documents within the group. 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 in the interests of a fair and expeditious trial.

⁷ 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. 20.

⁸ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C) 5 of IT/184 Rev. 2, paras. 5, 7.

Disposition

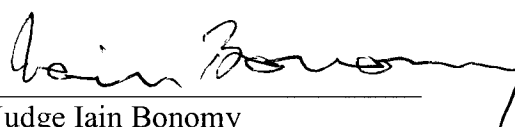
12. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, hereby GRANTS the Motion, in part, permits the Lazarević Defence to exceed the word limitation, and ORDERS as follows:

- (a) The following document shall not be admitted into evidence at this time, and the Lazarević Defence may make further submissions as to its relevance and probative value, in accordance with the terms contained within this Decision: 5D459.
- (b) The following documents shall not be admitted into evidence at this time, and the Lazarević Defence may make further submissions as to their relevance, authenticity, and probative value, in accordance with the terms contained within this Decision: 5D1355, 5D1295, and 5D693.
- (c) Document 5D456 shall not be admitted at this time, and the Lazarević Defence may make further submissions as to the relevance and probative value of this document and as to whether 5D456 is tendered on its own, or whether the regulation to which it refers has been inadvertently omitted.
- (d) Document 5D302 shall not be admitted, and the Lazarević Defence, is invited to tender P525 for admission in its place, in accordance with the terms contained within this Decision.
- (e) The following documents and their translations shall be admitted into evidence: 5D1320, 5D1321, 5D1325, 5D53, 5D55, 5D56, 5D60, 5D63, 5D88, 5D89, 5D1308, 5D1252, 5D1255, 5D1262, 5D1278, 5D51, 5D98, 5D632, 5D648, 5D649, 5D650, 5D651, 5D652, 5D653, 5D66, 5D638, 5D243, 5D250, 5D255, 5D258, 5D262, 5D263, 5D266, 5D1282, 5D1360, 5D2, 5D190, 5D191, 5D193, 5D206, 5D209, 5D210, 5D214, 5D216, 5D217, 5D220, 5D225, 5D226, 5D230, 5D283, 5D288, 5D301, 5D303, 5D304, 5D306, 5D312, 5D314, 5D364, 5D403, 5D406, 5D409, 5D418, 5D429, 5D430, 5D432, 5D433, 5D437, 5D439, 5D440, 5D442, 5D451, 5D452, 5D453, 5D455, 5D457, 5D465, 5D481, 5D499, 5D500, 5D503, 5D504, 5D545, 5D552, 5D570, 5D615, 5D618, 5D794, 5D796, 5D899, 5D908, 5D933, 5D935, 5D938, 5D939, 5D944, 5D945, 5D951, 5D954, 5D955, 5D961, 5D972, 5D979, 5D986, 5D1005, 5D1054, 5D1055, 5D1056, 5D1082, 5D1087, 5D1118,

5D1137, 5D1179, 5D1201, 5D1205, 5D1354, 5D1280, 5D1342, 5D1348, and 5D1350.

13. The Trial Chamber hereby DISMISSES as moot the Motion with respect to 5D150, 5D151, 5D153, 5D261, 5D325, 5D352, 5D375, 5D448, 5D646, 5D1023, 5D1034, 5D1035, 5D1039, 5D1085, 5D1086, 5D1088, 5D1351, and 5D419.

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



Judge Iain Bonomy
Presiding

Dated this sixteenth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]