



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: 10 March 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: 10 March 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON OJDANIĆ RENEWED MOTIONS FOR ADMISSION OF
DOCUMENTS (COMBAT REPORTS AND BRIEFINGS) 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 the “Ojdanić Renewed Motion Requesting Admission of Exhibits (Combat Reports) from the Bar Table”, filed on 14 February 2008 (“Combat Reports Motion”), and the “Supplement to Ojdanić Renewed Motion to Admit Documents (Combat Reports) from the Bar Table”, filed on 19 February 2008 (“Supplement”), requesting the admission of various documents from the bar table, along with their translations. Additionally, the Chamber is seised of the “Ojdanić Renewed Motion Requesting Admission of Exhibits (General Staff Briefings) from the Bar Table”, also filed on 14 February 2008 (“Briefings Motion”), requesting the admission of various documents from the bar table, along with their translations. The Chamber hereby issues this decision on both motions and the Supplement.

The Motions and Preceding Decisions

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 On 1 November 2007, the Ojdanić Defence indicated in relation to one group of the tendered documents—the “General Staff combat reports” (“combat reports”)—that these had been arranged into a priority list and submitted to the Registry’s Conference and Language Services Section (“CLSS”) for translation, in accordance with the Chamber’s decision of 25 October 2007.³ Subsequently, on 14 February 2008, the Ojdanić Defence filed the Combat Reports Motion seeking to tender the combat reports and their translations.⁴ Additionally, on 19 February 2008, the Ojdanić Defence filed the Supplement, seeking the admission of four combat reports from the Third Army, which are associated with the documents tendered in the Combat Reports Motion.⁵

2. In the Combat Reports Motion, the Ojdanić Defence submits that the combat reports from the period of the conflict with NATO are relevant as a group to show the reporting system which existed in the (“*Vojska Jugoslavije*” or “VJ”) and the information that was presented to Ojdanić and his staff.⁶ The Ojdanić Defence specifies that the combat reports set out in detail the issues Ojdanić and his staff dealt with during the conflict with NATO, including the activities of the opposing

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 General Dragoljub Ojdanić’s Renewed Motion Requesting Admission of Exhibits From the Bar Table and Defence Motion Requesting Leave to Exceed Word Limit, 1 November 2007, para. 2.

⁴ Combat Reports Motion, para. 2.

⁵ Supplement, para. 3.

forces, the situation at the border, and the activities, manning levels, morale, security, command and communications, and logistics situations of the units of the VJ, along with irregular issues such as cases of desertion, lack of adequate financing, anti-war demonstrations, interactions with the MUP of Montenegro, and inspections and tours of the units of the VJ.⁷ Additionally, the Ojdanić Defence submits that the combat reports detail the work of the VJ military judicial organs, and specifies the references to these organs in 22 of the approximately 80 combat reports that are tendered.⁸ Finally, the Ojdanić Defence submits that the combat reports show, in their entirety, that there was no plan to expel ethnic Albanians from Kosovo, but rather that the activity of the VJ was aimed solely at maintaining the sovereign integrity of the Former Republic of Yugoslavia.⁹

3. In the Supplement, the Ojdanić Defence informs the Chamber that it has received translations of the 1999 combat reports from the Third Army of 27 March, 29 March, 4 April, and 7 April, which were still pending when it filed the Motion, and that it has uploaded these to eCourt.¹⁰ It sets out submissions in support of the admission of these four documents, including that they contain information relevant to the activities of the military judicial organs within the FRY, to NATO's intention to cause a humanitarian crisis, and the VJ's efforts to control criminal activity and ill-discipline during the conflict with NATO.¹¹

4. In relation to the second group of documents tendered by the Ojdanić Defence on 16 October 2007—namely briefings to the Chief of Staff of the Supreme Command held between 24 March and 8 June 1999—the Chamber allowed for further written submissions as to their relevance, probative value, and authenticity in its Decision of 25 October 2007.¹² On 21 November 2007, the Chamber denied admission of these briefings, on the basis that the Ojdanić Defence had withdrawn the so-called “Book of Briefings”, due to it being incomplete.¹³ In doing so, the Chamber noted that the Ojdanić Defence had indicated that a more complete Book of Briefings was expected to be provided by the Government of Serbia.¹⁴

⁶ Combat Reports Motion, para. 2.

⁷ Combat Reports Motion, para. 4.

⁸ Combat Reports Motion, para. 5.

⁹ Combat Reports Motion, para. 2.

¹⁰ 3D1126; 3D1127; 3D1128; and 3D1129.

¹¹ Supplement, para. 4.

¹² First Decision, para. 2.

¹³ Decision on Ojdanić Renewed Motion for Admission of Documents from the Bar Table, 21 November 2007 (“Second Decision”), para. 5. The original Book of Briefings was 3D1094.

¹⁴ Second Decision, para. 5; 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.

5. In its Briefings Motion, the Ojdanić Defence indicates that a replacement Book of Briefings has been received from the Government of the Republic of Serbia and seeks to tender this for admission along with the documents pertaining to each individual briefing.¹⁵ The Ojdanić Defence submits that the briefings to the Chief of the General Staff/Supreme Command Staff collectively demonstrate “that there was no plan, let alone discussions, concerning the alleged expulsions” of ethnic Albanians from Kosovo, as well as detailing the activities of Ojdanić and the General Staff, and documenting that their intent was “solely to defend their country against NATO and KLA attacks.”¹⁶ The Ojdanić Defence provides specific submissions as to the relevance and probative value of each of these documents.¹⁷

6. The Prosecution has indicated that it does not intend to respond to the Motions.¹⁸

Combat Reports

7. 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.

8. In relation to the Ojdanić Defence’s claim that the combat reports show that there was no plan to expel ethnic Albanians from Kosovo, the Chamber notes that these documents are relevant and possess the requisite probative value in relation to the issue of the activities of the VJ and the information available to Ojdanić and the General Staff/Supreme Command Staff during the conflict with NATO.

9. Looking to the relevance and probative value of the individual combat reports, the Chamber notes that in its decisions of 25 October and 21 November 2007, it directed the Ojdanić Defence to relate each tendered document (or relevant portion thereof) to issues in the trial and address issues of provenance where necessary and appropriate.¹⁹ Whilst the Ojdanić Defence has provided

¹⁵ The replacement book of briefings is 3D1125; Briefings Motion, para. 1.

¹⁶ Briefings Motion, para. 4, 5.

¹⁷ Briefings Motion: Annex A, paras. 6–47.

¹⁸ Emails from Prosecution to the Chamber of 15 February 2008 and 28 February 2008.

¹⁹ First Decision, para. 1; Second Decision, para. 1.

general arguments in favour of the admission of the combat reports as a group, and specific references in relation to 22 of the combat reports, it has not made specific submissions relating the other combat reports to issues in the trial. The Ojdanić Defence has directed the Chamber to a passage from a decision in the case of *Prosecutor v. Delalić et al.*, in support of the tendering of documents to provide “a context and complete picture presented by the evidence gathered.”²⁰ The Chamber may indeed admit documents for such a purpose. However, that does not obviate the need for specific submissions relating each tendered document to issues in the trial.²¹ The quoted passage in the *Prosecutor v. Delalić et al.* decision was made in the context of a discussion of the authenticity of documents. Subsequently, that decision addressed the tendered documents on their individual merits. Consequently, the Chamber repeats its direction to the parties, when submitting documents from the bar table, to relate each tendered document (or relevant portion thereof) to issues in the trial and address issues of provenance where necessary and appropriate.

10. Nonetheless, noting that the Ojdanić Defence has concluded the presentation of its defence case—and in the interests of a fair and expeditious trial—the Chamber has assessed the combat reports for their individual relevance and probative value. The Chamber considers that the following are relevant and have sufficient probative value to be admitted: 3D799, 3D800, 3D801, 3D802, 3D803, 3D804, 3D805, 3D806, 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, 3D848, 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, and 3D875.

11. The Chamber notes that the combat report of 2 April 1999, 3D807, has not been admitted into evidence, as claimed in the Motion.²² Nonetheless, the Chamber, having reviewed this combat report, is satisfied as to its relevance and probative value.

12. Additionally, the Ojdanić Defence has tendered the reports from the Third Army that did not reach the General Staff/Supreme Command Staff in time for inclusion in the combat reports;

²⁰ Combat Reports Motion, para. 2; *Prosecutor v. Delalić et al.* Decision on the Motion of the Prosecution for Admission of Evidence, Case no. IT-96-21-T, 19 January 1998, para. 20.

²¹ An example of such individualised treatment is provided by the Pavković Second Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit, 9 November 2007.

²² Combat Reports Motion, para. 2.

3D1126, 3D1127, 3D1128, and 3D1129. The Chamber, having reviewed these reports from the Third Army, is satisfied as to their relevance and probative value.

Briefings

13 In relation to the briefings of the General Staff/Supreme Command Staff, the Chamber notes that the new Book of Briefings differs from the previously submitted one in that it includes additional pages that were missing from the previous one, and also in that it does not include notes on the briefings from after 9 June 1999. Stamps have been added to each page of the new Book of Briefings indicating that it was received from the VJ. During the course of the trial, Spasoje Mučibabić testified that he and Dragan Paskaš entered notes into the Book of Briefings and identified a number of notes that were in his writing.²³ Milovan Vlajković, Đorđe Ćurčin, and Milan Radoičić confirmed that Paskaš and Mučibabić were responsible for taking the notes of these meetings.²⁴ On this basis, the Chamber is satisfied as to the authenticity of the Book of Briefings.

14 Additionally, the Ojdanić Defence also seeks to support the authenticity of 3D1125 on the basis of the accompanying letter from the Government of Serbia, 3D1124.²⁵ However, the Chamber notes that the letter is simply approval for the use of 3D1125 and the briefings notes that comprise it. The letter does not contain any additional information specifically related to the authenticity of 3D1125. Noting that the Ojdanić Defence does not tender the letter for admission as evidence, the Chamber considers it as material provided in support of the Briefings Motion.

15. Looking to the documents pertaining to each individual briefing, the Ojdanić Defence has indicated that there are discrepancies between the translations of these and the translation of the Book of Briefings, 3D1125.²⁶ The Chamber has compared the translations and, in the absence of any objection from the Prosecution, is satisfied as to the authenticity of the documents pertaining to each individual briefing.

16. In relation to the Ojdanić Defence's general submission that the briefings are relevant and probative, the Chamber first notes that a number of the individual minutes from briefings are already in evidence in the case.²⁷ Additionally, the Chamber notes that, taken collectively, these

²³ Spasoje Mučibabić, T. 16553–16554 (27 September 2007).

²⁴ Milovan Vlajković, T. 16086 (20 September) and statement 3D1112, para. 18; Đorđe Ćurčin, T. 17071 (16 October 2007); Milan Radoičić, 3D1111 (witness statement), para. 11.

²⁵ Briefings Motion, para. 2.

²⁶ Briefings Motion, para. 14, Annex C.

²⁷ 3D493; 3D580; 3D581; 3D582; 3D584; 3D586; 3D587; 3D589; 3D592; 3D593; 3D600; 3D606; 3D633; 3D639; 3D721; 3D723; 3D728; and 3D729.

documents are probative of the relevant issue of the discussions and activities of Ojdanić and the General Staff.

17. Looking to the documents relating to each individual briefing, the Chamber finds that the following are relevant and have sufficient probative value to be admitted: 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. The Chamber takes cognisance that the meetings of 2 April and 9 June 1999 do not have individual exhibits, but are contained in the Book of Briefings, and that no data for the briefings of 27 March, 9, 10, 20 April is contained in the Book of Briefings.²⁸

18. The Chamber recalls that it has previously denied the admission of exhibits 3D724 and 3D725, which are entitled briefings to the Chief of Staff of the Supreme Command for 6 and 8 April 1999, respectively, on the ground that it was not satisfied with the Defence's arguments that Spasoje Mučibabić had laid an adequate basis for the authenticity of the two documents.²⁹ The Chamber therefore did not admit them into evidence at that time but invited the Ojdanić Defence to make additional submissions regarding their authenticity in a further written submission. On the basis of the replacement Book of Briefings and the testimony of Spasoje Mučibabić, in conjunction with that of Vlajković, and Ćurčin, referred to above, the Chamber considers that the authenticity of these documents has been adequately demonstrated.

Disposition

19. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motions and Supplement, and ORDERS as follows:

- (a) The following combat reports from the General Staff/Supreme Command Staff and their translations shall be admitted into evidence: 3D799, 3D800, 3D801, 3D802, 3D803, 3D804, 3D805, 3D806, 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,

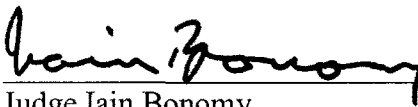
²⁸ Briefings Motion, para. 13.

²⁹ Order re exhibits 3D639, 3D724, 3D725, 3D758, 3D1009, 3D1040, 3D1041, 3D1044, 3D1045, 3D1046, 3D1048, 3D1075, 3D1094, and 3D1109, 26 October 2007, para. 4; Request for the Admission of MFI Documents 3D724 and 3D725, 19 October 2007.

3D835, 3D836, 3D837, 3D838, 3D839, 3D840, 3D841, 3D842, 3D843, 3D844, 3D845, 3D846, 3D847, 3D848, 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, and 3D875.

- (b) The following combat reports from the Third Army and their translations shall be admitted into evidence 3D1126, 3D1127, 3D1128, and 3D1129.
- (c) The Chamber shall admit 3D807 and its translation into evidence, *proprio motu*.
- (d) The Chamber shall admit the Book of Briefings, 3D1125, and its translation into evidence.
- (e) The following briefings of the General Staff/Supreme Command Staff and their translations shall be admitted into evidence: 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, 3D724, 3D725, and 3D730.

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


Judge Iain Bonomy
Presiding

Dated this tenth day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]