



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: 2 April 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: 2 April 2008

PROSECUTOR

v.

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

PUBLIC

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

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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 (i) the “Defence Motion Requesting Leave to Exceed Word Limit of ‘Defence Second Motion Requesting Admission of Exhibits from the Bar Table’” (“Word Limit Motion”); (ii) the “Defence Second Motion Requesting Admission of Exhibits from the Bar Table” (“Bar Table Motion”); and (iii) “Vladimir Lazarevic’s Tenth Motion to Amend Rule 65 *ter* Exhibit List” (“Exhibit List Motion”), all of which were filed by Lazarević Defence on 15 February 2008. In addition, the Trial Chamber is seised of the “Supplement to Defence Second Motion Requesting Admission of Exhibits from the Bar Table”, filed by Lazarević Defence on 24 March 2008 (“Supplement”). The Chamber hereby issues this decision on the Motions and the Supplement.

1. In the Word Limit Motion, the Lazarević Defence seeks leave to exceed the limit of 3,000 words or ten pages, whichever is greater, as set out by the Practice Direction on the Length of Briefs and Motions. This request relates to the Lazarević Defence’s Bar Table Motion, which contains 13,745 words. In support, the Lazarević Defence claims that the purpose of the Bar Table Motion is to address the criteria envisaged for admissibility of evidence, and argues that this cannot be achieved within the above mentioned word limit when there are over 100 exhibits to be discussed.¹ In light of the number of documents subject to the Bar Table Motion, the Chamber grants the request to exceed the word limit.

2. In the Bar Table Motion, the Lazarević Defence requests, pursuant to Rule 89(C) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), admission of over 250 documents from the bar table, and argues that they are all reliable and relevant, and therefore have probative value.² The Lazarević Defence also addresses each document, or groups of documents, in some detail and outlines the issues with which they are concerned.³ Furthermore, the Bar Table Motion contains a public Annex which lists the documents in question and indicates the translation status of the same. According to the Annex, over a third of documents referred to in the Bar Table Motion have not been translated.⁴ In that context, on 17 March 2008, the Lazarević Defence informed the Chamber that it had received translations relating to 15 exhibits mentioned in the Bar Table Motion, namely 5D204, 5D285, 5D293, 5D294, 5D305, 5D309, 5D331, 5D668, 5D781, 5D782, 5D783, 5D784,

¹ Word Limit Motion, paras. 1–3.

² Bar Table Motion, paras. 1–3.

³ Bar Table Motion, paras. 7–171.

⁴ Bar Table Motion, pp. 33–39.

5D978, 5D1022, and 5D1176.⁵ Similarly, on 1 April 2008, the Lazarević Defence informed the Chamber that it had also received a translation of exhibit 5D318, which still needs to be uploaded to e-Court.⁶

3. In the Exhibit List Motion, the Lazarević Defence seeks permission to amend its Rule 65 *ter* exhibit list, for the tenth time, by adding six documents to it, namely 5D1436, 5D1437, 5D1438, 5D1439, 5D1440, and 5D1441, all of which are referred to in the Bar Table Motion as well. According to the Exhibit List Motion, these documents were unintentionally omitted as the Lazarević Defence was not in position to list them in previous motions to amend the Rule 65 *ter* exhibit list.⁷ Their relevance and probative value is then addressed in the Bar Table Motion, along with the other documents listed therein.⁸

4. Finally, in the Supplement, the Lazarević Defence informs the Chamber that one of the documents referred to in the Bar Table Motion, namely 5D456, contains a reference to an order which has already been admitted into evidence under exhibit number P2633.⁹

5. On 21 February 2008, the Prosecution filed its “Prosecution’s Response to Lazarević’s Second Motion Requesting Admission of Documents from the Bar Table” (“Response”). As for the Exhibit List Motion, on 29 February 2008, the Prosecution indicated that it did not intend to respond to it.¹⁰

6. In the Response, the Prosecution notes that a number of documents referred to in the Bar Table Motion have already been admitted into evidence during the course of the Defence case, and lists a few as an example.¹¹ The Chamber finds that there are 22 such documents in the Bar Table Motion, namely 5D432, 5D666, 5D670, 5D675, 5D690, 5D899, 5D910, 5D911, 5D922, 5D933, 5D935, 5D938, 5D945, 5D951, 5D954, 5D955, 5D1014, 5D1055, 5D1087, 5D1129, 5D1209, and 5D1243. Accordingly, the parts of the Bar Table Motion referring to these exhibits are now moot.

7. The Prosecution further notes that 5D302, along with its partial translation, is a duplicate of exhibit P525.¹² This is acknowledged by the Lazarević Defence in the Bar Table Motion where the

⁵ Email from Lazarević Defence, sent on 17 March 2008.

⁶ Email from Lazarević Defence, sent on 1 April 2008.

⁷ Exhibit List Motion, paras. 1–4, Annex A.

⁸ Bar Table Motion, paras. 170–172.

⁹ Supplement, paras. 1–4.

¹⁰ Email from Prosecution, sent on 29 February 2008.

¹¹ Response, para. 3.

¹² Response, para. 5.

Lazarević Defence first submits that P525 should be admitted instead of 5D302,¹³ but nevertheless proceeds to seek admission of 5D302 as well.¹⁴ Given the fact that 5D302 has already been the subject of an earlier decision of this Chamber when the Lazarević Defence was encouraged to use exhibit P525 instead of 5D302,¹⁵ and given the fact that the Lazarević Defence seems to have accepted this suggestion,¹⁶ the Chamber is of the view that exhibit 5D302 should not be admitted into evidence.

8. The Prosecution further objects to admission of the large number of untranslated documents.¹⁷ In that context, the Prosecution also notes that a number of untranslated documents listed in the Bar Table Motion have been marked for identification during the course of the trial, their admission thus being suspended until such time when the translations are provided.¹⁸ The Chamber here recalls its Order of 2 April 2008 whereby it admitted into evidence a number of documents, tendered by the Lazarević Defence, which had earlier been marked for identification.¹⁹ Ten of the documents admitted by virtue of that Order are also referred to in this Bar Table Motion, namely 5D773, 5D963, 5D966, 5D1070, 5D1076, 5D1132, 5D1178, 5D1210, 5D1244, and 5D1245. Accordingly, the parts of the Bar Table Motion relating to the admission of the above-mentioned ten exhibits have now become moot.

9. Thus, the Chamber, having taken the foregoing into account, notes that there remain 84 untranslated exhibits referred to in the Bar Table Motion, namely 5D44,²⁰ 5D223, 5D224, 5D233, 5D235, 5D310, 5D321, 5D470, 5D672, 5D694, 5D696, 5D702, 5D703, 5D704, 5D705, 5D710, 5D715, 5D716, 5D717, 5D718, 5D719, 5D720, 5D721, 5D722, 5D724, 5D746, 5D748, 5D750, 5D752, 5D772, 5D776, 5D777, 5D778, 5D779, 5D836, 5D886, 5D929, 5D962, 5D969, 5D976, 5D977, 5D982, 5D987, 5D990, 5D996, 5D1001, 5D1006, 5D1008, 5D1015, 5D1075, 5D1077, 5D1078, 5D1111, 5D1113, 5D1115, 5D1119, 5D1120, 5D1122, 5D1123, 5D1125, 5D1128, 5D1130, 5D1133, 5D1134, 5D1135, 5D1136, 5D1140, 5D1183, 5D1188, 5D1212, 5D1232, 5D1260, 5D1261, 5D1279, 5D1281, 5D1283, 5D1343, 5D1349, 5D1406, 5D1407, 5D1409, 5D1437, 5D1440, and 5D1441.

¹³ Bar Table Motion, para. 7.

¹⁴ Bar Table Motion, para. 23.

¹⁵ Decision on Lazarević Motion for Admission of Documents from the Bar Table, 16 January 2008, para. 8.

¹⁶ Bar Table Motion, para. 7.

¹⁷ Response, para. 2.

¹⁸ Response, para. 3.

¹⁹ Order Regarding Documents Tendered by Lazarević Defence That Have Been Marked for Identification, 2 April 2008.

²⁰ Even though this exhibit has a document labelled "translation" linked to it, this "translation" is in fact the original document in B/C/S.

10. Given the Chamber's policy in relation to admission of untranslated documents,²¹ the Chamber does not find it appropriate to admit into evidence the untranslated documents referred to above at the current time.

11. Finally, the Prosecution indicates that, apart from objections outlined above, it takes no objection to the admission of the remaining translated documents.²² The Chamber has assessed these documents in accordance with the requirements set out in Rule 89(C) of relevance, probative value, and reliability.

12. The Chamber first notes that 11 of these documents have only been partially translated, namely 5D628, 5D676, 5D789, 5D851, 5D871, 5D906, 5D918, 5D919, 5D981, 5D1368, and 5D1369.²³ In relation to two of those, namely 5D789 and 5D1369, the Prosecution raised an objection to their use during the testimony of Krsman Jelić on the basis that they were only partially translated, arguing that the Chamber would need to see them in their entirety in order to appreciate them fully. A discussion ensued, and the Lazarević Defence expressed its intention to have the documents translated in their entirety. Accordingly, they were not admitted at the time.²⁴ In its current Response, the Prosecution makes no objection to any of the partially translated documents mentioned above, including the two it objected to during the trial. However, the Chamber notes that majority of them are short combat reports and VJ orders. As such, they should be translated in their entirety for the Chamber to have a full understanding of their content and the situation they describe. For that reason, the Chamber denies admission of 5D628, 5D676, 5D789, 5D851, 5D871, 5D906, 5D918, 5D919, 5D981, 5D1368, and 5D1369 at this time.

13. The Chamber notes that exhibit 5D405, which is a Priština Corps document concerned with clearing up of the battlefield, has no date. It is, therefore, difficult to assess its relevance and probative value at this stage. In addition, exhibit 5D529 is represented by the Lazarević Defence as belonging to a group of documents originating from the command of the 15th Armoured Brigade.²⁵ However, the Chamber notes that this must be a mistake as 5D529 is a document that originates from the 175th Infantry Brigade. The Chamber is of the view that the reference to 5D529 is

²¹ Order on Procedure and Evidence, 11 July 2006, para. 8. The order was modified by the "Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence," issued 16 August 2007. The lack of translations of these documents was also discussed at the hearing held on 18 October 2007. *See also* Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007, para. 1.

²² Response, para. 6.

²³ The Chamber does not include 5D1244 and 5D1245 in this list even though they are also only partially translated. These documents are different than the 11 listed above; they are relatively lengthy documents containing VJ rules on the use of certain weapons. Since the Chamber is concerned with the portions of those rules relevant to this trial, only those need to be translated.

²⁴ T. 18870–18874 (23 November 2007).

²⁵ Bar Table Motion, para. 85.

probably an inadvertent typographical error and that the Lazarević Defence was most likely referring to 5D929, which is a document originating from the 15th Armoured Brigade. However, as stated above, 5D929 has not been translated as of yet and therefore will not be admitted into evidence in accordance with the admission of evidence policy discussed above. In addition, it is unclear whether the Lazarević Defence wishes to submit 5D529 for admission nevertheless. Accordingly, 5D529 is denied admission.

14 With respect to 5D456, the Chamber recalls its request for clarification of its relevance and probative value in an earlier decision.²⁶ Having received the clarification in the current Bar Table Motion, as well as being notified in the Supplement of its connection to P2633, the Chamber is now satisfied that this document has the requisite relevance, probative value, and reliability.

15 The remaining documents are combat reports or orders of 3rd Army Command, Priština Corps Command, or Priština Corps' various Brigades, which were produced in the period relevant to the Indictment and the trial. Thus, the Chamber considers that the Lazarević Defence has established the relevance, probative value, and reliability of the following documents:

- (a) Supreme Command Staff document: 5D318.
- (b) 3rd Army documents: 5D90, 5D285, 5D337, 5D340, 5D420.
- (c) Priština Corps documents: 5D45, 5D222, 5D241, 5D289, 5D293, 5D294, 5D353, 5D360, 5D371, 5D399, 5D413, 5D417, 5D419, 5D431, 5D449, 5D456, 5D668, 5D1359.
- (d) 37th Motorised Brigade documents: 5D204, 5D1022, 5D1024, 5D1025, 5D1026, 5D1028, 5D1030, 5D1036, 5D1038, 5D1040, 5D1042, 5D1043, 5D1044, 5D1045, 5D1046, 5D1047, 5D1048, 5D1049, 5D1050, 5D1058.
- (e) 125th Motorised Brigade documents: 5D331, 5D464, 5D466, 5D473, 5D474, 5D695, 5D697, 5D699, 5D712, 5D749, 5D751, 5D753, 5D754, 5D757, 5D759, 5D775, 5D781, 5D782, 5D783, 5D784, 5D1177.
- (f) 243rd Motorised Brigade documents: 5D689, 5D787.
- (g) 211th Armoured Brigade documents: 5D582, 5D597, 5D608, 5D614.
- (h) 252nd Armoured Brigade document: 5D968.

²⁶ Decision on Lazarević Motion for Admission of Documents from Bar Table, 16 January 2008, para. 7.

- (i) 549th Motorised Brigade documents: 5D849, 5D876, 5D882, 5D887, 5D896, 5D924, 5D1211.
- (j) 15th Armoured Brigade documents: 5D925, 5D927, 5D930, 5D932, 5D941, 5D942, 5D943, 5D948, 5D950, 5D952, 5D953, 5D959, 5D1438, 5D1439.
- (k) 58th Light Infantry Brigade documents: 5D1116, 5D1399, 5D1436.
- (l) 354th Infantry Brigade documents: 5D505, 5D520.
- (m) Engineering Brigade document: 5D588.
- (n) Military District and Military Departments documents: 5D978, 5D984, 5D988, 5D993, 5D998, 5D1002, 5D1003, 5D1007, 5D1011, 5D1013.
- (o) Military Prosecutions documents: 5D124, 5D1018.
- (p) Activities of NATO: P525, 5D305, 5D307, 5D308, 5D309.
- (q) Miscellaneous documents: 5D855, 5D865, 5D1051, 5D1176, 5D1181.

16. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, and 89 of the Rules, hereby GRANTS the Motions and the Supplement, in part; permits the Lazarević Defence to exceed the word limitation; and ORDERS as follows:

- (a) Exhibits 5D1436, 5D1437, 5D1438, 5D1439, 5D1440, 5D1441 shall be added to Lazarević Defence's Rule 65 *ter* list.
- (b) The following documents shall not be admitted into evidence because they have not been translated: 5D44, 5D223, 5D224, 5D233, 5D235, 5D310, 5D321, 5D470, 5D672, 5D694, 5D696, 5D702, 5D703, 5D704, 5D705, 5D710, 5D715, 5D716, 5D717, 5D718, 5D719, 5D720, 5D721, 5D722, 5D724, 5D746, 5D748, 5D750, 5D752, 5D772, 5D776, 5D777, 5D778, 5D779, 5D836, 5D886, 5D929, 5D962, 5D969, 5D976, 5D977, 5D982, 5D987, 5D990, 5D996, 5D1001, 5D1006, 5D1008, 5D1015, 5D1075, 5D1077, 5D1078, 5D1111, 5D1113, 5D1115, 5D1119, 5D1120, 5D1122, 5D1123, 5D1125, 5D1128, 5D1130, 5D1133, 5D1134, 5D1135, 5D1136, 5D1140, 5D1183, 5D1188, 5D1212, 5D1232, 5D1260, 5D1261, 5D1279, 5D1281, 5D1283, 5D1343, 5D1349, 5D1406, 5D1407, 5D1409, 5D1437, 5D1440, and 5D1441.
- (c) Exhibits 5D628, 5D676, 5D789, 5D851, 5D871, 5D906, 5D918, 5D919, 5D981, 5D1368, and 5D1369 shall not be admitted into evidence as they are only partially translated.
- (d) Exhibit 5D405 shall not be admitted into evidence as it contains no date.
- (e) Exhibit 5D302 shall not be admitted into evidence as it is a duplication of exhibit P525.
- (f) Exhibit 5D529 shall not be admitted into evidence and the Lazarević Defence may make further submissions as to its relevance, probative value, and reliability, in accordance with the terms contained within this Decision.
- (g) The following documents and their translations shall be admitted into evidence: P525, 5D45, 5D90, 5D124, 5D204, 5D222, 5D241, 5D285, 5D289, 5D293, 5D294, 5D305, 5D307, 5D308, 5D309, 5D331, 5D337, 5D340, 5D353, 5D360, 5D371, 5D399, 5D413, 5D417, 5D419, 5D420, 5D431, 5D449, 5D456, 5D464,

5D466, 5D473, 5D474, 5D505, 5D520, 5D582, 5D588, 5D597, 5D608, 5D614, 5D668, 5D689, 5D695, 5D697, 5D699, 5D712, 5D749, 5D751, 5D753, 5D754, 5D757, 5D759, 5D775, 5D781, 5D782, 5D783, 5D784, 5D787, 5D849, 5D855, 5D865, 5D876, 5D882, 5D887, 5D896, 5D924, 5D925, 5D927, 5D930, 5D932, 5D941, 5D942, 5D943, 5D948, 5D950, 5D952, 5D953, 5D959, 5D968, 5D978, 5D984, 5D988, 5D993, 5D998, 5D1002, 5D1003, 5D1007, 5D1011, 5D1013, 5D1018, 5D1022, 5D1024, 5D1025, 5D1026, 5D1028, 5D1030, 5D1036, 5D1038, 5D1040, 5D1042, 5D1043, 5D1044, 5D1045, 5D1046, 5D1047, 5D1048, 5D1049, 5D1050, 5D1051, 5D1058, 5D1116, 5D1176, 5D1177, 5D1181, 5D1211, 5D1359, 5D1399, 5D1436, 5D1438, and 5D1439.

- (h) With respect to exhibit 5D318, once the Lazarević Defence has informed the Chamber and parties that the translation has been uploaded to e-Court, exhibit 5D318, and its translation, shall be deemed admitted into evidence.

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

Judge Iain Bony
Presiding

Dated this second day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]