



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: 17 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: 17 April 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON OBJECTION UNDER RULE 94 *bis* TO HANDWRITING EXPERT
ŽIVOJIN ALEKSIĆ**

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 “Pavković Notice Pursuant to 94 *bis* Concerning Professor Živojin Aleksić”, filed on 27 March 2008 (“Notice”), and hereby issues this decision thereon.

1. On 29 February 2008, the Ojdanić and Lukić Defences requested the Chamber to admit expert and lay testimony in order to contest the reliability and authenticity of a report, purportedly written by the Accused Pavković and addressed to the “Supreme Command Staff–Chief of Staff in person” (“25 May 1999 report”), which is an exhibit in the case.¹ In response, the Pavković Defence first filed an objection to the request on 13 March 2008, setting out lengthy arguments against the admission of such evidence.² Subsequently, on 27 March 2008, the Pavković Defence filed the Notice, as detailed below. On 3 April 2008, the Chamber issued a decision allowing the Ojdanić Defence to call a handwriting expert, Živojin Aleksić, to give evidence in relation to the 25 May 1999 report.³

2. In the Notice, the Pavković Defence informs the Chamber, in accordance with Rule 94 *bis* of the Rules of Procedure and Evidence of the Tribunal, that it objects to both the expert report and the proposed testimonial evidence of Aleksić.⁴ The Pavković Defence asserts that the subject of Aleksić’s report and intended testimony is rendered irrelevant by various other materials in evidence in the case containing the information in that report, and that the Chamber is, in any case, able to determine the appropriate weight to give to this document absent the proposed evidence.⁵ The Pavković Defence further submits that neither the qualifications of the proposed expert nor the means used for the analysis described in his report have been adequately demonstrated.⁶ The Notice states that, if Aleksić’s evidence is allowed, the Pavković Defence would cross-examine Aleksić, and would seek to call its own handwriting expert.⁷

¹ Joint (Ojdanić and Lukić) Request for Leave to Call Handwriting Expert Professor Živojin Aleksić, Motion to Admit Additional Exhibits, and Motion to Amend Rule 65 *ter* Witness and Exhibit List, 29 February 2008.

² Pavković Objection to Joint (Ojdanić and Lukić) Request for Leave to Call Handwriting Expert Professor Živojin Aleksić, Motion to Admit Additional Exhibits, and Motion to Amend Rule 65 *ter* Witness and Exhibit List, 13 March 2008.

³ Decision on Joint Ojdanić and Lukić Request to Call Živojin Aleksić and Dušan Mladenovski, 3 April 2008; P1459 (Report on the non-compliance of the MUP organs, dated 25 May 1999).

⁴ Notice, paras. 2, 11.

⁵ Notice, paras. 7–8.

⁶ Notice, paras. 9–10.

⁷ Notice, paras. 10–11.

3. On 3 April 2008, the Ojdanić and Lukić Defences filed an addendum to the Request (“Addendum”), providing additional information as to the qualifications of Aleksić.⁸ Annexed to the Addendum are the following: a supplement to his curriculum vitae, a conclusion of the Government of the Republic of Serbia declaring Aleksić a permanent court expert for forensic analysis of documents and handwriting, and a copy of the cover page of one of Aleksić’s publications.⁹

4. The Prosecution has indicated that it does not intend to respond to the Motion.

5. On the basis of his curriculum vitae and the supplementary materials annexed to the Addendum, the Chamber is satisfied that Aleksić is qualified to proffer his opinions in the relevant fields of inquiry. Furthermore, his proposed evidence relates to a relevant issue, the Accused Ojdanić’s receipt of the 25 May 1999 report, which has been advanced by the Prosecution on prior occasions.¹⁰ The existence of additional evidence rendering this issue moot is a matter that can be dealt with in cross-examination and final submissions. In relation to Aleksić’s expert report, the Chamber notes that in its Decision of 3 April 2008, it allowed the report to be added to the Ojdanić Defence’s 65 *ter* exhibit list.¹¹ Accordingly, the Chamber will consider the admission of the expert report at such a time as it is tendered, in connection with the testimonial evidence of Aleksić. The Chamber therefore rejects the objections relating to Aleksić contained within the Notice.

6. Accordingly, the Trial Chamber, pursuant to Rules 54, 89, and 94 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

- (a) Živojin Aleksić shall be allowed to testify as an expert on matters relevant to the 25 May 1999 report.

⁸ Addendum to Joint (Ojdanić and Lukić) Request for Leave to Call Handwriting Expert Professor Živojin Aleksić, Motion to Admit Additional Exhibits, and Motion to Amend Rule 65*ter* Witness and Exhibit List, 3 April 2008 (“Addendum”).

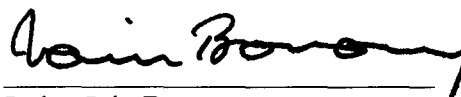
⁹ Addendum, para. 2, Annexes A, B, C.

¹⁰ See, for example, the Prosecution arguments on the Defence Rule 98 *bis* application, T. 12628–12631 (4 May 2007).

¹¹ 3D1140 (expert report of Aleksić).

(b) Živojin Aleksić shall be required to appear for cross-examination.

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



Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]