

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 8 March 2010

THE PROSECUTOR

v.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

GENERAL PAVKOVIĆ'S SUPPLEMENTAL BRIEF

The Office of the Prosecutor

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Mr. John Ackerman and 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

I. INTRODUCTION

1. On 12 February 2010, the Appeals Chamber granted Pavković's Motion to Admit Additional Evidence under Rule 115.
2. The stated purpose and relevance of the proposed documents was to contest the testimony of Aleksandar Dimitrijević, called by the Trial Chamber as a witness at the very end of the trial. His testimony was crucial to conclusions by the Trial Chamber that would have been impossible in its absence. The Chamber's heavy reliance on Dimitrijević for its conclusions is shown by the fact that his testimony is cited in 19 separate footnotes in the Judgement.¹ In paragraph 644 of the Judgement, Dimitrijević's testimony is used to establish that Pavković by-passed the usual chain of command starting in 1998 by communicating directly with Milošević thus acting without the approval of the General Staff.²
3. Dimitrijević's testimony was also considered to be credible to show, (incorrectly) that Samardžić had attempted to discipline Pavković and that when Pavković heard of this he visited Milošević and was instead promoted.³
4. The Trial Chamber referred to Dimitrijević's testimony in concluding that his complaints in 1998 that VJ units should be used in Kosovo only if they were threatened was referring to his concern that VJ units had previously been used in Kosovo without approval of the General Staff. He told the Chamber that Pavković's irregular behaviour

¹ See footnotes in Volume III – 1538, 1539, 1540, 1541, 1554, 1555, 1575, 1605, 1606, 1611, 1614, 1616, 1653, 1684, 1685, 1686, 1687, 1688 and 1979

² Judgement, Vol. III, Para. 644.

³ Judgement, Vol. III, Para. 649.

continued throughout 1998.⁴

5. In Paragraph 688, the Trial Chamber relied on Dimitrijević for the proposition that Pavković was illegally and improperly using the VJ in Kosovo in 1998 without command chain approval.⁵
6. The centrality of the Dimitrijević testimony is best exemplified by this conclusion of the Trial Chamber:

Pavković's intent to participate in the common purpose can also be inferred from the way in which he worked closely with Milošević on the issue of Kosovo in 1998 and 1999.⁶

7. In Paragraphs 44 through 52 of the Prosecution Response to the Amended Brief of Pavkovic, they argue the "close" relationship between Milošević and Pavković and in paragraphs 53 through 68 they argue the alleged bypassing of the normal chain of command by Pavković, primarily in 1998. The Prosecution argues that these matters, supported almost entirely by the Dimitrijević testimony, are key to the Pavković convictions.
8. The Exhibits admitted by this Appeal Chamber provide evidence that Pavković was not operating as some shill of Milošević bypassing his VJ superiors to carry out the Milošević scheme for Kosovo.
9. The Prosecution was given the opportunity to tender additional evidence to contest the arguments of Pavković supporting the admission of the additional exhibits. After approximately 12 years of investigating incidents in Kosovo the Prosecution has not come forward with one shred of evidence showing an action carried out by Pavković in

⁴ Judgement, Vol. III, Para. 664.

⁵ Judgement, Vol. III, Para. 688.

⁶ Judgement, Vol. III, Para. 778.

Kosovo that did not result from orders flowing down to him through the chain of command.⁷ There is no evidence that he carried out any activity in Kosovo as a result of orders directly to him from Milošević.

10. The documents discussed herein and admitted by this Appeals Chamber are credible evidence showing that the conviction and sentence of General Pavković is unsafe.

II. THE NEW EXHIBITS

11. **2 June 1998.** 4DA23 is a Report from the 3rd Army to the General Staff. The commander reports in paragraph 5 that he has decided to coordinate VJ forces with MUP forces. It shows that Samardzic ordered use of the VJ outside the border belt before the issuance of the 28 July Grom 3 directive⁸ and reported the same to the General Staff.
12. **13 June 1998.** 4DA24 is a Report from the 3rd Army to the General Staff. It shows that Samardzic ordered use of the VJ outside the border belt before the issuance of the 28 July Grom 3 directive⁹ and reported the same to the General Staff.
13. **10 July 1998.** 4DA01 is a communication from Samardžić to Pavković. Pavković has clearly sent letters to Samardžić on 8 and 10 July 1998 making certain proposals. Samardžić tells Pavković that he does not accept the proposals. This type of document would not exist if Pavković was acting outside the chain and carrying out orders directly from Milošević.

⁷ The fact that the Prosecution continues to investigate and consider evidence relevant to the issues in this case is demonstrated by a recent disclosure of more than 5,000 pages of exculpatory material pursuant to Rule 68.

⁸ 3D702.

⁹ 3D702.

14. **31 July 1998.** 4DA02 is a Report from the 3rd Army to the General Staff. This document provides significant information to the General Staff about the situation in Kosovo and notably at the end points out that a Pavković decision reading “be prepared to disarm the terrorists and transfer them to specific sectors,” was not approved. Although there is no explanation as to why this order was not approved it is evidence that Pavković was being controlled by and subordinate to his 3rd Army superiors.
15. **2 August 1998.** 4DA03 is a Report from the 3rd Army Command to the General Staff. In paragraph 3 it reports that VJ units are supporting MUP forces. In paragraph 4 it reports that the Commander has decided to support MUP forces in reinforcing certain lines in certain sectors. This document makes it clear that the General Staff was being made aware that VJ units in Kosovo were supporting MUP units. In its Judgement, the Trial Chamber concluded that Pavković carried out the actions against Drenica against the orders of Samardžić.¹⁰ This document shows that Samardžić was fully aware of the Drenica action and reported the same to the General Staff without further comment.¹¹
16. **3 August 1998.** 4DA04 is a Report from the 3rd Army to the General Staff. This Report provides very detailed information on the deployment of VJ units in Kosovo, including their support of MUP forces in paragraph 3. Again the Commander reports that he did not approve a proposal from Pavković to “Support the MUP forces in reinforcing the achieved lines in the Jablanica, Rakovica, Ovčarevo and Likovac villages’ sectors.” Again no reason

¹⁰ Judgement, Vol. III, Para. 658.

¹¹ See, Paragraph 3.

is given. However, the report shows that Samardžić is firmly in charge. This report also shows that Samardžić was fully aware of actions against Drenica and reported the same to the General Staff.¹²

17. **3 August 1998.** 4DA05 bears the same date as the previous document. It is a 3rd Army Order to Pavković changing a deadline for implementation contained in a previous order. This shows a very hand-on control of the use of VJ units in Kosovo by the 3rd Army Command. It is noted that on this date General Perišić approved the GROM plan proposals of Samardžić.¹³
18. **4 August 1998.** 4DA06 is a Report from the 3rd Army Command to the General Staff. Again, this document in paragraph 3 shows MUP forces being supported by VJ forces.
19. **5 August 1998.** 4DA07 is a Report from the 3rd Army Command to the General Staff. Again it shows support of MUP forces by VJ units.
20. **6 August 1998.** 4DA08 is a Report from the 3rd Army Command to the General Staff. It reports that the Commander, Samardžić, was at the Forward Command Post in Kosovo and visited two combat units. This indicates a hands-on control of Kosovo events. In addition, in paragraph 4 is a decision to engage in a coordinated action with MUP forces.
21. **7 August 1998.** 4DA09 is a Report from 3rd Army Command to the General Staff. In this document the Commander reports decisions to support and coordinate with MUP forces. The Commander remains in Kosovo on this day and chairs a briefing with the Commanders of

¹² See previous paragraph.

¹³ 4D415.

Kosovo forces under 3rd Army command.¹⁴ These do not include any MUP forces. In the meeting Pavković proposes the crushing of KLA forces in the Glodane village sector. He estimates that 300 to 500 terrorists can be destroyed in one day. Samardžić supports this proposal.

22. **8 August 1998.** 4DA10 is a Report from the 3rd Army to the General Staff. In paragraph 3 it reports that the Commander, Samardžić, visited some Army units in the territory. In paragraph 5 it is reported that the Commander has decided to support and coordinate with MUP forces.
23. **11 August 1998.** 4DA11 is a Report from the 3rd Army to the General Staff. In paragraph 3 it reports Army forces supporting MUP forces and mentions success in the village of Glođane that Pavković had proposed at the above-mentioned briefing.¹⁵ In paragraph 5 the Commander decides to support MUP forces in further actions in Glođane and other villages. The Pavković Order regarding Glođane and other villages was issued on 10 August following the briefing noted above where he proposed such an action and the Commander accepted it.¹⁶
24. **12 August 1998.** 4DA12 is a Report from the 3rd Army to the General Staff. In paragraph 2 it reports Army forces supporting MUP forces and again mentions the village of Glođane, among others. In paragraph 5 the Commander decides to continue to support MUP forces Glođane and other villages.
25. **13 August 1998.** 4DA13. These are minutes of a meeting in Kosovo at the Forward Command Post. General

¹⁴ 4D97.

¹⁵ 4D97.

¹⁶ P1427.

Perišić is present along with several members of the General Staff. General Samardžić is present. Perišić is identified in the meeting as NGŠ. Perišić had reported to Milošević 20 days earlier that the VJ was being used in Kosovo in an illegal manner.¹⁷ He states in this meeting that the "VJ was intervening in the spirit of the Constitution and laws of the FRY." The minutes of this meeting make it clear that it was totally inappropriate for the Trial Chamber to give the letter any credence. Further in this document the Army Commander, Samardžić, in the presence of Perišić, "concluded that the PrK (Pristina Corps) had carried out its assignments to date in an expert and professional manner." Recall that the Pavković enemy, Dimitrijević testified that in late July 1998, the 28th, 29th or 30th, Samardžić initiated disciplinary proceedings against Pavković for failing to adhere to orders.¹⁸ The only conclusion from this, and certainly the conclusion that any reasonable trial chamber would be bound to draw, is that Dimitrijević was not being truthful. It is inconceivable that in a meeting less than two weeks later with Perišić and Samardžić in attendance that Pavković would receive praise for his Priština Corps having carried out its assignments in an expert and professional manner. This is simply totally inconsistent with disciplinary proceedings having been initiated against him two weeks earlier by Samardžić.

26. **21 August 1998.** 4DA22 is minutes of a briefing of the Army Commander, Samardžić, at the Forward Command Post in Kosovo by subordinate commanders and command organs. It shows presence in Kosovo and control of

¹⁷ P717, 23 July 1998.

¹⁸ Aleksandar Dimitrijević, T. 26682, 26683.

activities and events by the Commander.

27. **23 August 1998.** 4DA14 is a Report from the 3rd Army to the General Staff. In paragraph 3 there is a report regarding VJ support of MUP forces. In paragraph 5 the Commander reports his decision to order support of MUP forces.
28. **24 August 1998.** 4DA15 is a Report from the 3rd Army to the General Staff. It reports continued operations by the VJ in support of MUP forces. In paragraph 5 the Commander reports his decision to support MUP forces.
29. **3 September 1998.** 4DA16 is a Report from the 3rd Army to the General Staff. Paragraph 3 reports continued VJ support of MUP units. In paragraph 5 the Commander reports his decision to support MUP units.
30. **9 September 1998.** 4DA17 contains minutes of a briefing of the Army Commander, Samardžić, at the Forward Command Post by subordinate commanders and command organs. It shows that Samardžić was in Kosovo receiving first-hand reports and exercising control over operations.
31. **14 September 1998.** 4DA18 is a Report from the 3rd Army to the General Staff. Paragraph 3 reports support of MUP units by the VJ. In paragraph 5 the Commander reports his decision to support MUP forces.
32. **22 September 1998.** 4DA19 is a Combat Report from the 3rd Army to the General Staff. Paragraph 3 reports numerous instances of VJ support to MUP units. In paragraph 5 the Commander reports his decision to support MUP forces.
33. **23 September 1998.** 4DA20 is a Report from the 3rd Army to the General Staff. Paragraph 3 reports VJ support for MUP forces. In paragraph 5 the Commander reports

his decision to engage VJ forces in support of MUP forces.

34. **3 October 1998.** 4DA21 is a Report from the 3rd Army to the General Staff. The document shows the continued monitoring and control of the Kosovo situation by Army Commander Samardžić.

III. CONCLUSION

35. The documents admitted by the Appeals Chamber, explained above call important conclusions of the Trial Chamber into such serious question that a reasonable Trial Chamber seized of this additional evidence could not have reached such conclusions.
36. One of the major issues in the case was the alleged operation of the VJ outside the border belt in 1998. It was contended that these operations showed that Milošević was issuing orders directly to Pavković, thus bypassing the appropriate chain of command. The admitted documents add to the multitude of documents now in this case showing exactly the opposite.
37. The 3rd Army Reports to the General Staff in these exhibits report VJ activity outside the border belt. The exhibit attached hereto is an attempt to list all those villages and areas. It is an incomplete list but graphically demonstrates the extent of such activity that was fully reported up the chain of command.

Word Count: 2472

Respectfully Submitted



John E. Ackerman



Aleksandar Aleksić

EXHIBIT

**Areas outside the border belt where VJ operated during 1998 under
Samardzic orders**

Ade village
Babaloc
Bajgora village
Bandera sector
Banjica
Batuša village
Beleg
Blace village
Brocina village
Busnik village
Čabrat
Crmljane
Crnobreg
Crnojjevo
D. Fuštica
Đakovica-Dečane-Peć road
Dečani municipality
Dobra Voda village
Donja Fuštica
Donji Obilić village
Drenica sector
Duga
Dulje
G. Fuštia
Glamocelj village
Glođane village
Gorni Nec
Gornja Fustica
Grebnik mountains
Grebnik Polje
Hercegovo village

Jablanica
Jablanica Sector
Jablanica village
Karaboj
Kijevo village
Kišna Reka
Klisura
Komorane
Kosmac
Kramovik canyon
Kramovik village
Krasmirovac village
Kručevac village
Laletić
Lapužane
Lausa village
Likovac

**Areas outside the border belt where VJ operated during 1998 under
Samardzic orders**

Likovac
Lipovica
Ljubovce
Lodja village
Lugađija village
Makramalj village
Marina village
Markamaj village
Molić village
Mount Čičavica
Mount Lipovica
Nakovce
Nakovce
Nivokaz village
Novo Selo-Zajmovo village sector
Očljane village
Ovčarevo village

Pećane
Petrašica
Petraštica
Poluže village
Poluzje village

Popovac village
Prilep village

Radonjicka suka
Rakitnica village
Rakovina village

Raštane
Rezala village
Rznić
Sedlare
Sibovac vilage
Slapužnica

Stankovce
Strovce village
Surlići
Svinjare village
Trstenik village
Turicevac village
Vranić village
Vrelak Mahala hamlet
Vučitrn village