

**UNITED
NATIONS**



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-05-87/1-T
Date: 28 April 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christoph Flügge
Judge Melville Baird

Registrar: Mr John Hocking, Acting Registrar

Decision: 28 April 2009

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION TO ADMIT
EXHIBITS FROM THE BAR TABLE**

The Office of the Prosecutor:

Mr Chester Stamp
Ms Daniela Kravetz
Mr Matthias Neuner

Counsel for the Accused:

Mr Dragoljub Đorđević
Mr Veljko Đurđić

1. This Trial Chamber (“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 seized of the “Prosecution’s Motion to Admit Exhibits from the Bar Table”, filed on 10 February 2009 (“Motion”). In its Motion the Prosecution seeks the admission into evidence of 77 exhibits. On 24 February 2009, Counsel for Vlastimir Đorđević (“Defence”) filed “Vlastimir Đorđević’s Response to Prosecution’s Motion to Admit Exhibits from the Bar Table” (“Response”), objecting to the admission of all of the documents. On 3 March 2009, the Prosecution filed the “Prosecution’s Reply to Vlastimir Đorđević’s Response to Prosecution’s Motion to Admit Exhibits from the Bar Table” (“Reply”), whereby the Prosecution replies to the Response.¹

A. Submissions

2. The Prosecution submits that all documents proposed for admission into evidence are relevant and have probative value.² Submissions with regard to the relevance and probative value of each document will be addressed later in this decision. The Prosecution argues that the admission of these documents will result in substantial savings of time at trial, and will provide the Chamber with additional background and context to the oral evidence that the Prosecution intends to lead.³ Due to the large number of documents that it seeks to tender, the Prosecution also requests leave to file a motion exceeding the 3,000 word limitation set out in the Practice Direction on the Length of Briefs and Motions.⁴

3. The Defence objects to the admission of all seventy-seven documents. It submits that the Motion is premature and the Prosecution should attempt to tender the documents through appropriate witnesses.⁵ The Defence contends that admission from the bar table is normally done in the later stage of the case where relevance can more easily be shown.⁶ The Defence submits that the documents which the Prosecution seeks to have admitted are of varying reliability with most having little indication of how they were produced.⁷ The Defence seeks leave to exceed the prescribed word limit in its Response.⁸

¹ On 2 March 2009, in its “Order Regarding the Prosecution’s Request for Leave to Reply” the Chamber granted leave to the Prosecution to reply to the Response.

² Motion, para 7.

³ Motion, para 5.

⁴ Motion, paras 1-4. *See* Practice Direction on the Length of Briefs and Motions, 16 September 2005.

⁵ Response, para 2.

⁶ Response, para 5.

⁷ Response, para 7.

⁸ Response, para 1.

B. Law

4. Pursuant to Rule 89(C) of the Rules, a Chamber may admit any relevant evidence which it deems to have probative value. As a general rule, the document proposed for admission has to be of sufficient reliability⁹ and relevance¹⁰ to the issues in the case to have probative value. It is for the party that moves to have a document admitted into evidence to demonstrate its relevance and reliability to justify its admission.¹¹ The Chamber may exclude evidence under Rule 89(D) of the Rules, if its probative value is substantially outweighed by the need to ensure a fair trial.

5. It is desirable that documents are tendered for admission through witnesses who are able to comment on them. A party is not necessarily precluded from seeking the admission of a document even though it was not put to a witness with knowledge of the document (or its content) when that witness gave testimony in court. However, the failure to put the document to such a witness is relevant to the exercise of the Chamber's discretion to admit the document. Further, if the document is admitted, the failure is likely to limit the value of the document in evidence.¹²

C. Discussion

1. Preliminary issues

6. The Chamber is satisfied that in view of the large number of documents, which the Prosecution seeks to have admitted into evidence, the oversized filing is justified and leave will be granted to exceed the prescribed word limit in the Motion and the Response.

⁹ The Appeals Chamber has clarified that "a piece of evidence may be so lacking in terms of indicia of reliability that it is not 'probative' and is therefore not admissible", *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No: IT-95-14/2-AR73.5, "Decision on Appeal Regarding Statements of a Deceased Witness", 21 July 2000, para 24. See also *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, "Decision on Prosecution's Motion to Admit Documentary Evidence", 10 October 2006, para 10 (quoting *Prosecutor v. Duško Tadić*, Case No: IT-94-1-T, "Decision on Defence Motion in Hearsay", 5 August 1996, para 15); *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, "Decision on Mile Mrkšić's Motion for Admission of Documents", 21 November 2006; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, "Decision on Bošković Defence Motion to Amend Its Rule 65ter List and Admit Exhibits from the Bar Table", 20 March 2008 ("Bošković 20 March 2008 Decision"), para 4.

¹⁰ *Bošković 20 March 2008 Decision*, para 4; see *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92bis (C)", 7 June 2002, para 35.

¹¹ *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-T, "Decision on Prosecution's Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A to E", 14 May 2007 ("Bošković 14 May 2007 Decision"), para 14; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, "Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court", 29 October 2008, para 23.

7. The Defence submits that the Motion is premature, as it is filed at an early stage of the Prosecution case.¹³ The Chamber notes that the Rules do not provide for time restrictions for the admission of evidence from the bar table, although the principle of orality must be weighed. An exhibit may be admitted during a trial at any convenient moment, once it is established that there is a sufficient basis on which the Chamber can be satisfied that the exhibit is apparently relevant and of probative value.¹⁴ The Chamber will examine the Motion.

2. Document 00425¹⁵

8. Document 00425 is a photocopy of a booklet produced on 15 December 1998 by the Provincial Board of the Socialist Party of Serbia in Kosovo. The Prosecution submits the document is relevant to the historical and political background in Kosovo.¹⁶ The Defence argues the document is from a political organisation and therefore contains inherent bias.¹⁷ Document 00425 indicates the Provincial Board of the Socialist Party of Serbia's desire to increase Serb settlement and employment in Kosovo, and contains allegations of the involvement of ethnic Albanians in terrorist activities. The document has some relevance to the political context of the main allegations in the Indictment.¹⁸ The Prosecution submits that the document is reliable as its originator is the Provincial Board of the Socialist Party of Serbia in Kosovo.¹⁹ In addition, the document contains lists of names of a large number of people (e.g. unemployed persons, refugees), including, in many cases, their addresses, which adds to the apparent authenticity of the document. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. It shall be admitted into evidence.

3. Document 00472

9. Document 00472 contains the text of an "agreement" dated 4 June 1999 proposing measures to end the conflict in Kosovo. The Prosecution submits the document is relevant to the cessation of hostilities and the situation in Kosovo during the Indictment period.²⁰ The Defence responds that it

¹² *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, "Decision on Tarčulovski's Second Motion for Admission of Exhibits from the Bar Table with Annex A", 7 April 2008, para 5.

¹³ Response, para 2.

¹⁴ *Boškoski* 14 May 2007 Decision, para 10; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, "Decision on Defence Motion for Admission of Documentary Evidence", 5 March 2008, para 6.

¹⁵ Documents are referred to throughout the Decision by their Rule 65ter number.

¹⁶ Motion, para 8.

¹⁷ Response, para 9.

¹⁸ Indictment, para 89.

¹⁹ Motion, para 8.

²⁰ Motion, para 9.

is impossible to tell the context and purpose of the document.²¹ It is to be noted that document 00472 is taken from a website which in turn took the text from the BBC website. The reliability of the document would be increased if a more official version were provided. In addition, the document is merely a statement of what needs to be agreed upon to help a resolution of the situation. Without any indication of Serb involvement in the drafting of the document or acceptance and signature of the document the relevance of 00472 is dubious. The Chamber will not admit the document at this time.

4. Document 00710

10. The document is the “Draft Conclusions” of the National Assembly of the Republic of Serbia from 23 March 1999. The Prosecution submits that it is relevant to the political and legal situation in Kosovo.²² The Defence contests the relevance of the document and notes that it may not have been adopted.²³ The Chamber agrees that without a showing that the “Draft Conclusions” were formally adopted, the document is of hardly any relevance. Furthermore, the document is a facsimile version with no indication of the author(s) or any signatories. This undermines the reliability of the proposed document. For these reasons the Chamber shall not admit document 00710 at this time.

5. Documents 00604, 00605, 00949, 00950, 00948

11. Document 00604 is the transcript of an off-the-record meeting with Milan Milutinović. The other documents are interviews with Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić respectively. They were each charged with the Accused in one of the previous versions of the Indictment.²⁴ Relying on a decision given in the case of *Prosecutor v. Sefer Halilović*, the Prosecution asserts that statements provided to it by an accused may be tendered from

²¹ Response, para 10.

²² Motion, para 9.

²³ Response, para 10.

²⁴ On 8 July 2005, the initial indictment against the Accused, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (Case No.: IT-03-70-I) was joined with another, against Milan Milutinović, Dragoljub Ojdanić and Nikola Šainović (*Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No.: IT-99-37-PT, and *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić*, Case No.: IT-03-70-PT, “Decision on Prosecution Motion for Joinder”, 8 July 2005). On 26 June 2006, the Accused was severed from the joint indictment against *Milan Milutinović et al.* to be tried separately. (*Prosecutor v. Milan Milutinović et al.*, Case No.: IT-05-87-PT, “Order replacing Third Amended Joinder Indictment and Severing Vlastimir Đorđević from the Trial”, 26 June 2006)

the bar table.²⁵ It also submits that the same statements were received from the bar table in the case of *Prosecutor v. Milan Milutinović et al.*²⁶ The Chamber notes that, unlike in the case against *Milan Milutinović et al.*, the statements presently sought to be admitted were not given by the Accused. Further, in the *Halilović* decision relied on by the Prosecution, the Appeals Chamber ruled that the principle of orality, which constitutes a preference for the oral introduction of evidence, is weaker in application to the accused's own statements than to the testimony of other witnesses.²⁷ It follows that in the present case the principle of orality is stronger with respect to the statements in issue than it was in the *Milutinović et al.* case. The Defence contends that the statements should be considered as witness statements and introduced under Rules 92bis or 92ter.²⁸ The Defence also notes that at the time of giving the statements the accused in the *Milutinović et al.* case were suspects and thus not obliged to tell the truth.²⁹ The Prosecution did not comment on this matter in its Reply. The Chamber agrees that the circumstances in which the statements appear to have been given may affect their reliability. In addition, matters of great significance to the alleged individual criminal responsibility of the Accused are discussed in the statements. As the Prosecution apparently does not intend to call as witnesses those who gave the statements, the admission of the statements from the bar table would deprive the Accused of the opportunity to challenge the reliability of evidence of such significance. The Chamber finds that the admission of these statements from the bar table would cause prejudice to the Accused. Documents 00604, 00605, 00949, 00950 and 00948 shall not be admitted at this time.

6. Document 01012

12. Document 01012 is the minutes and a transcript of the 16th Session of the Main Board of the Socialist Party of Serbia held on 10 June 1998. The Prosecution asserts it is relevant to the existence of alleged Joint Criminal Enterprise ("JCE") and to steps taken by the Serb political leadership to preserve Serb control of Kosovo.³⁰ The Chamber notes that the alleged JCE came into existence no later than October 1998 and thus later than the document was produced.³¹ The Prosecution does not address this issue. The Chamber is, however, satisfied that the document is relevant to the political background of the allegations in the Indictment, as indicated by the

²⁵ Motion, para 11, referring to *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-AR73.2, "Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused From the Bar Table", 19 August 2005 ("*Halilović* Decision"), paras 16-19.

²⁶ Motion, para 11, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, "Decision on Prosecution Motion to Admit Documentary Evidence", 10 October 2006, para 43.

²⁷ *Halilović* Decision, para 17.

²⁸ Response, para 11.

²⁹ Response, para 12.

³⁰ Motion, para 12.

³¹ Indictment, para 20.

Prosecution.³² The Prosecution submits that the document was prepared by the Social Party of Serbia's Main Board.³³ The Chamber takes note of the large number of attendees of the session listed and the detailed information on the location and time of the meeting, which lend support to the reliability of the document. It shall be admitted into evidence.

7. Documents 01942 and 01943

13. Document 01942 is an order, dated 7 April 1999, regarding the reception, induction and deployment of volunteers to the Army of Yugoslavia ("VJ"). Document 01943 is a letter of 20 April 1999 from Colonel General Matović sent by telegram to various commands in the VJ. The Prosecution submits that these documents are relevant to the issue of use of paramilitary groups and volunteers in Kosovo, and asserts that the reliability of the documents is demonstrated through the official seals and signature as well as the fact that they were received pursuant to a Request for Assistance ("RFA").³⁴ The Chamber is satisfied that the documents are of relevance to the issues in the Indictment and their reliability has been sufficiently shown. Documents 01942 and 01943 shall be admitted into evidence.

8. Document 01688

14. Document 01688 is a telegram dated 4 May 1999 and concerning problems with conscripts and volunteers in the VJ. The Prosecution submits that the document is relevant to the issue of deployment of volunteers without proper screening.³⁵ The Prosecution states that the document was obtained by the Prosecutor Madam Carla del Ponte in Belgrade, that it is type-signed by General Ojdanić and is in the regular form of a VJ telegram.³⁶ The Chamber is satisfied that the document is of relevance to the issues in the Indictment and its reliability has been sufficiently shown. Document 01688 shall be admitted into evidence.

9. Documents 04010 and 04048

15. Documents 04010 and 04048 are shorthand notes and minutes of the 5th session of the Supreme Defence Council ("SDC") held on 9 June 1998. The Prosecution submits that the documents are relevant to the issue of use of excessive and indiscriminate force by the VJ and the Serbian Ministry of Internal Affairs ("MUP") during operations in Kosovo.³⁷ This is alleged in

³² Indictment, para 89.

³³ Motion, para 12.

³⁴ Motion, para 13.

³⁵ Motion, para 14.

³⁶ Motion, para 14.

³⁷ Motion, para 15.

paragraphs 94 and 95 of the Indictment. The Prosecution asserts that document 04010 is corroborated by Exhibit P00087 and that both 04010 and 04048 are signed by the Secretary of the SDC.³⁸ However, 04010 is only signed on the first page, which is merely the agenda for the 5th session of the SDC to be held on 9 June 1998. Document 04048 is a copy of the minutes of the same meeting. Exhibit P00087 does indeed reference this meeting of the SDC.³⁹ The documents provide sufficient corroboration of each other especially when P00087 is considered. The Chamber is satisfied that the documents are relevant to the issue indicated by the Prosecution and that their reliability has been sufficiently shown. Documents 04010 and 04048 shall be admitted into evidence.

10. Documents 01063 and 01064

16. Document 01063 is an excerpt of the duties of the Civilian Defence in defending Priština and appears to have been sent on 30 July 1998. The first two pages of 01063 seem to be unrelated to the actual document and of no relevance. Document 01064, dated 28 July 1998, is a cover letter which relays instructions from the “joint command” regarding the defence of inhabited areas in Kosovo from terrorism. The Chamber notes that the Prosecution’s assertion that 01064 is the cover letter to 01063 is unlikely as it is dated two days earlier and references a different order, bearing a different filing number.⁴⁰ The Prosecution may need to reconsider whether it wishes to have the entire document 01063 admitted, including its first two pages, and whether it tenders 01064 as the cover letter to 01063. The Prosecution submits that document 01063 is relevant to the existence of the Joint Command and its relationship with the MUP and the VJ.⁴¹ The Chamber, however, notes that the Joint Command is referred to in the Indictment primarily in the context of the JCE, which allegedly came into existence not later than October 1998, and thus a few months later than the documents were apparently produced.⁴² The Prosecution’s submissions do not discuss the documents’ relevance in the context of time of their production. For these reasons, the Chamber will not receive documents 01063 and 01064 at this time.

11. Documents 01198, 01204, 01206, 01203

17. Documents 00198, 01204, 01206 and 01203 are reports apparently prepared in October and November 1998. The words “Joint Command for [Kosovo and Metohija]” are at the end of each. The Prosecution asserts they are relevant to the role of the Joint Command in coordinating the

³⁸ Motion, paras 15-16.

³⁹ Exhibit P00087, p 3.

⁴⁰ Motion, para 17.

⁴¹ Motion, para 17.

⁴² Indictment, para 20.

actions of the VJ and MUP.⁴³ The Prosecution submits that the documents are sufficiently reliable because they originated from the Joint Command for Kosovo and Metohija, and one of them, 00198, was recovered from the Executive Council Building in Priština.⁴⁴ The Defence disputes the existence of the Joint Command and points out that none of the documents are signed.⁴⁵ The Chamber notes that none of these documents was signed or stamped, and that the only showing of reliability is the Prosecution's assertion that they originated from the Joint Command, the existence of which is apparently disputed by the Defence. Documents 01198, 01204, 01206 and 01203 have not been shown to be sufficiently reliable to justify their admission. They shall not be received at this time.

12. Document 01139

18. The document is a combat report from 26 September 1998. The Prosecution asserts it is relevant to the VJ and MUP coordination in furtherance of the JCE.⁴⁶ The Prosecution submits that the document is signed by the commander of the Priština Military Department and that it was seized from the VJ Headquarters in Priština.⁴⁷ The Chamber is satisfied that the document is of relevance to the issue indicated by the Prosecution and that it has been shown to be sufficiently reliable. Document 01139 shall be admitted into evidence.

13. Document 04055

19. Document 04055 is a letter dated 13 May 1999 and discussing joint checkpoints of the VJ and MUP. The Prosecution submits that the document is relevant to the issue of co-ordination between the VJ and MUP, and that it was signed by Sreten Lukić, who is alleged to have participated in a JCE involving the Accused.⁴⁸ The Chamber is satisfied that the document is relevant and that it has probative value. Document 04055 will be admitted into evidence.

14. Document 01101

20. Document 00101 is an order dated 5 September 1998, whereby the Priština Corps are directed to support the MUP in an operation against terrorists. The Prosecution submits that the document is relevant to the issue of co-ordination between the VJ and MUP "in 1998 and during the Indictment period", and to the alleged large-scale offensive against the KLA launched in mid-July

⁴³ Motion, paras 18-21.

⁴⁴ Motion, paras 18-21.

⁴⁵ Response, para 17.

⁴⁶ Motion, para 22.

⁴⁷ Motion, para 22.

⁴⁸ Motion, para 23

1998.⁴⁹ The Chamber notes that the order is dated 5 September 1998 and concerns an operation to be conducted on 7 September 1998, whereas the JCE is alleged to have come into existence “no later than October 1998”. However, the document is relevant to the allegation of a “large-scale offensive operation” involving the Priština Corps, as indicated by the Prosecution. The document bears a stamp and is signed. The Chamber is satisfied that the document has been shown to be sufficiently reliable. Document 01101 shall be admitted into evidence.

15. Document 01157

21. Document 01157 is an order dated 11 August 1998 instituting various firearm safety measures throughout the 125th Motorised Brigade. The Prosecution asserts that 01157 is relevant to the issue of coordination between the VJ and MUP.⁵⁰ However, the order only directs that firearm security precautions be taken and that it applies to MUP units stationed in VJ barracks. Further, as indicated earlier, the alleged co-operation between the VJ and MUP is of direct relevance to the Indictment if it relates to the time of existence of the alleged JCE, commencing “no later than October 1998”. The relevance of document 01157 to the instant case has not been sufficiently demonstrated to justify its admission. The document shall not be received at this time.

16. Documents 03120, 03121, 03122, 03130

22. Documents 03120, 03121, 03122 and 03130 are minutes from MUP staff meetings held in Priština on 23 July, 28 July, 2 December and 2 November 1998 respectively. The Prosecution asserts the documents are relevant to the functioning of the MUP Staff and its role in furthering the goals of the JCE and coordinating activities with the VJ.⁵¹ The Chamber notes that the documents list, among other participants to MUP staff meetings, Sreten Lukić and Vlastimir Stojilković, who are alleged to have participated in a JCE involving the Accused. The subject matter of the meetings is relevant to the common purpose of the alleged JCE. The Prosecution submits that it received these documents from Serbia pursuant to a Request for Assistance.⁵² The Defence contends that it is unclear which authority provided these documents to the Prosecution.⁵³ The Chamber accepts the Prosecution’s assertion as to the source of the documents. It also notes that they are type-signed. The Chamber is satisfied that the documents have been shown to be sufficiently reliable to justify their admission. Documents 03120, 03121, 03122 and 03130 will be admitted into evidence.

⁴⁹ Motion, para 24.

⁵⁰ Motion, para 25.

⁵¹ Motion, paras 26-28.

⁵² Motion, para 29.

⁵³ Response, para 18

17. Documents 01227, 01228, 01229, 01693, 04229, 04232, 04235, 04239, 04249, 04250, 04253

23. These documents appear to be regular reports on the situation in Kosovo forwarded to MUP headquarters, including the Accused, between 27 December 1998 and 1 May 1999. The Prosecution submits that the documents are relevant to the existence of a “well-functioning” reporting system within the MUP.⁵⁴ It is indicated in the documents that they were sent to, among other individuals, the Accused. The Chamber agrees that these documents are of relevance to the issue indicated by the Prosecution. The Prosecution asserts that some of these documents are sufficiently reliable as they were signed or type-signed and were prepared in a “regular” form.⁵⁵ The Prosecution does not make any submission with respect to the reliability of seven documents from this batch, indicating only that they were admitted into evidence in the *Milutinović et al.* case, pursuant to a written decision.⁵⁶ The documents, including the seven whose reliability is not discussed by the Prosecution, are signed or type-signed and bear filing numbers, which appear to follow a consistent numbering system. The Chamber is thus satisfied that the Prosecution’s showing of reliability with respect to some of these documents applies to the seven other documents, and that all the documents discussed in this paragraph have been shown to be sufficiently reliable to justify their admission. They shall be admitted into evidence.

18. Documents 04086 and 04077

24. Document 04086 is a dispatch from the MUP in Belgrade dated 18 February 1999 ordering certain measures to be taken by the SUP chiefs. Document 04077 is a dispatch dated 24 March 1999 from the MUP office in Belgrade to the SUP chiefs and the Priština MUP headquarters, among others. Document 04077 references the earlier orders contained in document 04086. The Prosecution submits that the documents are relevant to the issue of the Accused’s authority to issue instructions to the MUP staff.⁵⁷ The Prosecution asserts a showing of reliability premised on the nature of the documents and the Accused’s signature and Vljako Stojiljković’s type-signature on the final pages.⁵⁸ Document 04086 contains instructions on matters such as the recruitment of members of Special Police Units (“PJP”) and co-operation between the MUP and the VJ. The document indicates that these instructions were issued by the Accused. Document 04077 contains instructions regarding the enforcement of the order referred to in document 04086, as well as the deployment of volunteer and paramilitary units and co-operation with units of the VJ. The documents may thus be of significance to the Accused’s authority in relation to the MUP staff. The Chamber is satisfied

⁵⁴ Motion, para 31.

⁵⁵ Motion, para 31.

⁵⁶ Motion, para 32.

⁵⁷ Motion, paras 34, 35.

that the documents have been shown to be sufficiently reliable to justify their admission. Documents 04086 and 04077 shall be admitted into evidence.

19. Document 01113

25. Document 01113 is a letter dated 31 December 1998 to the SUP chiefs, describing the correct vetting procedure for applicants for posts in the MUP. The Prosecution submits that the document is of relevance to the Accused's power to appoint MUP personnel.⁵⁹ The Chamber agrees that the document is relevant, albeit indirectly, to the issue indicated by the Prosecution. The document is stamped and signed with the name of the Accused. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 01113 shall be admitted into evidence.

20. Documents 01214, 01217, 01218, 04083, 04082, 01216, 01219

26. Documents 01214, 01217, 01218, 04083, 04082, 01216 and 01219 are various MUP and RJB dispatches dated from 4 June 1997 to 1 July 1998. The Prosecution submits that these documents are relevant to the position and authority of the Accused in relation to the MUP staff, the MUP's chain of command and reporting system, the Accused's knowledge of crimes committed by the MUP staff and his authority to prevent and punish crimes.⁶⁰ The Defence contends, with respect to some of these documents, that in view of the date of their issuance, they are of no relevance to the case.⁶¹ The Indictment alleges that the Accused held the position of the Assistant Minister of the MUP since at least 4 June 1997 and throughout the period when the crimes charged in the Indictment were allegedly committed, that is between 1 January and 20 June 1999.⁶² Therefore, although issued before 1 January 1999, the documents may be of relevance to the Accused's authority in relation to the MUP staff in the period when the crimes were allegedly committed. The Prosecution submits that the various documents are reliable because they bear signatures, type-signatures and/or stamps, some are certified as true copies, and with respect to some the location where they were seized is indicated.⁶³ The Defence submits that some of the documents are only type-signed or signed by individuals other than those indicated in the document.⁶⁴ The Chamber notes that the documents which are only type-signed or signed "for" the person whose name is indicated, also bear stamps or marks certifying that they are true copies. The

⁵⁸ Motion, paras 34, 35.

⁵⁹ Motion, para 36.

⁶⁰ Motion, paras 37, 38, 39, 46, 48, 52, 53.

⁶¹ Response, paras 23, 24.

⁶² Indictment, para 14.

⁶³ Motion, paras 37, 38, 39, 46, 48, 52, 53; Reply paras 5(b), 5(c), 6(a).

Chamber is satisfied that the documents have been shown to be sufficiently reliable to justify their admission. Documents 01214, 01217, 01218, 04083, 04082, 01216 and 01219 shall be admitted into evidence.

21. Document 01509

27. Document 01509 is a MUP dispatch dated 4 June 1997 which relays to various government offices the appointment of the Accused as the acting Chief of the RJB. The Prosecution submits that the document is relevant to the position of the Accused.⁶⁵ The Chamber notes that the document was apparently issued before the crimes charged in the Indictment were allegedly committed. However, it may be of relevance to the allegation that the Accused was the Chief of the RJB “since at least 4 June 1997”.⁶⁶ The Prosecution asserts the type-signature of Vljako Stojiljković is sufficient indicia of reliability.⁶⁷ The Chamber also takes note of the form of the document. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 01509 shall be admitted into evidence.

22. Documents 04088, 04120, 04270, 04096

28. Documents 04088, 04120 and 04270 are RJB dispatches from Belgrade dated 21 March, 17 March and 8 February 1999 respectively. Document 04096 is a dispatch dated 22 March 1999 and references an order allegedly issued by the Accused, contained in document 04088. The Prosecution submits that the documents are relevant to the Accused’s authority over the RJB and subordinate units in Kosovo, “including his authority to order the recruitment of personnel for PJP detachments, reinforce the strength of existing units and dispatch these units to Kosovo”.⁶⁸ The Prosecution asserts that document 04270 was signed “for” the Accused and both document 04088 and document 04120 were type-signed by the Accused. As further indicia of reliability the Prosecution notes 04088 and 04120 were certified as true copies by an authorised official.⁶⁹ The Prosecution further points out that the documents are similar to documents already in evidence under agreement with the Defence.⁷⁰ The Prosecution submits that document 04096 was type-signed and is similar in form to other MUP dispatches.⁷¹ Documents 04088, 04120 and 04270 contain instructions regarding the deployment of the PJP in Kosovo at the relevant time. It is

⁶⁴ Response, paras 23, 24.

⁶⁵ Motion, para 40.

⁶⁶ Indictment, para 14.

⁶⁷ Motion, para 40.

⁶⁸ Motion, paras 41, 44.

⁶⁹ Motion, para 42; Reply, para 5.

⁷⁰ Motion, para 41.

⁷¹ Motion, para 44.

indicated in these documents that the instructions were issued by the Accused. Document 04096 appears to describe the implementation of measures ordered in dispatch 04088. The documents may thus be of relevance to the issues indicated by the Prosecution. The Chamber is satisfied that the documents have been shown to be sufficiently reliable to justify their admission. Documents 04088, 04120, 04270 and 04096 will be admitted into evidence.

23. Document 04091

29. Document 04091 is a report dated 1 June 1998 on the formation and equipment of the 72nd PJP Detachment. The Prosecution submits that the document is of relevance to the Accused's authority, as it allegedly shows that his instructions were complied with. The Prosecution asserts the document is reliable because it was stamped and signed by Ivan Maksimović.⁷² The document appears to have been prepared in relation to a previous dispatch, dated 25 May 1998. However, that dispatch is not appended and it is thus not possible to ascertain the relevance of the document to the issues identified by the Prosecution. The relevance of the document has not been sufficiently demonstrated. Document 04091 shall not be admitted.

24. Document 04084

30. Document 04084 is a RJB telegram dated 3 November 1998. The Prosecution submits that the document is relevant to the Accused's authority over MUP units on the ground in Kosovo with regard to the co-operation between the MUP and the OSCE Verification Mission in Kosovo, and his "role as an integral member of the Serbian side that negotiated the October Agreements".⁷³ The Prosecution asserts that the document is type-signed by the Accused and certified as a true copy of the original by an authorised official.⁷⁴ The Chamber notes that the document discusses the actions which the MUP should take in order to facilitate the establishment and functioning of the OSCE Verification Mission, in accordance with an agreement. There is no reference to the Accused's alleged involvement in the negotiations leading to the agreement. However, the document is of relevance to the establishment of the Kosovo Verification Mission. The document is type-signed and its authenticity is verified by an authorised official. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 04084 shall be admitted into evidence.

⁷² Motion, para 43.

⁷³ Motion, para 45.

⁷⁴ Motion, para 45.

25. Document 04087

31. Document 04087 is a RJB dispatch dated 16 March 1999 regarding citizens without proper identification or registration of residency. The Prosecution submits that the document is relevant to the issue of “a functioning chain of command between RJB and the various MUP units” and of the Accused’s notice of refugees and displaced persons.⁷⁵ The Prosecution asserts the document is sufficiently reliable as it has been type-signed by the Accused and stamped.⁷⁶ The document contains instructions directed to, *inter alia*, the Chiefs of the SUP and other MUP staff, and concerning identification. It is indicated in the document that the instructions were given by the Accused and the document is thus relevant to the Accused’s alleged authority over the MUP staff. Further, the document makes reference to refugees and displaced persons, which is of relevance to the Accused’s notice of “the massive displacement of Kosovo Albanians”.⁷⁷ These matters may be of relevance to the Indictment. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 04087 shall be admitted into evidence.

26. Document 04085

32. Document 04085 is a dispatch from the RJB dated 21 December 1998. The Prosecution submits that the document is relevant to the issues of the MUP reporting system and the Accused’s authority to prevent and punish crimes.⁷⁸ The Chamber notes that the document does not specifically refer to the prevention or commission of crimes by subordinates of the Accused, a matter of relevance to his alleged responsibility under Article 7(3) of the Statute. It, however, contains information relating to the reporting system within the MUP in the period from 28 December 1998 to 18 January 1999. It is thus relevant to the Indictment. The Prosecution asserts the document is reliable because it is signed by the Accused and certified as a true copy of the original by an authorised official.⁷⁹ The Defence “challenges [this document] purported to be signed by the Accused”.⁸⁰ However, it is unclear what specific objection it makes to the reliability of the document. The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 04085 will be received.

⁷⁵ Motion, para 47.

⁷⁶ Motion, para 47.

⁷⁷ Indictment, para 64(f).

⁷⁸ Motion, para 49.

⁷⁹ Motion, para 49.

⁸⁰ Response, para 24.

27. Documents 04234, 04236, 04237, 04238, 04247, 04248, 04211

33. Documents 04234, 04236, 04237, 04238, 04247, 04248 and 04211 appear to be reports from Major-General Lukić to the MUP office in Belgrade and the Accused. They are dated from March to April 1999, and include the numbers of Albanians who fled Kosovo during certain time frames. The Prosecution submits that these documents are relevant to the issue of the Accused's notice of the massive displacement of Kosovo Albanians in the period relevant to the Indictment.⁸¹ The Prosecution asserts the documents are sufficiently reliable as they were type-signed by Major-General Lukić.⁸² The Chamber also takes note of the general format of the documents, including the consistent numbering. The Chamber is satisfied that the documents are relevant and have been shown to be sufficiently reliable to justify their admission. Documents 04234, 04236, 04237, 04238, 04247, 04248 and 04211 shall be admitted into evidence.

28. Documents 00829, 00830, 00831, 00846

34. Documents 00829, 00830, 00831 and 00846 are an OSCE report prepared in October 2003 and some of the purported underlying materials. The Prosecution asserts these documents are relevant to the failure of the Accused to take the measures necessary to punish crimes committed in Kosovo.⁸³ The OSCE report is a review of war crime trials in Serbia, including trials concerning events in Kosovo. Conclusions are drawn in the report as to the allegedly low number of trials of members of the Serb security forces. The report may be of relevance to the issue of measures taken to prosecute crimes allegedly committed by subordinates of the Accused. The report appears to rely on information provided by, among others, the MUP and the Ministry of Defence. The Prosecution submits that documents 00829, 00830 and 00831 are the "underlying materials" of the report. Document 00831, a letter sent from the MUP in response to a request for information by the OSCE, is referenced in the report. Document 00829 is only a cover letter and thus of little value. Document 00830 is dated 9 April 2002. In view of the fact that the report appears to have been prepared in 2003, the relation of document 00830 to the report is unclear. As its admission is sought on the basis that it is one of the "underlying materials", the Chamber is not satisfied that its relevance has been demonstrated. More information is required concerning the circumstances in which it was composed.

⁸¹ Motion, paras 50, 51.

⁸² Motion, paras 50, 51.

⁸³ Motion, para 54.

35. The Prosecution submits that it received the OSCE report from the OSCE officers in charge of the “Rule of Law project”.⁸⁴ The report bears the logo of OSCE and appears to be in the standard format. Document 00831 bears the signature of a military prosecutor and, as mentioned earlier, is referenced in the OSCE report. The Chamber is satisfied that documents 00831 and 00846 are relevant and have been shown to be sufficiently reliable to justify their admission. They shall be admitted into evidence. Documents 00829 and 00830 shall not be received at this time.

29. Document 03086

36. Document 03086 is a note from a Border Police station referring to the confiscation of identity documents from ethnic Albanians who were willing to cross the border with Albania. The Prosecution asserts the document is relevant to the allegation of “identity cleansing” and the crime of deportation (Count 1 of the Indictment).⁸⁵ The document is relevant to allegations relating to Count 1 of the Indictment. The Prosecution states the document is sufficiently reliable because it is an official document and is signed.⁸⁶ The Defence objects to the lack of any corroboration of the reliability.⁸⁷ Having regard to the form of the document and the signature on it, the Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 03086 shall be admitted into evidence.

30. Document 04062

37. Document 04062 is a report from an investigation by the Crime Investigation Police Department at the SUP in Kosovska Mitrovica of a mass grave in Izbica. The report describes a number of new graves which are described as Muslim due to a number of factors. It is relevant, as the Prosecution asserts, to the charge of murder in Izbica in the Indictment.⁸⁸ The Prosecution asserts the stamp and pair of signatures are sufficient indicia of reliability to support the admission of the document.⁸⁹ The Chamber is satisfied that the document has been shown to be sufficiently reliable to justify its admission. Document 04062 shall be admitted into evidence.

31. Documents 02855, 02849, 02851, 02852, 02856, 02857

38. Two of the documents listed, 02855 and 02856, are Requests for Assistance to the government of Serbia for the MUP files of various people alleged to have participated in crimes

⁸⁴ Motion, para 55.

⁸⁵ Motion, para 57.

⁸⁶ Motion, para 57.

⁸⁷ Response, para 26.

⁸⁸ Motion, para 58.

⁸⁹ Motion, para 58.

alleged in the Indictment. The other documents, 02849, 02851, 02852, and 02857, are personnel files, which the Prosecution submits it received from the authorities of Serbia in response to the RFAs.⁹⁰ The Chamber notes that neither the Indictment, nor the Prosecution's Pre-Trial Brief refers to the individuals whose files are tendered. The basis for the Prosecution's assertion that the documents are relevant is thus unclear. Further, documents 02849, 02851 and 08252 are not accompanied by a cover letter and no other evidence has been provided to demonstrate that these personnel files allegedly received from the authorities of Serbia are complete. Documents 02855, 02849, 02851, 02852, 02856 and 02857 shall not be admitted into evidence at this time. Should the Prosecution wish to renew its application for the admission of these documents, it will need to provide additional information and/or evidence regarding their relevance and completeness.

D. Disposition

39. For the foregoing reasons, and pursuant to Rules 54 and 89 of the Rules, the Chamber

GRANTS leave to exceed the word limit in the Motion and the Response;

DECIDES as follows:

- documents bearing Rule 65ter numbers: 00425, 01012, 01942, 01943, 01688, 04010, 04048, 01139, 04055, 01101, 03120, 03121, 03122, 03130, 01227, 01228, 01229, 01693, 04229, 04232, 04235, 04239, 04249, 04250, 04253, 04086, 04077, 01113, 01214, 01217, 01218, 04083, 04082, 01216, 01219, 04088, 04120, 04270, 04096, 04084, 04087, 04085, 04234, 04236, 04237, 04238, 04247, 04248, 04211, 00831, 00846, 03086, 04062, will be received and admitted into evidence;
- documents bearing Rule 65ter numbers: 00472, 00710, 00604, 00605, 00949, 00950, 00948, 01063, 01064, 01198, 01204, 01206, 01203, 01157, 01509, 04091, 00829, 00830, 02855, 02849, 02851, 02852, 02856, 02857, will not be received at this time; and

REQUESTS the Registry to assign exhibit numbers to the received documents and to inform the Chamber and the parties in writing accordingly.

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

Dated this twenty-eighth day of April 2009
At The Hague
The Netherlands



Judge Kevin Parker
Presiding

[Seal of the Tribunal]

⁹⁰ Motion, paras 59, 60.