

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: 22 July 2009
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr John Hocking

Decision: 22 July 2009

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**SECOND DECISION ON PROSECUTION'S SECOND
WRITTEN MOTION TO AMEND THE RULE 65 *TER* EXHIBIT
LIST**

The Office of the Prosecutor:

Mr Chester Stamp
Ms Daniela Kravetz
Mr Matthias Neuner

Counsel for the Accused:

Mr Dragoljub Đorđević
Mr Veljko Đurđić

I. BACKGROUND

1. On 2 July 2009, the Trial Chamber (“Chamber”) issued its “Decision on Prosecution’s Second Written Motion to Amend the Rule 65*ter* exhibit list” (“First Decision”) whereby it granted leave to the Prosecution to add 25 out of the 60 documents sought by the Prosecution for addition to the Rule 65*ter* exhibit list by a Motion filed on 4 June 2009 (“Motion”).¹

2. The Chamber reserved its decision with respect to the remaining 35 documents for which, at the time of the filing of the Motion no English translations existed, and ordered the Prosecution to notify the Chamber once they were available on e-court.²

3. On 13 July 2009, the Prosecution informed the Chamber that the English translations of these 35 documents were received and were available on e-court.³ This decision is limited to these 35 documents.

4. The parties’ submissions on the Motion were discussed in the Chamber’s First Decision and will not be repeated here in full.⁴ In essence, the Prosecution submitted that it has only recently received these documents, that the Defence has been in their possession since 21 May 2009, and that the documents it proposes for addition to the Rule 65*ter* exhibit list are reliable and relevant to the issues in this case.⁵ The Defence objected to the addition of these documents to the Prosecution’s Rule 65*ter* exhibit list on the basis that the addition at this late stage of proceedings will incur undue prejudice in that, *inter alia*, it deprives the Defence of the opportunity to examine the documents in a large part of the Prosecution’s case in chief.⁶

II. APPLICABLE LAW

5. The law concerning the addition of materials to the exhibit list pursuant to Rule 65*ter* of the Rules of Procedure and Evidence has been sufficiently set out in the Chamber’s First Decision⁷ and will, therefore, not be repeated in full in this decision. A Chamber may, if it is satisfied that this is in the interests of justice, grant a request for the amendment of the Prosecution’s Rule 65*ter* exhibit

¹ *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Prosecution’s Motion to Amend the 65*ter* Exhibit List (re: Documents received pursuant to RFAs 1755 and 1766) with Annex A”, filed by the Office of the Prosecutor (“Prosecution”) on 4 June 2009. On 18 June 2009, the Defence filed “Vlastimir Đorđević’s Response to the Prosecution Motion to Amend the 65*ter* Exhibit List (re: Documents received pursuant to RFAs 1755 and 1766) with Annex A”. On 26 June 2009, the “Prosecution’s Request for leave to Reply to Defence Response (Re: Documents received pursuant to RFAs 1755 and 1756)” was filed. The Chamber granted leave for the Prosecution to submit its reply (*see* para 22 of the First Decision).

² First Decision, para 22.

³ Transcript of Court hearing on 13 July 2009, T 7287.

⁴ First Decision, paras 4-6.

⁵ Motion, paras 3, 4-8, 9, 11.

⁶ Response, paras 7

list.⁸ The admissibility of these documents, if and when they are tendered by the Prosecution during trial, shall be governed by the Rules of admissibility of evidence as applied by the Tribunal.

III. DISCUSSION

6. Several of the remaining documents for which the Chamber has now received English translations are included in more than one of the categories identified by the Prosecution regarding the potential relevance of the proposed documents. The Chamber notes that where one document is listed in several categories, it will discuss this document in relation to the first category to which the Prosecution submits its relevance.

7. The documents in Category 1, as submitted by the Prosecution, are relevant to Vlastimir Đorđević's role in deploying MUP personnel to Kosovo during 1998 and 1999.⁹ Rule 65ter numbers 05262 to 05266, 05270, 05271, 05273 and 05274 are dispatches and telegrams issued on 22 March 1999 by various SUPs in Serbia proper signed by their respective SUP chiefs, and addressed to the MUP and "PJP Command". They concern the deployment of PJP members to Kosovo, and were all issued in response of Dispatch no. 587 issued by the Public Security Department ("RJB") on 21 March 1999. Rule 65ter 05280 to 05282 and 05285 are a telegram and two dispatches, respectively, issued by various SUPs in Serbia proper to the MUP and "PJP command", and relate to the deployment of PJP members to Kosovo, signed by the chiefs of these SUPs. They were issued in response to RJB Dispatch no. 218, dated 9 February 1999. Rule 65ter number 05288 is a dispatch from the RJB dated 2 March 1999, addressed to, *inter alia*, various SUPs in both Serbia proper and Kosovo, the heads of various PJP detachments, and the MUP Staff in Priština. It is signed by Vlastimir Đorđević and relates to troop rotation as support for the SUPs in Dečani and Peć, in Kosovo. Rule 65ter documents 05289, 05291 and 05292 are dispatches from SUPs in Serbia proper addressed to the MUP and "PJP Command" relating to the deployment of PJP members to Kosovo to carry out "special tasks". These three dispatches were issued in response to RJB dispatch no. 193 dated 4 February 1999. Rule 65ter numbers 05296 and 05299 are a dispatch and a telegram, respectively, from Kragujevac and Smederovo SUP in Serbia proper, dated 23 February 1999 and addressed to the MUP and "PJP Command" relating to the deployment of PJP members to Kosovo to carry out "special security tasks". They were issued in response to RJB

⁷ First Decision, para 7.

⁸ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, "Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning", 14 December 2007 ("*Popović Appeals Chamber Decision*"), para 37. See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, "Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65ter Exhibit List", 25 October 2007 ("*Popović Trial Chamber Decision*"), para. 18. See also *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, "Decision on Prosecution Motion to Amend Exhibit List", 19 August 2008, para 3;

⁹ Motion, para 10, Category 1.

dispatch no. 297, dated 17 February 1999. Rule 65ter number 05300 is a dispatch issued by the RJB and addressed to, *inter alia*, the chiefs of various SUPs, the chief of the MUP Staff in Priština, and the commanders of various PJP detachments. It is signed by Vlastimir Đorđević and dated 12 January 1999¹⁰. Finally, Rule 65ter number 05311 is a dispatch from “Belgrade” dated 15 February 1999 and addressed to, *inter alia*, the chiefs of various SUPs, the command of a number of PJP detachments and the MUP Staff in Priština, concerning the dispatch of PJP members to Kosovo. It is signed by Vlastimir Đorđević. The Chamber notes that Rule 65ter number 05313 listed in this category of documents is in fact a duplicate of Rule 65ter number 05288 discussed above.

8. According to the Prosecution, the documents in Category 2 are relevant to establishing the pattern of communication between MUP Staff in Kosovo and Vlastimir Đorđević.¹¹ The two documents for which the Chamber was awaiting English translations are also included in Category 1 and are listed in paragraph 7, above.¹² With respect to the third category of documents that the Prosecution seeks to add to the Rule 65ter exhibit list, it is submitted that these documents are relevant as they relate to the level of control exercised by Vlastimir Đorđević over events in Kosovo, or indicates his knowledge of these events.¹³ They are Rule 65ter numbers 05303, 05304 and 05318. They are dated 7 October 1998, 25 November 1998 and 29 April 1999 respectively, and are all three signed by Vlastimir Đorđević. These documents are dispatches from the RJB addressed to, *inter alia*, chiefs of “RJB organisational units”, chiefs of all SUPs, and the head of the MUP Staff in Priština. Rule 65ter number 05303 refers to, *inter alia*, the necessity to speed up the “defence plan” in light of excessive pressure by NATO members and to provide surveillance of foreigners present on the ground. Rule 65ter number 05304 calls for the implementation of measures based on the agreement between the “international community” and Slobodan Milošević, and the “accord” on the Organisation for Security and Cooperation in Europe (“OSCE”) Verification Mission in Kosovo. Finally, Rule 65ter number 05318 includes an invitation to present employees for decorations, early promotion or awards, in commemoration of 13 May 1999, marked “Security Day”.

9. Category 4 lists documents which, as submitted by the Prosecution, relate to the functioning of the MUP command system.¹⁴ They are Rule 65ter numbers 05279, 05283, 05284 and are dispatches from a number of SUPs from February and March 1999, addressed to the MUP and “PJP Command”, regarding the deployment of PJP members to Kosovo. Rule 65ter number 05287 is a

¹⁰ The Chamber notes that the date on the English translation of Rule 65ter 05300 is 12 January 1998. The contents of the document, however, refer to events on 12 January 1999. The Chamber considers that the document should be read as dated 12 January 1999.

¹¹ Motion, para 10, Category 2.

¹² These are Rule 65ter 05300 and 05313.

¹³ Motion, para 10, Category 3.

dispatch dated 19 February 1999 from the SUP Prizren informing the MUP police administration, the "Operations Centre" as well as the head of the MUP Staff in Priština about the hepatitis treatment of a PJP member after completion of his task in Prizren.

10. The Prosecution submits that the fifth category of documents it seeks to add the Rule 65ter list is relevant because it relates to the MUP disciplinary system at the time relevant to the Indictment and/or Vlastimir Đorđević's particular authority over disciplinary measures.¹⁵ These are Rule 65ter numbers 05275, 05286, 05293 and 05294. They are dispatches from various SUPs in Serbia proper, signed by the respective chiefs of these SUPs, dated February and March 1999. They generally relate to the suspected dereliction of duty of members of the MUP for refusal to be deployed to Kosovo.

11. The two documents in Category 6 were dealt with in the First Decision. With respect to the seventh category of documents the Prosecution seeks to add to the Rule 65ter exhibit list, it submits that they are relevant to the deployment of MUP personnel to Kosovo by individuals other than Vlastimir Đorđević.¹⁶ These are Rule 65ter numbers 05268 and 05298, dispatches from Požarevac SUP dated 22 March 1999 and 23 February 1999 respectively, signed by the chief of the SUP, and including names of PJP members who refused to be deployed to Kosovo.

12. The Chamber has reviewed the documents of which it remains seized and is satisfied that they are of *prima facie* relevance to the issues in this case. With respect to the documents for which the Defence has concerns with regarding their reliability,¹⁷ the Chamber incorporates, by reference, its discussion in this regard in the First Decision.¹⁸ Concerning the question of good cause being shown by the Prosecution for seeking the addition of these documents at this advanced stage of proceedings, the Chamber, as stated in its First Decision in more detail, has no reason to believe that the Prosecution acted in anything other than good faith in providing these documents to the Defence at the earliest possible time, once they were analysed.¹⁹

13. The Chamber refers to its discussion in the First Decision with respect to the alleged loss of opportunity by the Defence to explore some or all of these documents with witnesses that have already testified and the burden on the defence that the addition of these documents will cause.²⁰ It

¹⁴ Motion, para 10, Category 4.

¹⁵ Motion, para 10, Category 5.

¹⁶ Motion, para 10, Categories 6 and 7.

¹⁷ See Response, para 13. The documents relevant to this particular decision are Rule 65ter numbers 05262-05264, 05270, 05279, and 05299 concerning the lack of a handwritten signature on the original, and Rule 65ter number 05277 concerning the missing signature block.

¹⁸ First Decision, para 17.

¹⁹ First Decision, para 18.

²⁰ First Decision, para 19.

reiterates here, however, that the Defence may, if it considers that it has incurred some material prejudice as a result of not being able to question a previous witness on any of the proposed Rule 65ter documents, request leave from the Chamber to recall such a witness.

14. Finally, the Defence have been in the possession of these documents since 21 May 2009.²¹ The Chamber also emphasizes its finding in the First Decision that documents of a similar nature are already in evidence in this trial, so that the proposed documents do not introduce a new element of the Prosecution's case. As a result, the burden that the review of these documents will demand is significantly reduced.

15. On the basis of the above arguments, the Chamber considers it to be in the interests of justice to allow the addition of the remaining 35 documents to the Rule 65ter exhibit list. It notes further that a number of exhibits were marked for identification during the proceedings of 21 July 2009, and that those should be given the status of exhibits.

IV. DISPOSITION

16. For the foregoing reasons, and pursuant to Rule 65ter(E) of the Rules, the Chamber

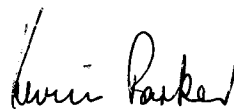
(i) **GRANTS** the Motion with respect to proposed Rule 65ter numbers 05262-05266, 05268, 05270, 05271, 05273-05275, 05279-05289, 05291-05294, 05296, 05298, 05299, 05300, 05303, 05304, 05311, 05313, and 05318.

(ii) **REQUESTS** the Registry to assign the status of exhibit to the following Rule 65ter numbers; 05262-05266, 05270, 05271, 05273, 05274, 05288, 05303, 05304, 05311 and 05318.

²¹ Motion, para 9.

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

Dated this twenty-second of July 2009
At The Hague
The Netherlands



Judge Kevin Parker
Presiding

[Seal of the Tribunal]