



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-60-A
Date: 16 August 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision: 16 August 2005

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

**DECISION ON DRAGAN JOKIĆ'S AMENDED MOTION FOR
DISCLOSURE**

The Office of the Prosecutor:

Mr. Norman Farrell

Counsel for the Accused:

**Ms. Cynthia Sinatra and Mr. Christopher Staker for Dragan Jokić
Mr. Vladimir Domazet for Vidoje Blagojević**

I, MOHAMED SHAHABUDEEN, Judge of the Appeals 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 (“International Tribunal”);

NOTING the “Order Appointing a Pre-Appeal Judge,” filed on 22 October 2004, in which the President designated me to serve as Pre-Appeal Judge in this case;

NOTING that Trial Chamber I rendered its Judgment in this case on 17 January 2005 and in writing on 24 January 2005 (“Judgment”);

NOTING that the Prosecution’s Status Report, filed on 16 June 2005, identifies certain materials that the Prosecution intends to disclose to the Appellants, including a substantial collection of documents known as the Drina Corps Collection that, the Prosecution estimates, will be available through the Electronic Disclosure System (EDS) in late September 2005;

NOTING that at the Status Conference held on 17 June 2005, a lengthy discussion of these materials took place, at which the Prosecution provided its assurance that it was endeavouring in good faith to make the materials available through the EDS as quickly as possible, and the Appellant Dragan Jokić (“Appellant”) did not deny that this was the case;¹

BEING SEISED OF “Dragan Jokić’s Amended Motion for Disclosure,” filed 2 July 2005 (“Amended Motion”), which requests, pursuant to Rule 68(i) of the Rules of Procedure and Evidence (“Rules”), that the Office of the Prosecutor (“Prosecution”) disclose to Appellant the following evidence in English and B/C/S: the entire contents of the Drina Collection, a war road map of the Zvornik Brigade (“Map”), all statements made by Vinko Pandurević, closed session transcripts from the Milošević² trial of witnesses B1455 and B1775, any other documents seized from the Zvornik Brigade Headquarters in 1999, witness statements taken from Witness P130 that have been taken since trial, statements of Prosecution witnesses from other trials before the International Tribunal,³ and any other materials that the Prosecution is required to disclose under Rule 68;

NOTING that the Amended Motion also requests that the Prosecution provide the Appellant, pursuant to Rule 68(ii) of the Rules, with the appropriate computer software to conduct searches of the documents disclosed in electronic form;

¹ Transcript of Status Conference of 17 June 2005, pp. 14-20

² Case Number IT-02-54-T

³ Namely, Dragan Spasojević, Vinko Stojkić, Miladin Jijatović, Danilo Lazarević, Branko Risočić, Drago Stokić, Slavko Bogičević, Drago Nikolić, Branko Mikić and Šemso Muminović.

NOTING that this Amended Motion replaces the original “Request for Disclosure of Documents Removed from Zvornik Brigade Headquarters,” filed by the Appellant on 20 June 2005 (“Original Request”);⁴

NOTING “Prosecution’s Response to Dragan Jokić’s Amended Motion for Disclosure,” filed 15 July 2005 (“Prosecution’s Response”) and “Corrigendum to Prosecution’s Response to Dragan Jokić’s Amended Motion for Disclosure,” filed 18 July 2005, in which Prosecution argues that, “there is absolutely no basis for the request in the Amended Motion,”⁵ in that Prosecution has provided ongoing disclosure, responded to all defence requests for disclosure, including the requests contained in the Amended Motion and that there is no basis for the Amended Motion to have been brought before the Appeals Chamber;

NOTING that the Appellant has not filed a reply to the Prosecution’s Response;

CONSIDERING that the Prosecution states that it is unaware of the existence of the Map, that the Appellant has not contested this point, and that if the Appellant has reason to believe that the Prosecution has access to the Map he should provide the Prosecution with a precise description of it;

CONSIDERING that the Prosecution states, and the Appellant has not denied, that during the ongoing correspondence between the parties regarding the disclosure of Vinko Pandurević’s statements, the Prosecution informed the Appellant on two occasions that all statements of Vinko Pandurević had been disclosed, and that the Appellant failed to respond to the Prosecution’s request to establish that there was further information requiring disclosure under Rule 68(i);

CONSIDERING that the Appellant has not specified exactly to which transcripts of Witness B1455 he is referring, that the Prosecution claims to have disclosed the closed session testimony of Witness B1775, and that the Appellant has not responded to this claim;

CONSIDERING that the Prosecution claims to have disclosed all documents seized from the Zvornik Brigade Headquarters at trial and that the Appellant has not responded to its request to establish that there exists additional material “which in the actual knowledge of the Prosecutor may

⁴ As the Prosecution pointed out in its “Response to Jokić Motion Requesting Documents from Zvornik Brigade Headquarters,” filed 30 June 2005, the original Motion was extremely confusing and appeared to include portions of a trial filing that had been incorporated by accident. The Prosecution suggested that the Appellant refile his motion, and he has done so.

⁵ Prosecution’s Response, para. 9

suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence,"⁶;

CONSIDERING that the Prosecution's assertion that it has disclosed all statements in its possession provided by Witness P130 has not been challenged by the Appellant;

CONSIDERING that the Appellant has not been precise in identifying which statements from other trials it requires and that the Prosecution has disclosed the statements of which it is aware;

CONSIDERING that Rule 68(ii) requires the Prosecution to make available to the Appellant, "in electronic form, collections of relevant material held by the Prosecution, together with appropriate computer software with which the Defence can search such collections electronically";

CONSIDERING that the Appellant has not denied that the Prosecution is working in good faith to make the Drina Collection available through the searchable EDS as soon as is reasonably possible;

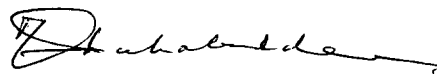
CONSIDERING that the counsel for the Appellant has been provided with the password and an instruction booklet for the EDS;

FINDING that the Prosecution has complied with Rule 68 and that there appears to be no question of willingness to make disclosure, but simply a question of uncertainty as to which material is being sought, and that this could be resolved by continued direct communication between the parties;

FINDING therefore that the Appeals Chamber's involvement is therefore not necessary at this stage;

DENY the Appellant's motion for disclosure.

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



Mohamed Shahabuddeen
Pre-Appeal Judge

Dated 16 August 2005
At The Hague
The Netherlands

[Seal of the International Tribunal]

⁶ Rule 68(i) of the Rules