



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: 13 February 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: 13 February 2009

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR ADMISSION
OF EVIDENCE OF NEILL WRIGHT PURSUANT TO RULE
92bis WITH ANNEX A**

The Office of the Prosecutor:

Mr Chester Stamp
Ms Daniela Kravetz
Mr Matthias Neuner
Ms Priya Gopalan
Ms Silvia D'Ascoli

Counsel for the Accused:

Mr Dragoljub Đorđević
Mr Veljko Đurđić

I. BACKGROUND

1. Trial Chamber II (“Chamber”) of the International Criminal 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 for Admission of Evidence of Mr Neill Wright Pursuant to Rule 92*bis* with Annex A”, filed on 28 October 2008 (“Motion”) whereby the Prosecution seeks the admission into evidence without cross-examination, pursuant to Rule 92*bis* of the Rules of Procedure and Evidence (“Rules”), of the written statement of Mr Neill Wright (Witness’s letter)¹ as well as the associated Attachments One, Two, Three, and Four, which it submits meet the requirements of Rule 92*bis* (B). On 11 November 2008 Counsel for Vlastimir Đorđević (“Defence”) filed a “Response to Prosecution’s Motion for Admission of Evidence of Neill Wright Pursuant to Rule 92*bis* with Annex A” (“Response”), in which the Defence agreed to the admission without cross-examination of Attachments One, Two, and Three, as well as the Witness’s letter, with appropriate redactions. The Defence objects to the admission of Attachment Four as well as to the portion of the Witness’s letter referring to Attachment Four.

II. SUBMISSIONS

2. The Prosecution submits that the Witness’s letter and its four associated Attachments satisfy the criteria for admission under Rule 92*bis* of the Rules.² It submits that none of the proposed evidence goes to proof of acts and conduct of the Accused as it contains statistical data regarding the number of Kosovo Albanian refugees.³ It further submits that the evidence is corroborative of that which will be provided by other *viva voce* witnesses, thus favouring its admission under Rule 92*bis* (A)(ii).⁴ The Prosecution further submits that the proposed evidence “does not touch upon live issues between the parties”⁵ and accordingly that the Witness should not be called for cross-examination. It is submitted, however, that should the Trial Chamber require that the Witness appear for cross-examination, the Prosecution will apply for appropriate protective measures.⁶

3. The Defence consents to the admission without cross-examination of Attachments One, Two and Three as well as of the Witness’s letter, upon the condition that all reference pertaining to

¹ Letter from the Witness to Mr. Graham T. Blewitt, 5 February 2002 (the “Witness’s letter”), p 1

² Motion, para 3.

³ Motion, para 3.

⁴ Motion, para 3.

⁵ Motion, para 3.

Attachment Four are redacted.⁷ However, the Defence objects to the admission of Attachment Four on the basis that “it is not appropriate for submission under Rule 92bis as it goes to the acts and conduct of the Accused and touches upon very real and live and important issues between the parties, including reasons for population movements.”⁸ While it is submitted that cross-examination of the Witness alone will be insufficient to cover the admission of Attachment Four as it consists of multiple degrees of hearsay and speculation that go to live issues in this case, the Defence requests that the Witness be made available for cross-examination, should Attachment Four be admitted into evidence.⁹

III. LAW

4. The Chamber recalls its recent “Decision on Prosecution’s Motion for Admission of Transcripts of Evidence of Forensic Witnesses in Lieu of Viva Voce Testimony Pursuant to Rule 92bis” and the law stated therein.¹⁰

IV. DISCUSSION

5. The Chamber notes that the Witness’s letter and its associated Attachments One, Two and Three are documents produced by the Witness in his capacity of head of the United Nations High Commission for Refugees (“UNHCR”) unit responsible for operations in the former Yugoslavia in 1998 and 1999. Attachment One, Two and Three provide statistical information and explanations on the number of Kosovo Albanians displaced within and outside of Kosovo’s borders during the Indictment Period. The Witness’s letter describes the methodology applied for the collection of the statistical data and the sources relied on to compile them. It was prepared for the Office of the Prosecutor and contains a signed statement by the Witness to the effect that it may be submitted as evidence before this Tribunal.¹¹

6. The Witness’s letter and associated Attachments One, Two and Three constitute evidence which does not go to proof of acts and conduct of the Accused within the meaning of Rule 92bis.¹² Further, the Chamber accepts that they are reliable, relevant to the present Indictment and of sufficient probative value to be admitted into evidence.

⁶ Motion, para 18.

⁷ Response, para 9.

⁸ Response, para 12.

⁹ Response, para 11.

¹⁰ *Prosecutor v. Vlastimir Dordejić*, Case No. IT-05-87/1-T, 11 February 2009, pp. 3-4

¹¹ Witness’s letter, p 1

¹² Witness’s letter, p 1

7. Whereas Attachment One, Two and Three are purely statistical, Attachment Four is not. It consists of a number of "Kosovo Emergency Updates" reports issued by UNHRC between 30 March 1999 and 25 August 1999.¹³ These reports contain, *inter alia*, statistical data relating to the number of displaced Kosovo Albanians which is of a similar nature to those contained in Attachment One, Two and Three. However, in addition to the statistical data, Attachment Four also contains portions of narrative text purporting to set out reasons for leaving Kosovo given by refugees to UNHCR field staff.¹⁴

8. The Chamber notes that, with regard to the reliability of Attachment Four, the Witness's letter sets out the sources relied on to compile the statistical data linked to the Kosovo refugee crisis and the methodology applied for its collection and compilation.¹⁵ The Chamber is satisfied that this statistical data in Attachment Four has sufficient indicia of reliability and probative value for it to be admissible.

9. The Chamber must, however, consider the issue of fairness to decide whether in its discretion it should admit Attachment Four at all, or subject to cross-examination of the witness by the Defence.¹⁶

10. The Chamber notes that the Accused is charged, *inter alia*, with deportation and participating in a joint criminal enterprise to deport and forcibly transfer Kosovo Albanians, as well as with responsibility under Article 7(3). Hence, he could be held responsible for the acts of his own subordinates and of members of the joint criminal enterprise and their subordinates. Nevertheless, in the view of the Chamber, the narrative portions of Attachment Four do not go to proof of acts and conduct of the Accused within the meaning of Rule 92*bis*. Even so, this evidence does have some relevance to at least the issue of the reason for refugees leaving Kosovo, but it is not so precise or direct as to be pivotal to the Prosecution case, nor does it reveal a sufficiently proximate relationship to the Accused, or to those for whom he might be held responsible under Article 7(1) or 7(3), so as to make it unfair for this evidence to be admitted in written form. The Chamber is inclined to the view, however, that the Witness should be available for cross-examination in respect of the sources and methodology used to prepare the narrative portions as they do appear to be wholly or partly hearsay. Of course, the issue of the probative value, if any, to be accorded this evidence by the Chamber is not one to be considered at this stage of the trial. That

¹³ Witness's letter p 2.

¹⁴ Witness's letter p 2.

¹⁵ Witness's letter, pp 1-2.

¹⁶ *Prosecutor v. Galić*, Case No.IT-98-29-T, Decision on the Prosecution's Request for Admission of Rule 92*bis* Statements, 26 July 2002, para 18.

will have to be considered, in light of all the evidence relevant to that issue, when the Chamber comes to reach a final conclusion on the charges.

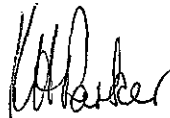
V. DISPOSITION

For the reasons stated above,

The Chamber, pursuant to Rules 89 and 92*bis* of the Rules of Procedure and Evidence of the Tribunal, **HEREBY GRANTS** the Motion **IN PART** and **ORDERS**:

- (1) The Witness's letter, Attachment One, Two, Three, and Four will be admitted into evidence;
- (2) The admission into evidence of Attachment Four is subject to the Witness appearing for cross-examination in respect of the matters identified in this decision.

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



Judge Kevin Parker
Presiding

Done this 13th day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]