



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: 14 December 2009  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr John Hocking, Registrar

**Decision:** 14 December 2009

**PROSECUTOR**

v.

**VLASTIMIR ĐORĐEVIĆ**

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*PUBLIC*

**DECISION ON PROSECUTION'S SECOND MOTION TO RE-  
OPEN THE CASE AND SUBMISSION OF PROOF-OF DEATH  
CHARTS**

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**The Office of the Prosecutor:**

Mr Chester Stamp  
Ms Daniela Kravetz

**Counsel for the Accused:**

Mr Dragoljub Đorđević  
Mr Veljko Đurđić

**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”);

**BEING SEIZED OF** “Prosecution’s Second Motion to Re-open the Case and Submission of Proof-of-Death Charts”, filed by the Prosecution on 23 November 2009 (“Motion”), whereby the Prosecution seeks leave to re-open its case to file proof-of-death charts (“charts”) submitted in Annex A to this Motion, in order to assist the Chamber in locating forensic and other evidence relevant to the deceased persons listed in the schedules to the Indictment;<sup>1</sup>

**NOTING** that while the Prosecution does not seek to make any submissions about the charts at this stage apart from pointing to where the evidence is located on the Trial Record, the Prosecution submits that if these charts are of assistance to the Chamber, they should be admitted into evidence;<sup>2</sup>

**NOTING** the Prosecution’s submission that the charts contain information about victims with respect to whom evidence of murder has been adduced at trial but who have not been scheduled in the Indictment;<sup>3</sup>

**NOTING** further that the Prosecution submits that the following errors should be corrected in the schedules to the Indictment: (a) the removal of the name of Shehu Fnu (son of Sinan) from Schedule C to the Indictment and (b) Shurata Zhuniqi should be identified as a nine or ten-year-old female, as oppose to a four year old male as listed in Schedule B to the Indictment;<sup>4</sup>

**NOTING** “Vlastimir Đorđević’s Response to Prosecution’s Second Motion to Re-open the Case and Submission of Proof-of-Death Charts”, filed on 23 November 2009” (“Response”), whereby the Defence objects to the admission into evidence of any party-prepared charts and that the chart is not evidentiary material permissible under Rule 89 of the Rules of Procedure and Evidence (“Rules”) as it would allow the Prosecution to submit testimony;<sup>5</sup>

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<sup>1</sup> Motion, paras 1-2.

<sup>2</sup> Motion, paras 2-3.

<sup>3</sup> Motion, para 5.

<sup>4</sup> Motion, para 6.

<sup>5</sup> Response, paras 8-10, 12, 14, 15.

**NOTING** that the Defence submits that the charts should be filed with the Prosecution's final submissions or alternatively, that the chart should be introduced through an expert who could attest of the methodology in compiling the chart;<sup>6</sup>

**NOTING** that the Defence submits that the removal of a name from the Indictment cannot be done without the leave of the Chamber after having heard the parties and that removing a name without formally changing the Indictment is to remove some of the Prosecution's burden;<sup>7</sup>

**RECALLING** that on 28 October 2009, the Chamber allowed the Prosecution to close its case subject to the filing of, *inter alia*, the present submission;<sup>8</sup>

**CONSIDERING** that the charts contain forensic and other evidence pertaining to the individual victims of murder listed in the schedules to the Indictment;<sup>9</sup>

**CONSIDERING** that the Chamber is satisfied that the charts do not constitute evidence *per se* but Prosecution's submissions concerning the evidence adduced at trial;

**CONSIDERING** therefore that the charts are not admissible into evidence pursuant to Rule 89 of the Rules but are more appropriately regarded as submissions which could form part of the Prosecution's final trial brief;

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<sup>6</sup> Response, para 16.

<sup>7</sup> Response, paras 20-22.

<sup>8</sup> *Prosecutor v Vlastimir Đorđević*, Case No IT-05-87/1-T, court session of 28 October 2009, T 9329.

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

**TAKES NOTE** of the submission and **DENIES** admission of the charts into evidence.

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

Dated this fourteenth day of December 2009

At The Hague

The Netherlands



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Judge Kevin Parker  
Presiding

**[Seal of the Tribunal]**

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<sup>9</sup>Motion, Annex A.