



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: 3 February 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr John Hocking

Decision: 3 February 2010

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON VLASTIMIR ĐORĐEVIĆ'S ORAL MOTION
FOR ADMISSION OF DOCUMENTS MARKED FOR
IDENTIFICATION (MFI) D514-D518**

The Office of the Prosecutor:

Mr Chester Stamp
Ms Daniela Kravetz

Counsel for the Accused:

Mr Dragoljub Đorđević
Mr Veljko Đurđić

1. This decision of Trial Chamber II (“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 in respect of a motion moved orally by Counsel for Vlastimir Đorđević (“Defence”) in court session on 29 January 2010 for admission into evidence of five documents pertaining to the testimony of Slobodan Petković.

A. Background

2. On 4 January 2010 the Defence filed a motion for admission into evidence of written statements and transcripts of prior evidence before the Tribunal of 22 witnesses. On 22 January 2010 the Chamber granted the motion in part and ruled, *inter alia*, that portions of the written statement and of the transcript of evidence in the *Milutinović* case of one witness, Slobodan Petković, which pertain to locations outside Kosovo or which constitute expert evidence will not be admitted into evidence in the present case. Slobodan Petković gave evidence in this trial on 29 January 2010. In the course of his testimony the Defence sought to tender into evidence five exhibits. It also sought leave to add one of them (Document 1792) to its exhibit list filed pursuant to Rule 65ter of the Rules of Procedure and Evidence (“Rules”). The Chamber did not admit into evidence these documents at the time but marked them for identification as MFI D514, MFI D515, MFI D516, MFI D517, and MFI D518, respectively, pending further consideration of the oral motion.

B. Law

3. 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 reliability¹ and relevance² 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

¹ 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”, see *Prosecutor v. Kordić and Čerkez*, Case No: IT-95-14/2-AR73.5, Decision on Appeal Regarding Statements of a Deceased Witness, 21 July 2000, paras 24. See also *Prosecutor v. 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. Tadić*, Case No: IT-94-1-T, Decision on Defence Motion in Hearsay, 5 August 1996, para 15 in which the Trial Chamber held that “if evidence offered is unreliable, it certainly would not have probative value.”) See also *Prosecutor v. 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. Boškoski 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.

² “[E]vidence is admissible only if it is relevant and it is relevant only if it has probative value”, see *Prosecutor v. Galić*, Case No: IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C), 7 June 2002, para 35.

reliability to justify its admission.³ 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.

C. Discussion

4. MFI D514 is a document dated 5 March 1999 signed by General Panić of the VJ General Staff. The document indicates that according to VJ intelligence NATO forces have used and are using depleted uranium ammunitions in Iraq. The document contains a table of weapons for which depleted uranium ammunition is believed to have been used. The document requires that the VJ General Staff collect information as to whether NATO forces deployed or to be deployed in Macedonia have this type of ammunition, which specific units in particular have this type of ammunition and in what quantities. In the Chamber's view MFI D514 is not of sufficient relevance or probative value to be admitted into evidence. While Slobodan Petković confirmed in his testimony that he drafted this document,⁴ the sources of the information contained in it and the basis for the beliefs expressed remain unclear. In the absence of any such information the document has no sufficient probative value to be admitted into evidence. Further, the relevance of a document purporting to establish types of ammunition available to NATO, to the allegations in the present Indictment has not been demonstrated. MFI D514, therefore, will not be admitted into evidence.

5. MFI D515 is a document signed by Slobodan Petković. Although the document appears to be dated 12 February 1999, the witness testified in court that the document was from 12 July 1997.⁵ The document asserts that NATO forces have used radiological weapons in the territory of Bosnia and Herzegovina and contains a detailed description of weapons believed to have been used there, including a physical description, modus operandi and potential effect. The document further expresses a belief that types of ammunition thought to have been used in Bosnia and Herzegovina may be used against targets in Kosovo and lists measures to be undertaken "in order to establish the radiological threat." It is the evidence of Slobodan Petković that this document was intended to familiarise subordinate units with the type of ammunition that would be used if air strikes take place.⁶ It is further his evidence that the document is based on a report of an expert panel of which the witness was a member, which visited Bosnia and Herzegovina in 1997 and collected and transported ammunition from there to Vinca institute in Serbia where this ammunition was analysed. It is also Slobodan Petković's evidence that parts of this document are based on

³ *Prosecutor v. Boškoski 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, para 14.

⁴ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10477.

⁵ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10479.

⁶ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10479.

information on the effects of depleted uranium found in reference books, on the internet and in the press.⁷

6. It is apparent from the above description that portions of MFI D515 refer to events taking place outside the territory of Kosovo and preceding the events alleged in the Indictment. These portions are of no apparent relevance to issues in the present Indictment and are, therefore, inadmissible on this basis. Significant portions of the document contain technical information about specific weapons and ammunition, which is expert in nature. Slobodan Petković has not been proffered as an expert witness pursuant to Rule 94*bis* of the Rules. The evidence of a fact witness on such highly technical matters is of limited or no probative value and of no assistance to the Chamber. The Chamber also notes that the proposed evidence does not refer to ammunition actually used in Kosovo but to ammunition which may be used in Kosovo if there are air strikes, and is thus speculative. Even if the Chamber had been able to be satisfied that the evidence is otherwise admissible, the document would not have been admissible on this basis. MFI D515, therefore, will not be admitted into evidence.

7. MFI D516 is a document entitled "Report on Radioactive Ammunition and Weapons of the NATO Forces" dated 4 May 1999 and signed by Slobodan Petković. The document contains detailed descriptions of types of weapons and ammunition, said to be NATO ammunition containing depleted uranium, which may be used by NATO in case of a ground attack. It is Slobodan Petković's evidence that the document was compiled in view of the possibility that a land operation may be launched by NATO, in order to instruct subordinate units about the characteristics of these munitions should they be used.⁸ In the Chamber's view the technical characteristics of ammunition and weapons contained in the document constitutes expert evidence and is inadmissible in the present circumstances. Further, MFI D516 refers to ammunition which may be used in the event of a ground attack by NATO forces in Kosovo and not to ammunition actually used in Kosovo; the document is speculative and of no probative value to issues in the present case. MFI D516, therefore, will not be admitted into evidence.

8. MFI D517 appears to be a letter from the Secretary General of NATO to the Secretary General of the United Nations dated 7 February 2000. The letter confirms that depleted uranium ammunition was used during the Kosovo conflict. It further specifies that depleted uranium ammunition was used throughout Kosovo during approximately 100 missions and that a total of approximately 31,000 rounds of ammunition were used. The letter also indicates that the major focus of these operations was in an area west of Peć/Pejë-Đakovica/Gjakovë-Prizren highway, in

⁷ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10480-10481.

the area surrounding Klina, in the area around Prizren and to the north of Suva Reka/Suharekë and Urosevac/Ferizaj. In the view of the Chamber, the document refers to events in the territory of Kosovo during the material time and may be of relevance to issues in the case. It bears the letterhead of NATO and a signature and thus appears to be of sufficient reliability to be admitted into evidence. The Chamber notes that the copy currently uploaded in eCourt is of a very poor quality, with the information in the upper part of the page being partly illegible. The Defence should replace the current copy with a better quality copy of this letter.

9. MFI D518 contains two maps of Kosovo marked during his evidence in court by the witness. The original maps (Document 1792) are not on the Defence Rule 65*ter* exhibit list. It was Slobodan Petković's evidence that the first map was drafted in Serbia based on information about locations where depleted uranium ammunition was used. It was further his evidence that the second map was "probably" based on Western sources and NATO information and that it indicates targets that were hit the most with ammunition containing depleted uranium.⁹ The Chamber notes that no specific information about the origin of the two maps and the sources that were used to compile them has been provided. Considering, however, the content of MFI D517, the Chamber is prepared to admit them into evidence, the decision on admissibility having no bearing on the weight the Chamber will give to these maps in its assessment of the evidence as a whole.

For the foregoing reasons and pursuant to Rules 89(C) and 89(D) of the Rules the Chamber

GRANTS the Motion **IN PART** and **ORDERS** that:

- Document 1792 will be added to the Defence Rule 65*ter* exhibit list;
- MFI D517 and MFI D518 will be admitted into evidence;
- MFI D514, MFI D515, and MFI D516 will not be admitted into evidence.

⁸ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10487.

⁹ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 29 January 2010, T 10498.

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

Dated this third day of February 2010
At The Hague
The Netherlands



Judge Kevin Parker
Presiding

[Seal of the Tribunal]