



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: 23 June 2010
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr John Hocking

Decision: 23 June 2010

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON VLASTIMIR ĐORĐEVIĆ'S MOTION TO
EXCEED THE WORD LIMIT AND MOTION TO ADMIT
DOCUMENTS FROM THE BAR TABLE**

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 “Vlastimir Đorđević’s Motion to Exceed the Word Limit and Motion to Admit Documents from the Bar Table” filed publicly by counsel for Vlastimir Đorđević (“Defence”) on 27 May 2010 (“Motion”). By this Motion the Defence seeks leave to file a motion exceeding 3,000 words and further seeks the admission of 110 documents from the bar table Pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”).

I. BACKGROUND

2. On 20 May 2010, at the close of the presentation of evidence in the present case, the Defence moved orally for a leave to file a motion for admission into evidence of some “20 to 30” documents from the bar table.¹ The Chamber granted leave to the Defence to file such a motion not later than noon on 27 May 2010. On 27 May 2010 the Defence filed the present Motion seeking admission of 110 documents from the bar table. On 8 June 2010 the Office of the Prosecutor (“Prosecution”) informed the Chamber and the Defence that it did not intend to file a response to the Motion.

II. LAW

3. Pursuant to Rule 89(C) of the Rules a Chamber may admit any relevant evidence which it deems to have probative value. It is desirable that documents are tendered for admission through witnesses who are able to comment on them. A party is not necessarily precluded from seeking the admission of a document even though it was not put to a witness with knowledge of the document (or its content) when that witness gave testimony in court. However, for a document to be admissible from the bar table, the party tendering it must show its relevance, “by clearly and specifically explaining how each exhibit fits into the case”.² It is for the party that moves to have a document admitted into evidence to demonstrate its relevance and reliability to justify its admission.³

¹ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court session of 20 May 2010, T 14358-14359.

² *Prosecutor v Popović et al*, Case No. IT-05-88-T, “Decision on Prosecution’s Motion for Admission of Exhibits from the Bar Table, Motion to Amend the Bar Table Motion, and Oral Motion for Admission of Additional Exhibit”, 14 March 2008, para 15. See also *Prosecutor v Delić*, Case No. IT-04-83/3-T, “Decision on Prosecution Submission on the Admission of Documentary Evidence”, 16 January 2008, paras 8, 9, and 16; *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 (“*Boškoski* 14 May 2007 Decision”), paras 13-15, 22-23.

³ *Boškoski* 14 May 2007 Decision, para 14; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, “Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court”, 29 October 2008, para 23;

4. The failure to put a document to a witness with knowledge of the document (or its content) when that witness gave testimony in court is relevant to the exercise of the Chamber's discretion to admit the document. Further, if the document is admitted, the failure is likely to limit the value of the document in evidence.⁴

III. SUBMISSIONS AND DISCUSSION

5. The Defence submits that the 110 documents proposed for admission in the present Motion are relevant, reliable and have probative value.⁵ It has categorized the proposed documents into four groups: (i) Priština Corps combat reports; (ii) Priština Corps command orders and documents; (iii) 3rd Army combat reports; and (iv) other documents.

A. Documents falling into the first and the third category

6. The Defence submits that the documents falling into the first and the third group bear sufficient indicia of reliability as they are all of the same type and in regular form and that they all bear appropriate stamps and signatures.⁶ It submits further that all documents have probative value as the documents of the first group pertain to the period 25 March to 2 June 1999 and the documents of the second group, to the period 26 March to 3 June 1999, which periods are alleged to be the cornerstone of the Indictment. It submits that these documents "go to give evidence of what was actually happening on the ground during the relevant time period [...] and shed additional light on what was and what was not happening in Kosovo and Metohija during this intense period of time" and that they have probative value "in outlining exactly the military actions taken in this critical period of time".⁷

7. The Prosecution does not make any submissions on the admissibility of the proposed documents.

8. The Chamber notes that while the jurisprudence of the Tribunal allows for the admission of documents from the bar table, it requires that the relevance and probative value of each document be established before the document is admitted into evidence. It is for the party tendering the document to demonstrate the relevance of the proposed documents by clearly and specifically

Prosecutor v Vlastimir Đorđević, Case No. IT-05-87/1-T, "Decision on Prosecution's Motion to Re-open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table", 7 December 2009.

⁴ *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, "Decision on Tarčulovski's Second Motion for Admission of Exhibits from the Bar Table with Annex A", 7 April 2008, para 5.

⁵ Motion, para 2.

⁶ Motion, paras 7 and 15, respectively.

⁷ Motion, paras 8, 10 for the documents falling in the first category and paras 16 and 17 for documents of the third category.

explaining how each proposed exhibit fits into the case.⁸ In the present case, the Defence seeks to tender 33 combat reports of the Priština Corps falling into the first category and 46 combat reports of the 3rd Army, falling into the third category, submitting that they are relevant as they give evidence as to “what was and what was not happening in Kosovo and Metohija during this intense period of time.” Apart from this very general statement, no submissions are made as to whether these documents relate to a specific allegation in the Indictment, if so which allegation in particular, and how these documents are able to support or challenge these allegations. While the Indictment in the present case covers a vast territory of Kosovo and events occurring over a prolonged period of time, the mere assertion that a document pertaining to Kosovo was issued during the time frame in the Indictment is not sufficient to establish that the document is in fact relevant to allegations in the Indictment. The Chamber notes that despite the fact that the Defence called a high number of witnesses who were members of the VJ who may have been able to comment on the proposed documents, none of these documents was put to a witness giving evidence to relevant events. Considering this fact and that the documents were not tendered until the close of oral evidence, without prior notification that they were to be relied on, the Chamber is of the view that it has not been demonstrated by the Defence that the documents proposed in categories one and three of the Motion should be admitted into evidence.

B. Documents falling into the second category

9. The Defence submits that the documents falling into the second category bear sufficient indicia of reliability as they are all of the same type and in a regular form bearing the signature of General Lazević, and that these documents are relevant to the present case as they are dated 29 March to 28 May 1999 and reflect the movement of the VJ on the ground.⁹ It is submitted that the proposed documents show that anti-terrorist actions were not aimed towards civilians but towards terrorists forces of the KLA and that the documents show which units took part in the anti-terrorist actions and the axis of their respective involvement, and the position of the enemy forces.¹⁰

10. The Prosecution does not make any submissions on the admissibility of the proposed documents.

11. As discussed above, the Chamber may admit into evidence documents tendered from the bar table only if the party tendering the documents is able to show clearly and specifically explain how each proposed document fits into the case. The 14 documents proposed under the second category of the Motion refer to combat operations in Kosovo during the period of the Indictment. The

⁸ See supra, para 3.

⁹ Motion, paras 12, 13.

Chamber notes that while the Indictment contains a wide ranging allegations of crimes in Kosovo from January to June 1999, it is not the Prosecution case that all VJ operations in Kosovo are related to the allegations in the Indictment. In the absence of specific submissions or witness evidence as to how specific combat orders relate to the allegations in the Indictment the Chamber is unable to be satisfied that the proposed documents are of sufficient relevance to be admitted into evidence. The Chamber further notes that a number of Defence witnesses associated with the VJ gave evidence in the present case and that none of these documents was put to any of these witnesses. The fact that these documents were not verified or the subject of comment by relevant witnesses during the hearing and the potential effect of such a large body of material being tendered without supporting oral evidence on the due assessment of this and any related evidence in the trial are additional factors taken by the Chamber in exercising its discretion whether to admit the documents at this late stage. The Chamber is of the view that it has not been demonstrated by the Defence that the proposed documents should be admitted into evidence.

C. Documents falling into the fourth category

12. Under the fourth category the Defence seeks to tender 17 documents of various nature. Specific submissions, to be addressed below, are made with respect to each of these documents.

13. The Prosecution does not make any submissions on the admissibility of these documents.

1. MFI D6

14. MFI D6 is a video shown by the Defence in court to Prosecution witness Veton Surroi. The video was not admitted into evidence but instead marked for identification because of the need to present further evidence to establish the relevance and probative value of the recording.¹¹ No such evidence has been tendered by the Defence. The Chamber, therefore, is of the view that MFI D6 shall not be admitted into evidence.

2. MFI D86

15. MFI D86 is a criminal report shown to Prosecution witness Hasbi Loku. The document was not admitted as an exhibit when it was first tendered because of the poor quality and the lack of apparent relevance of some of the photographs contained in it.¹² No further evidence to rectify these deficiencies has been proffered. In the circumstances the document will not be admitted into evidence.

¹⁰ Motion, para 13.

¹¹ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court session of 30 January 2009, T 357.

¹² *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court session of 22 April 2009, T 3681.

3. Documents Defence Rule 65ter numbers 211 and 305

16. Document Defence Rule 65ter number 211 is a criminal brief dated 2 April 1999 containing the criminal report filed with the Priština Military Prosecutor following the murder of three members of the Haziri family by a member of the VJ reserve force. The document has stamps and signatures. The Defence submits that the document is relevant as it provides evidence that crimes committed by members of the Serbian forces were investigated and the perpetrators were brought to justice. Document Defence Rule 65ter number 305 is a criminal report concerning the death of passengers on a bus hit by a NATO air-strike on 1 May 1999. The report has a stamp and signature. The Defence submits that the document is relevant as it concerns civilian casualties during the war due to the bombing campaign. In the Chamber's view, documents Defence Rule 65ter numbers 211 and 305 are of sufficient relevance and probative value to be admitted into evidence. They will be admitted.

4. Document Defence Rule 65ter number 955

17. Document Defence Rule 65ter number 955 purports to be a public announcement dated 13 October 1998 that negotiations between President Slobodan Milošević, other negotiators and the international community had reached a resolution of problems on Kosovo and Metohija by peaceful and political means. The document does not bear a stamp or a signature. The Defence submits that the document is relevant as it shows the will of the representatives of the FRY and Serbia to find a peaceful solution to the problems. In the Chamber's view, in the absence of verification by other evidence, the authenticity of the document is not demonstrated. Further, especially in the absence of oral testimony as to the circumstances which may have given rise to the document, and of informed comment on its content, Document Defence Rule 65ter number 955 can add very little, if anything, to documentary and *viva voce* evidence already part of the trial record. The document, therefore, will not be admitted.

5. Document Defence Rule 65ter number 1065

18. Document Defence Rule 65ter number 1065 is an unsigned and unattributed document in English containing information about the National Movement for Kosovo Fund—"The Fatherland is Calling"—in financing KLA, LNA and NLPMB. The Defence submits that the document was disclosed to it by the Prosecution and that it was previously tendered into evidence in the *Milutinović* case. In the view of the Chamber, in the absence of any indicia as to how the document was prepared, by whom, and on the basis of what information, Document Defence Rule 65ter number 1065 is not of sufficient reliability to be admitted into evidence. The document will not be admitted.

6. Document Defence Rule 65ter number 1067

19. Document Defence Rule 65ter number 1067 is an unsigned and unattributed document containing a list of names the Defence submits were members of the Temporary Executive Council. It is submitted that the document was disclosed to the Defence by the Prosecution. It is unclear how this document was prepared and by whom. In the absence of any evidence about its authenticity the Chamber is unable to be satisfied that the document meets the standards for admission. The document will not be admitted.

7. Document Defence Rule 65ter number 1076

20. Document Defence Rule 65ter number 1076 contains a cover letter of a facsimile transmitted by the FRY Embassy in Austria on 17 November 1998 regarding OSCE and NATO Co-operation, annexed to which are letters exchanged between the OSCE General Secretary G. Aragona, and the NATO General Secretary J. Solana that relate to the coordination between the two organisations concerning the Kosovo Verification Mission. The Defence submits that the document is relevant as it shows the exchange and the coordination between the two organisations. In the view of the Chamber, the document is of no direct relevance to any of the allegations in the present Indictment and, therefore, would be of no, or extremely limited value to any of the issues in the present case. It will not be admitted.

8. Document Defence Rule 65ter number 1263

21. Document Defence Rule 65ter number 1263 is a one page statement indicating that the government of Serbia has assigned representatives for talks with the leaders of the Albanian parties, and representatives of the cultural life of Kosovo and Metohija. It expresses commitment to resolve all issues relating to human and civil rights in Kosovo and Metohija. The document is dated 11 March 1998. It does not bear any stamps or signature. The Defence submits that the document is relevant as it shows the aims of the Serbian government to improve the political processes and resolve vital issues in Kosovo. In the view of the Chamber, the document is of very limited relevance in the present case. It concerns events preceding the main allegations in the Indictment by more than a half a year. The issues to which the Defence submits the documents pertains have no bearing on the alleged responsibility of the Accused or on any of the significant allegations in the Indictment. The document will not be admitted.

9. Document Defence Rule 65ter number 1279

22. Document Defence Rule 65ter number 1279 is a letter from the negotiators on behalf of the contact group to the delegation of the FRY and Serbia and the delegation of Kosovo dated 23

February 1999 enclosed to which is “the final text” of the Interim Agreement for Peace and Self-Government in Kosovo proposed at Rambouillet. It is indicated in the letter that the final proposal takes account of views expressed at the Rambouillet meeting and that Russia does not associate itself with Chapters 2 and 7. The letter bears the signatures of Christopher Hill, Boris Mayorksi, and Wolfgang Petritsch. The Defence submits that this letter was sent to the delegation of FRY and Serbia at 0930 hours on 23 February 1999 and that the delegation was expected to respond to it by 1300 hours on the same day, which, in the Defence submission, shows pressure on the delegation. In the view of the Chamber, the document bears sufficient indicia of reliability to be *prima facie* admissible. It is relevant to background allegations in the present Indictment. The Chamber notes, however, that this document was not put to witnesses testifying about the meeting in Rambouillet and that it is tendered now from the bar table without the opportunity to hear relevant oral evidence. The Chamber will admit the document. However, considering the failure of the Defence to tender the document at an earlier stage of the trial and through an appropriate witness, it is likely that the Chamber will only be able to give limited weight to the document especially in respect of issues relating to it but which are not directly governed by the terms of the document.

10. Documents Defence Rule 65ter numbers 1304, 1357, 1362, and 1364

23. Documents Defence Rule 65ter numbers 1304, 1357, 1362, and 1364 are excerpts from the Official Gazette of the Republic of Serbia and of the Autonomous Province of Kosovo and Metohija. Document 1304 is an excerpt of the Official Gazette of Serbia of 28 September 1998. It includes conclusions of the National Assembly of the Republic of Serbia on issues related to the situation in Kosovo. The Defence submits that the document is relevant as it shows the establishment of a Temporary Executive Council for Kosovo and relates to Prosecution’s submissions regarding this body. Document 1304 is relevant and of probative value. It will be admitted.

24. Document 1357 is an extract of the Official Gazette of 16 April 1997 showing the decision on the election of Vljako Stojilković as Minister of the Interior of the Republic of Serbia. The document is relevant and has a probative value. It will be admitted.

25. Document 1362 is an extract of the Official Gazette of 23 March 1999 which includes a decision of the National Assembly of Serbia indicating that it does not accept the presence of foreign troops in Kosovo and that it is ready to discuss the size of the international presence in Kosovo for the implementation of its political agreements. The document is relevant and of probative value. It will be admitted.

26. Document 1364 is an excerpt from the Official Gazette of the Autonomous Province of Kosovo and Metohija dated 5 November 1998. It contains a decision of the Executive Council of the “Provisional” Executive Council for Kosovo adopted on 15 October 1998 regarding its organization and procedure. The Defence submits the document is relevant as it relates to Prosecution’s submissions about the functioning and the role of this body. Document 1364 is relevant and of probative value. It will be admitted.

11. Document Defence Rule 65ter number 1575

27. Document 1575 is entitled “Plan for Marking MUP (Ministry of Interior) and VJ (Army of Yugoslavia) units for the period 25 to 31 July 1998”. The document represents a chart indicating the colour and the position of ribbons to be worn by members of these units on each of these days. The Defence submits that the document is relevant as it shows that “uniform-corruption and copying” was already a prevalent problem for the routine Serbian forces as early as mid 1998 and that the document helps to understand evidence already in the record. The document does not bear a stamp or a signature. It is not attributed to a specific institution. It is described in its title as a “Plan” so that there is a further question whether any such plan was adopted and implemented. In these circumstances authenticity has not been demonstrated. Further, even if authenticity of the document has been established, considering other evidence already part of the trial record, the document could at best be of very limited value to issues in the present case. In the circumstances, the document will not be admitted.

12. Document Defence Rule 65ter number 1700

28. Document Defence Rule 65ter number 1700 is an internet article entitled “Kosovo: What We Weren’t Told” which has previously been published in the *Labour and Trade Union Review* in November-December 2000. The article compares the war in Serbia with the war in Iraq and argues that the war in Serbia was launched in defiance of the United Nations Charter and was based on statements that were untrue. The Defence submits that the article is relevant as it exemplifies statements outlining how the Serbian side largely complied with the Milošević-Holbrooke Agreements and that there were other causes leading to the mass displacement of the population. In the view of the Chamber, the proposed article appears to represent personal views and opinions held by the author who has not been called or cross-examined. It is a commentary rather than being based on facts established by evidence. Thus, it could be of no probative value for establishing factual circumstances relevant to the case. The subject matter of the article further pertains to issues which at most are of limited relevance to allegations in the Indictment. Document 1700 will not be admitted.

13. Document Defence Rule 65ter number 1848

29. Document Defence Rule 65ter number 1848 is a MUP dispatch dated 2 May 1999 sent to all SUPs in Kosovo bearing the name of Sreten Lukić. Document 1848 was not on the original Defence Rule 65ter exhibit list. The Defence seeks leave to add this document to its exhibit list and submits that the document has been disclosed to the Prosecution on 13 May 2010 in anticipation of the evidence of Radomir Milašinović. The Defence submits further that the document correlates to another document, a dispatch of Assistant Minister Mišić to all SUPs in Serbia, already in evidence as Exhibit D261, and that the proposed document shows that the MUP Staff operated as an independent unit “taking direct measures from their responsibilities and tasks” for combating terrorism in Kosovo.

30. Document 1848 shall be added to the Defence Rule 65ter list. The document is *prima facie* reliable. The Chamber accepts that the document is apparently of sufficient relevance to be admitted into evidence.

IV. DISPOSITION

For the foregoing reasons and pursuant to Rule 89(C) of the Rules and the Practice Direction on the Length of Briefs and Motions the Chamber:

- (1) **GRANTS LEAVE** to the Defence to file a motion exceeding the word limit provided in the Practice Direction on the Length of Briefs and Motions;
- (2) **GRANTS LEAVE** to the Defence to add document 1848 to its Rule 65ter exhibit list;
- (3) **DECIDES** that documents Defence Rule 65ter numbers 211, 305, 1279, 1304, 1357, 1362, 1364, and 1848 shall be admitted into evidence;
- (4) **DENIES** the Motion in all other respects.

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

Dated this twenty-third day of June 2010
At The Hague
The Netherlands



Judge Kevin Parker
Presiding

[Seal of the Tribunal]