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UNITED
NATIONS

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-05-88-T

Date: 6 September 2006

Original: English

IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge O-Gon Kwon
Judge Kimberly Prost

Judge Ole Bjørn Støle – Reserve Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **6 September 2006**

PROSECUTOR

v.

VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

DECISION ON JOINT DEFENCE MOTION REQUESTING DETERMINATION AS TO THE ADMISSIBILITY OF THE TESTIMONY OF JEAN RENE RUEZ

The Office of the Prosecutor:
Peter McCloskey

Counsel for the Accused:
Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stephane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović for Radivoje Miletić
Mr. Dragan Krgović for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

TRIAL CHAMBER II 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 SEISED OF the "Defence Motion Requesting Determination as to the Admissibility of the Testimony of Jean René Ruez" ("Motion"), filed on 30 August 2006 jointly by the Defence counsel for Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević ("Defence"), pursuant to Articles 15, 20 and 21 of the Statute of the Tribunal and Rules 65*ter*, 73*bis*, 89, 90 and 94*bis* of the Rules of Procedure and Evidence ("Rules");

NOTING the oral arguments submitted by the Office of the Prosecutor ("Prosecution") and the Defence on 31 August 2006;[1]

NOTING that in its Motion the Defence submits, *inter alia*, that parts of the evidence given by Prosecution witness Jean René Ruez ("Witness"), who was the Prosecution Chief Investigator of crimes committed in Srebrenica area in 1995, in previous cases, lacked probative value, or, alternatively, had only a negligence probative value that was outweighed by the adverse effect that it had on the length of the proceedings. Therefore, the Defence submits, these parts of his testimony should have been considered inadmissible.[2] Based on this previous evidence given by the Witness, the Defence requests that his testimony in the current case be limited to evidence on the "geography [of the relevant area], the details of the investigation, the introduction and factual explanation of exhibits, and other factual matters within his direct knowledge";[3]

NOTING that the Prosecution confirmed that the Witness "has identified some 260 photographs [...] of some 24 crime scenes and certain maps, and it's [the Prosecution] intention that he go over each of the crime scenes and talk about them and what he saw and [...] observed [...]" According to the Prosecution, the Witness will also have to put the details of his investigation in the overall context and will "be asked to provide information on the context of why he goes, for example, to the Kravica warehouse. And so he will be providing some hearsay information in order to put the places he's talking about in context, and that is the way [the Prosecution] intend[s] to lead Mr. Ruez. And [the Prosecution] don't intend to have him go into a summary of

[1] Hearing of 31 August 2006, T. 1148-1166.
[2] Motion, pp 3-7.
[3] Motion, p. 9.

the case." The jurisprudence of this Tribunal, the Prosecution submits, does not exclude hearsay evidence as such;[4]

RECOGNISING that pursuant to Rule 89(C) of the Rules a Trial Chamber may admit any relevant evidence which it deems to have probative value. The relative weight of the evidence admitted, however, will be assessed by the Trial Chamber at a later stage in the context of the entire trial record;

RECALLING that the Appeal Chamber has held that hearsay evidence is admissible where a Trial Chamber is satisfied that the evidence is reliable;[5]

RECALLING that, more specifically, the Appeals Chamber did not find investigator's conclusions drawn from evidence given by other witnesses to be inadmissible hearsay as such. On the contrary, it found such conclusions to be part of "facts which the Trial Chamber is obliged to consider and in relation to which it must make its own findings before coming to the issue of the accused's guilt in relation to them";[6]

RECALLING, however, that the Appeals Chamber also clarified that such "task does not require expertise beyond that which is within the capacity of any tribunal of fact, that of analysing the factual material put forward by the witnesses. Whatever expertise the OTP investigator may claim to have in relation to such a task, the Trial Chamber was entitled to decline his assistance in the very task which it had to perform for itself";[7]

FURTHER RECALLING that the Appeals Chamber also clarified that "[n]o question arises in this appeal as to the admissibility, in principle, of what has been called summarising evidence - the summarising of material which is relevant to the issues of the case. It has been admitted on many occasions in appropriate cases. Whether it is appropriate in the particular case for the evidence to be admitted will depend upon the circumstances of that case [...] Where the material summarised consists of statements made by others [...] the summary still consists of hearsay

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[4] Hearing of 31 August 2006, T. 1151-1153.

[5] *Prosecutor v. Galić,* Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, para. 27, referring, *inter alia*, to the *Prosecutor v. Kordić and Čerkez,* Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, para. 20.

[6] *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.2, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002 (*Milošević* Decision), para. 17. The Appeals Chamber, however, recognized that "[a] summary made by one person of material provided by another person is necessarily hearsay evidence in character. The admissibility of hearsay evidence pursuant to Rule 89(C) should not permit the introduction into evidence of material which would not be admissible by itself: *Ibid*, para. 21.

[7] *Ibid*, para. 17.

evidence of those statements made by others, and the reliability of the statements made by those other persons [...] is relevant to the admissibility of the summary";[8]

NOTING that both the Defence and the Prosecution declared that they accept the relevant jurisprudence of the Tribunal;[9]

CONSIDERING that the Prosecution assured the Defence and the Trial Chamber that it was neither "going to ask Mr. Ruez to speculate [...] [or] make inappropriate conclusions that will not be helpful for the Court [...] [nor] to get into the problems that [...] [Defence] counsel are concerned about", and that it intended to stop the Witness if he were to testify in narrative form;[10]

CONSIDERING that although the transcripts of the evidence given by the Witness in previous cases do raise concern regarding the scope and form of his testimony, the Trial Chamber is of the view that there is no need for pre-emptive ruling on the content of his evidence in the current case;

CONSIDERING that the Trial Chamber has the overall responsibility of overseeing the proceedings of the trial in light of the principles laid down in the Statute and Rules of this Tribunal, and, as described in Rule 90(F), to "exercise control over the mode and order of interrogating witnesses and presenting evidence so as to (i) make the interrogation and presentation effective for the ascertainment of the truth; and (ii) avoid needless consumption of time";

FURTHER CONSIDERING that the Prosecution should have facilitated the proceedings of the trial by providing an early witness statement, but that, in the current circumstances, the concerns of the Defence regarding the scope and form of the testimony of the Witness can also be dealt with when the Witness attends court to give evidence;

ENJOINING the Prosecution to fully explain to the Witness, either during his briefing or before he is called to give evidence, the substantives of this decision;

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[8] *Ibid*, paras 19-22, where the Appeals Chamber also clarified that "the content of the written statements which the OTP investigator had summarized, and which had not been admitted into evidence under Rule 92*bis*, were inadmissible under Rule 89(C)."

FOR THE FOREGOING REASONS

HEREBY DENIES the Motion.

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

Carmel Agius
Presiding

Dated this sixth day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

[9] Hearing of 31 August 2006, T. 1165.
[10] Hearing of 31 August 2006, T. 1149-1150.