

**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-05-87/1-T
Date: 1 July 2009
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Order of: 1 July 2009

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR THE
ADMISSION OF EVIDENCE FROM WITNESS FUAT
HAXHIBEQIRI**

The Office of the Prosecutor:

**Mr. Chester Stamp
Ms. Daniela Kravetz
Mr. Matthias Neuner**

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,

BEING SEIZED OF the “Prosecution’s Motion for the Admission of Evidence of Witness Fuat Haxhibeqiri pursuant to Rule 92 *Ter*” filed on 5 June 2009 (“Motion”), whereby the Prosecution seeks the admission into evidence, pursuant to Rule 92*ter* of the Rules of Procedure and Evidence (“Rules”), of Fuad Haxhibeqiri’s witness statement dated 28 August 2001, bearing Rule 65*ter* no. 02235,¹

NOTING that, in the Motion, the Prosecution submits that it intends to call this witness in the week commencing 29 June 2009, and that it envisages a brief oral examination of the witness in court “to highlight, supplement and clarify certain portions of his written evidence”, and may also ask the witness to comment on exhibits relating to his evidence,²

NOTING “Vlastimir Đorđević’s Response to Prosecution’s Motion for the Admission of Evidence of Witness Fuat Haxhibeqiri pursuant to Rule 92 *Ter*”, filed on 22 June 2009 (“Response”), whereby the Defence for Vlastimir Đorđević (“Defence”) objects to the admission of the witness’s written statement pursuant to Rule 92*ter*, and argues that from the written statement alone it is unclear whether the witness was an eye-witness to the events described or whether the events described originated from other sources, and that because of this lack of clarity the Defence will have to conduct extensive cross-examination,³

NOTING further, that the Defence submits that contrary to the Prosecution’s request, conducting an examination in chief would allow focusing on what the Prosecution finds to be critical events that the witness had first-hand knowledge of rather than having to deal with the vast amount of second-hand information contained in his witness statement, and thus reducing the court time required for cross-examination,⁴

NOTING further, that the Defence submits that the Prosecution has not disclosed all documents relating to Fuad Haxhibeqiri’s prospective evidence as his witness statement refers to “at least one publication of photos [...] that the Defence believes it does not yet possess”,⁵

NOTING that Rule 92*ter*(A) provides:

¹ Motion, paras 1 and 3.

² Motion, para 8.

³ Response, paras 4-12.

⁴ Response, paras 4-12.

⁵ Response, para 13.

A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

CONSIDERING that Fuad Haxhibeqiri will be present in court to attest that his witness statement sought for admission is accurate and reflects what he would say if examined, and that he will be available for cross-examination and any questioning by the Judges,⁶

NOTING that the evidence sought to be admitted pursuant to Rule 92*ter* must also fulfill the general requirements of admissibility: that is, the proposed evidence must be relevant and have probative value, and the probative value must not be substantially outweighed by the need to ensure a fair trial,⁷

NOTING that Fuad Haxhibeqir was Chairman of the Council for the Defence of Human Rights and Freedoms in Đakovica/Gjakovë at the relevant time, and that his evidence focuses on the killings and forced expulsion of Kosovo Albanians in Đakovica/Gjakovë and the destruction of the old town of Đakovica/Gjakovë,⁸

CONSIDERING that Fuad Haxhibeqiri's witness statement dated 28 August 2001 is relevant to the Indictment and has probative value, and that the requirements of Rule 92*ter* have been met,

CONSIDERING that the Chamber is not persuaded by the Defence's contention that the examination in chief of this witness would increase the efficiency of presentation of his evidence and reduce the court time required for cross-examination,

⁶ See Motion, para 5.

⁷ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motions for Admission of Evidence pursuant to Rule 92*ter*, 10 February 2009, para 6 and footnote 14 which cites the *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No.: IT-98-32/1-T, "Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92*ter*", 9 July 2008, para 20. and *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No.: IT-04-84-R77.4, "Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92*bis* and/or 92*ter*", 2 September 2008, para 13.

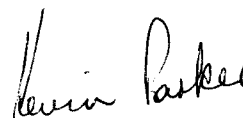
⁸ Fuad Haxhibeqiri, Witness statement of 28 August 2001 (65*ter* no. 02235).

RECALLING the Chamber's decision of 12 March 2009 which found that Fuad Haxhibeqiri's prospective evidence is relevant to all counts of the Indictment and has probative value and that his evidence would add significantly to other contemplated testimony,⁹

PURSUANT TO Rules 54 and 92*ter*(A) of the Rules,

- (i) **DECIDES** to admit Fuad Haxhibeqiri's witness statement dated 28 August 2001 subject to compliance with the conditions stipulated in Rule 92*ter*(A) of the Rules, including that the witness be available for cross-examination and questioning by the Judges, and
- (ii) **ORDERS** the Prosecution to disclose to the Defence no later than 3 July 2009 all documents not yet disclosed relating to Fuad Haxhibeqiri's prospective evidence.

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



Judge Kevin Parker
Presiding

Dated this 1st day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ *Prosecutor v Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motion to Amend the Rule 65*ter* Witness List, 12 March 2009, paras 20 and 22. In this Decision the Chamber ruled that Huad Haxhibeqiri be added to the Prosecution's 65*ter* Witness List.