

**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: 2 July 2009

Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr John Hocking

**Decision:** 2 July 2009

**PROSECUTOR**

v.

**VLASTIMIR ĐORĐEVIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION'S SECOND WRITTEN  
MOTION TO AMEND THE RULE 65 *TER* EXHIBIT LIST**

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**The Office of the Prosecutor:**

Mr Chester Stamp  
Ms Daniela Kravetz  
Mr Matthias Neuner

**Counsel for the Accused:**

Mr Dragoljub Đorđević  
Mr Veljko Đurđić

## I. BACKGROUND

1. 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”) is seized of the “Prosecution’s Motion to Amend the 65<sup>ter</sup> Exhibit List (re: Documents received pursuant to RFAs 1755 and 1766) with Annex A”, filed by the Office of the Prosecutor (“Prosecution”) on 4 June 2009 (“Motion”), whereby it seeks leave to add 60 documents to its Rule 65<sup>ter</sup> exhibit list.

2. Vlastimir Đorđević responded to the Motion on 18 June 2009 (“Response”)<sup>1</sup>. On 26 June 2009, the Prosecution requested leave to file the reply as set forth in the filing (“Reply”).<sup>2</sup> The Chamber notes that the Reply was filed a day late but will consider it as validly filed.

3. The Prosecution filed its Pre-Trial Brief on 1 September 2008, accompanied by, *inter alia*, its exhibit list pursuant to Rule 65<sup>ter</sup> of the Rules of Procedure and Evidence.<sup>3</sup> The trial phase of this case started on 27 January 2009.

## II. SUBMISSIONS

4. The Prosecution seeks the addition to the Rule 65<sup>ter</sup> list of a total of 60 documents which it has grouped into seven categories according to the relevance it ascribes to them vis-à-vis the charges in the case.<sup>4</sup> It submits that it has received these documents in the course of January and February of 2009, as a result of Requests for Assistance (“RFAs”) 1755 and 1756 that it sent to Serbia in November of 2008.<sup>5</sup> Having received these documents, it submits, it “took the necessary steps to interpret and analyze them to determine their potential significance” for this trial.<sup>6</sup> According to the Prosecution, these documents are *prima facie* relevant to the case and will be of significant assistance to the Chamber.<sup>7</sup> It submits, further, that all of the documents have been disclosed to Vlastimir Đorđević on 21 May 2009,<sup>8</sup> and that the rights of the Accused in the preparation of his defence will not be prejudiced as the documents are consistent with the

<sup>1</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Vlastimir Đorđević’s Response to the Prosecution Motion to Amend the 65<sup>ter</sup> Exhibit List (re: Documents received pursuant to RFAs 1755 and 1766) with Annex A”, 18 June 2009.

<sup>2</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Prosecution’s Request for leave to Reply to Defence Response (Re: Documents received pursuant to RFAs 1755 and 1756)”, 26 June 2009.

<sup>3</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Prosecution’s Submissions Pursuant to Rule 65<sup>ter</sup>(E) with Confidential Annex I, Annex II and Annex III”, 1 September 2008 (“Prosecution’s Pre-Trial Brief”).

<sup>4</sup> Motion, paras 1, 10.

<sup>5</sup> Motion, paras 4-7.

<sup>6</sup> Motion, para 7.

<sup>7</sup> Motion, paras 3, 10.

<sup>8</sup> Motion, paras 9, 11.

allegations and evidence led by the Prosecution thus far.<sup>9</sup> The Prosecution submits that it would be in the interest of justice, under these circumstances, to grant addition of the documents to the Rule 65*ter* exhibit list.<sup>10</sup>

5. In his Response, Vlastimir Đorđević (“Defence”) submits that the Prosecution has not shown good cause as to why the two RFAs were made at such a late stage in pre-trial proceedings, namely in November of 2008. He contends that at the time of the original Rule 65*ter* exhibit list filing, the Prosecution had five years since the initial indictment, and over a full year of time with Vlastimir Đorđević in custody awaiting trial, to make these requests.<sup>11</sup> The Defence takes issue with the Prosecution’s explanation, in its Motion, that the delay in providing the documents to the Defence, *i.e.*, on 21 May 2009, was the result of translation and the need for analysis of the documents in order to establish their relevance.<sup>12</sup> In this regard, the Defence notes that 35 out of the 60 proposed documents are, at the time of the filing of the Response, still not translated.<sup>13</sup> Further, the Defence submits that it has lost the opportunity to explore these documents with the witnesses who have already testified in this trial, and that as a result, he would suffer prejudice in his ability to prepare his Defence case should they be added to the Rule 65*ter* list.<sup>14</sup> Finally, he argues some of the proposed Rule 65*ter* numbers lack authenticity as they are missing either a handwritten signature or a “signature block” and are therefore not sufficiently reliable for addition to the Rule 65*ter* exhibit list.<sup>15</sup> He submits that should the Motion be granted in any part, the Prosecution should be required to admit these documents through an appropriate witness who can attest to their authenticity and reliability.<sup>16</sup>

6. In its Reply, the Prosecution submits that contrary to the Defence submission that it had only requested the proffered documents in November of 1998, the RFAs were in fact *further* requests for information from the Government of Serbia that had not been provided in response to earlier requests.<sup>17</sup> With respect to the assessing the relevance of the documents for which there exists no official translation as yet, the Prosecution submit that it was assisted by an interpreter on an *ad hoc* basis so that their relevance could be understood.<sup>18</sup> Further, and with respect to the

<sup>9</sup> Motion, paras 3, 11.

<sup>10</sup> Motion, para 3.

<sup>11</sup> Response, paras 7, 8.

<sup>12</sup> Response, para 10.

<sup>13</sup> Response, para 10.

<sup>14</sup> Response, para 11.

<sup>15</sup> Response, paras 12, 13. The specific documents Vlastimir Đorđević refers to in this respect are proposed Rule 65*ter* numbers 05262-05264, 05270, 05279, 05280, 05290, 05299, 05308, 05311, and 05319 which he submits do not contain a handwritten signature as they should, and proposed Rule 65*ter* numbers 05277 and 05278, which are telexes that do not include a “signature block” as they should.

<sup>16</sup> Response, para 14.

<sup>17</sup> Reply, para 5.

<sup>18</sup> Reply, para 6.

Defence concerns regarding the authenticity of some of the proffered documents, the Prosecution submits that it will address the authenticity and reliability of these documents at trial, and that it is not required to do so at this stage.<sup>19</sup> Finally, it contends that the decision as to how the Prosecution evidence should be led lies is the prerogative of the Prosecution, taking objection to the Defence submission that each of the proffered documents must be led through a specific witness.<sup>20</sup>

### III. APPLICABLE LAW

7. Pursuant to Rule 65 *ter* (E)(ii), the Prosecution is required, *inter alia*, to file a list of exhibits [it] intends to offer in its case. The purpose of the Rule 65*ter* list is to give notice to the Defence of the intention by the Prosecution to rely on the document during trial which will allow the Defence to prepare its case accordingly. A Chamber may, if it is satisfied that this is in the interests of justice, grant a request for the amendment of the Prosecution's Rule 65*ter* exhibit list.<sup>21</sup> In doing so, it must be satisfied that good cause has been shown for amending the list, that the material sought for addition is *prima facie* relevant and probative to the charges in the Indictment, and that the Accused is not unduly prejudiced by the addition of documents, bearing in mind the Prosecution's duty to present the available evidence to prove its case.<sup>22</sup> The Chamber recalls in this regard that a party should not be granted leave to add documents that are obviously irrelevant to its Rule 65*ter* list.<sup>23</sup> The Chamber also recalls that there is a difference between the admission of a document into evidence as an exhibit and its inclusion in the Prosecution's list of proposed exhibits submitted pursuant to Rule 65*ter* of the Rules. The admissibility of these documents, if and when they are tendered by the Prosecution during trial, shall be governed by the Rules of admissibility of evidence as applied by the Tribunal.

### IV. DISCUSSION

8. As a preliminary matter, the Chamber notes that the English translations of more than half of the documents being proffered by the Prosecution for addition to the Rule 65*ter* exhibit list

<sup>19</sup> Reply, paras 7, 8.

<sup>20</sup> Reply, para 10.

<sup>21</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, "Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning", 14 December 2007 ("*Popović* Appeals Chamber Decision"), para 37. See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, "Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65*ter* Exhibit List", 25 October 2007 ("*Popović* Trial Chamber Decision"), para. 18. See also *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, "Decision on Prosecution Motion to Amend Exhibit List", 19 August 2008, para 3;

<sup>22</sup> *Popović* Appeals Decision, para 37. See also *Popović* Trial Chamber Decision, para 18; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-PT, 14 February 2008, para 17; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Fifth, Sixth, Seventh and Eight Prosecution Motions for Leave to Amend its rule 65*ter* List, 24 April 2009, para 5.

<sup>23</sup> *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-T, "Decision on Prosecution's Sixth and Seventh Motions for Leave to Add Exhibits to its First Amended Exhibit List", 14 November 2007, para 5.

appears to be still pending.<sup>24</sup> It will reserve its decision on the addition of these documents to the Rule 65ter exhibit list until it has received and reviewed their translations.

9. It is noted, further, that several of the proffered documents are included in more than one of the categories identified by the Prosecution regarding the potential relevance of the proposed documents. Where one document is listed in several categories, the Chamber will discuss the relevance of the document in relation to the first category to which the Prosecution submits its relevance.

10. The Prosecution submits that the documents in Category 1 are relevant to Vlastimir Đorđević's role in deploying MUP personnel to Kosovo during 1998 and 1999.<sup>25</sup> The documents with available English translations in Category 1 are proposed Rule 65ter numbers 05276, 05297, 05305-05308, 05310, 05312, 05314. These are dispatches sent by the Public Security Department of the Ministry of the Interior ("MUP") of the Republic of Serbia in late 1998 and early 1999, signed by Vlastimir Đorđević,<sup>26</sup> and generally relate to the deployment of PJP detachments throughout Kosovo during this time-frame.

11. The second category of documents, the Prosecution submits, is relevant to establishing the pattern of communication between MUP Staff in Kosovo and the Accused.<sup>27</sup> Documents with available English translations in Category 2, which are not already listed in Category 1, are proposed Rule 65ter numbers 05309 and 05316.<sup>28</sup> These are dispatches dated 15 January 1999 and 12 April 1999 respectively, signed by the Vlastimir Đorđević and addressed to, *inter alia*, the MUP staff in Priština, the various Secretariats of the Interior ("SUPs") in Kosovo, the Crime Police Administration, the Traffic Police Administration, and the Border Police Administration.

12. According to the Prosecution, the third category of documents it seeks to add to the Rule 65ter list is relevant as it relates to the level of control exercised by the Accused over events in Kosovo, or indicates his knowledge of these events.<sup>29</sup> Available English translations of documents in Category 3 not listed in the previous two categories are proposed Rule 65ter number 05277, 05302, 05315, 05317, 05319 through to 05321.<sup>30</sup> Proposed Rule 65ter number 05277 is a dispatch

<sup>24</sup> These are Rule 65ter numbers 05262-05266, 05268, 05270, 05271, 05273-05275, 05279-05289, 05291-05294, 05296, 05298, 05299, 05300, 05303, 05304, 05311, 05313, 05318, a total of 35 documents.

<sup>25</sup> Motion, para 10, Category 1.

<sup>26</sup> The Chamber notes that the original of proposed Rule 65ter number 05308 does not bear the handwritten signature of Vlastimir Đorđević, but only his printed name.

<sup>27</sup> Motion, para 10, Category 2.

<sup>28</sup> Documents in Category 2 for which there are English translations and which are also included in Category 1 are proposed Rule 65ter number 05305-05311, 05314.

<sup>29</sup> Motion, para 10, Category 3.

<sup>30</sup> Documents in Category 3 for which there are English translations and which are included in Category 2 are proposed Rule 65ter numbers 05309 and 05316.

dated 14 March 1999 to the PJP command in Belgrade, the commander of the MUP in Priština, and the Chief of the SUP in Leskovac, containing a proposal for disciplinary proceedings of two police officers who had consumed alcohol and physically assaulted one another.<sup>31</sup> Proposed Rule 65ter documents 05302 and 05315, respectively, are dispatches dated 18 September 1998 and 22 March 1999, signed by Vlastimir Đorđević, addressed to a number of bodies in Kosovo, amongst which, for example, the MUP Staff in Priština, the various SUPs, Internal Affairs, and the Crime Police Administration. They relate, generally, to need to increase measures to prevent terrorist attacks by Albanian terrorist “gangs” in Kosovo. Proposed Rule 65ter number 05317 is another dispatch dated 12 June 1999, signed by Vlastimir Đorđević, relating to the withdrawal of MUP members from Kosovo and detailing how this is to be done. Proposed Rule 65ter documents 05319 and 05321, finally, are dispatches addressed to numerous bodies in Kosovo, dated 1 May 1999 and 31 August 1999 respectively, signed by Vlastimir Đorđević,<sup>32</sup> and generally relate to the demobilization, and remuneration of MUP reserve forces who were engaged in Kosovo.

13. Category 4 lists documents which, as submitted by the Prosecution, relate to the functioning of the MUP command system.<sup>33</sup> In Category 4, the Chamber reviewed four documents available in English and not listed in any of the previous categories.<sup>34</sup> These are proposed Rule 65ter numbers 05269, 05272, 05278, 05290. The first three proffered documents are dispatches from different SUPs in Serbia proper from March of 1999. While proposed Rule 65ter numbers 05269 and 05272 bear the signature of the Chief of the respective SUPs, document 05278 does not contain signature. These three dispatches concern the dispatching of detachments of PJP units to the SUP Prizren in Kosovo. Proposed Rule 65ter number 05290 is a Telegram dated 10 February 1999 from Pačevo SUP to the Police Administration of MUP in Belgrade bearing the printed signature of Dragan Terzić, Chief of the Secretariat, and referring to the deployment of 12 “workers” from the Pančevo SUP to the Command of the 23<sup>rd</sup> PJP detachment in Đakovica in Kosovo, for the execution of “special tasks”.

14. The fifth category of documents proffered by the Prosecution for addition to the Rule 65ter list is relevant, it submits, because it relates to the MUP disciplinary system at the time relevant to the Indictment and/or the Accused’s particular authority over disciplinary measures.<sup>35</sup> In Category 5, only two of the six listed document had available English translations. These were not included

<sup>31</sup> The Chamber notes that while the original of the document does not include a “signature block”, the top right of the English translation of this document appears to denote that the source of the dispatch is, *inter alia*, the Chief of the Public Security Department.

<sup>32</sup> The Chamber notes that the original of proposed Rule 65ter 05319 does not contain the handwritten signature of Vlastimir Đorđević but only his printed name.

<sup>33</sup> Motion, para 10, Category 4.

<sup>34</sup> Documents in Category 4 for which there are English translations and which are included in either Categories 1, 2, or 3 are proposed Rule 65ter numbers 05279, 05316, 05317, and 05320.

in any previous categories and are proposed Rule 65ter number 05295 and 05301. Proposed Rule 65ter number 05295 is a dispatch dated 18 March 1999 and signed by the Chief of SUP in Bor, Colonel Časlav Golubović. It is addressed to the Police Administration of the MUP in Belgrade and generally relates to disciplinary measures of a corporal who refused to follow an order to be dispatched to Kosovo to carry out “special security tasks”. Proposed Rule 65ter number 05301 is a dispatch dated 14 August 1998, signed by Vlastimir Đorđević and addressed to the Chief of the SUPs, the commander of the Border Police Station, the MUP Staff in Priština, the Dean of the Police Academy, the Directors of the College of Internal Affairs and the Secondary School of Internal Affairs. It discusses the imposition of disciplinary liability and suspension from the Ministry against members of the Ministry who abuse the right of absence from work or otherwise avoid executing “special security tasks” in Kosovo.

15. The Prosecution submits that the sixth category of documents relates to the Accused’s control and authority over the recruitment and deployment of MUP reservists.<sup>36</sup> The documents listed in Category 6 were also listed in Category 3. They are proposed Rule 65ter numbers 05319 and 05321.

16. The final category of documents which the Prosecution seeks to add to the Rule 65ter list is Category 7, on the basis that they are relevant to the deployment of MUP personnel to Kosovo by MUP by individuals other than the Accused.<sup>37</sup> Only two documents listed in Category 7 currently have available English translations and have not been listed in previous categories.<sup>38</sup> These are proposed Rule 65ter numbers 05261 and 05297. Proposed Rule 65ter number 05261 is a Telegram dated 20 July 1998 signed by Chief of the SUP of Užice, Đ. Kerić, addressed to the Police Administration of the MUP in Belgrade concerning the mobilization of a total of 76 members of the PJP to Kosovo on 20 July 1998. Proposed Rule 65ter number 05297 is a dispatch dated 23 February 1999 signed by Chief of SUP in Bor, Colonel Časlav Golubović to the Police Administration in Belgrade, concerning the dispatching of 100 PJP members from the Bor SUP to assist the SUP in Priština.

17. The Chamber, having reviewed these documents, considers that the Prosecution has demonstrated they are of *prima facie* relevance to the issues in this case. With respect to the Defence concern that a number of the documents do not contain a handwritten signature and that a

<sup>35</sup> Motion, para 10, Category 5.

<sup>36</sup> Motion, para 10, Category 6.

<sup>37</sup> Motion, para 10, Categories 6 and 7.

<sup>38</sup> Documents in Category 7 for which there are English translations and which are also included in Category 4 are proposed Rule 65ter numbers 05269, 05272, 05278, 05290 and 05297.

few are missing a “signature block”<sup>39</sup> the Chamber has reviewed these documents. It is of the view that on the basis that the source of the document is detailed at the heading in each one of these documents, the missing signature or “signature block” does not stand in the way of the addition of the documents to the Rule 65ter exhibit list. The Chamber is of the view that the documents are *prima facie* reliable, and the Defence will have further opportunity to make objections with respect to their reliability if and when these documents are tendered into evidence at trial.

18. With respect to the question of whether good cause has been shown by the Prosecution for the proposed addition of the documents to the Rule 65ter exhibit list at this rather late stage of proceedings, the Chamber recalls the Prosecution’s duty to present all available evidence at trial. The Chamber also takes note of the non-provision of the proffered documents by the Government of Serbia in response to earlier RFAs made by the Prosecution. It therefore has no reason to believe that the Prosecution acted in anything other than good faith in providing these documents to the Defence at the earliest possible time, once they were analysed.

19. Concerning the Defence submission that the addition of the proposed documents to the Rule 65ter exhibit list at this stage of the proceedings denies the Defence the opportunity to explore them with witnesses who have already testified, the Chamber notes that the majority of witnesses who have already testified are crime-base witnesses and would therefore not have been the most appropriate witnesses to explore these documents with. Should the Defence nonetheless consider that it has incurred some material prejudice as a result of not being able to question a previous witness on any of the proposed Rule 65ter documents, the Chamber may grant leave to recall such a witness. The Chamber further considers that while there will be some additional burden on the Defence in the review of these documents, it notes that documents of a similar nature are already in evidence in this trial so that the proposed documents do not introduce a new element of the Prosecution’s case.

20. Given the *prima facie* relevance of the proffered documents, and in light of the fact that it does not consider that the Accused will be unfairly prejudiced by their addition to the Rule 65ter exhibit list, the Chamber considers it to be in the interests of justice to allow the addition of these documents to the Rule 65ter exhibit list.

## V. DISPOSITION

21. For the foregoing reasons, and pursuant to Rule 65ter(E) of the Rules, the Chamber

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<sup>39</sup> See footnote 15 above for specific proposed Rule 65ter numbers and Response, para 13.



- (i) **GRANTS** leave to the Prosecution to file the Reply;
- (ii) **RESERVES** its decision with respect to the proposed documents for which there currently exists no English translation. These are proposed Rule 65ter numbers 05262-05266, 05268, 05270, 05271, 05273-05275, 05279-05289, 05291-05294, 05296, 05298, 05299, 05300, 05303, 05304, 05311, 05313, 05318; and
- (iii) **GRANTS** the Motion with respect to the remaining documents; and
- (iv) **ORDERS** the Prosecution to notify the Chamber once English translations of the documents identified in (ii) of this disposition are available on e-court.

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

Dated this second day of July 2009  
At The Hague  
The Netherlands



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Judge Kevin Parker  
Presiding

[Seal of the Tribunal]