



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: 26 January 2010
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. John Hocking

Decision of: 26 January 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION MOTION TO REOPEN ITS
CASE**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Vujadin Popović
Mr. John Ostojić and Mr. Predrag Nikolić for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Christopher Gosnell and Ms. Tatjana Čmerić for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Vinko Pandurević

THIS TRIAL 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”),

BEING SEISED OF the “Prosecution’s Motion Seeking Leave to Reopen its Case” filed on 16 December 2009 (“Motion”) in which the Prosecution seeks to re-open its case for the purpose of entering two documents into evidence—an information report by Prosecution investigator Tomasz Blaszczyk memorialising a meeting with Prosecution witness Colonel Mirko Trivić (“Trivić”)¹ on 12 March 2009 (“Information Report”), and a re-scanned copy of the notebook Trivić kept of the *Krivaja-95* and *Stupčanica-95* operations (“Trivić Diary”),² along with an English translation (“Re-scanned Trivić Diary”)— in order to answer a query of the Trial Chamber;³

NOTING the “Pandurević Defence Response to Prosecution’s Motion Seeking Leave to Reopen its Case” filed confidentially on 30 December 2009 (“Response”) in which Pandurević does not oppose the admission of the Re-scanned Trivić Diary into evidence, together with five proposed stipulations based on the Information Report (“Stipulations”), but opposes the admission of the Information Report;⁴

NOTING the “Request for Leave to Reply and Reply to Pandurević Defence Response to Prosecution’s Motion Seeking Leave to Reopen its Case” filed on 6 January 2010 (“Reply”), in which the Prosecution agreed to Pandurević’s Stipulations and submitted that the request to admit the Information Report was therefore moot;⁵

NOTING the “Pandurević Defence Motion for Leave to File Sur-Reply and Surreply to Prosecution’s Reply Seeking Leave to Reopen its Case” filed confidentially on 13 January 2010 (“Sur-Reply”) in which Pandurević introduces into evidence the Stipulations agreed between him and the Prosecution and partially opposes the granting of leave for the Prosecution Reply;⁶

¹ Colonel Trivić testified as a Prosecution witness on 18 and 21 to 23 May 2007. *See* T. 11793-12048; Motion, para. 2.

² Ex. P04309, “Personal Diary of Mirko Trivić”.

³ Motion, paras. 1, 2, 5; *See* Appendix A and B to Reply. On 14 December 2009, this Trial Chamber sent an e-mail via its Legal Officer to Senior Trial Attorney Peter McCloskey, copied to all parties, indicating that it wished to see the original Trivić Diary, or a copy of the original, in order to clarify how it was bound and which were the front and rear pages of the copy scanned into court. *See* Motion, para. 1.

⁴ Response, paras. 9–14, 24–25.

⁵ Reply, paras. 2–6.

⁶ Sur-Reply, paras. 2–7, Appendix.

CONSIDERING that although the Rules of Procedure and Evidence (“Rules”) do not specifically so provide, the jurisprudence of the Tribunal recognises that a Trial Chamber may grant leave to the Prosecution to re-open its case in order to introduce fresh evidence;⁷

CONSIDERING that, although the Re-scanned Trivić Diary does not qualify as fresh evidence, it is in the interests of justice to admit it into evidence as it is a better reproduction of an admitted exhibit and is intended to clarify the order of pages in the Trivić Diary and how it was re-assembled;

CONSIDERING further that the Stipulations are likewise likely to clarify issues relating to the Trivić Diary;

CONSIDERING that the Trial Chamber will review the Re-Scanned Trivić Diary as reproduced in Appendices A and B of the Reply with the guidance provided by the Stipulations;

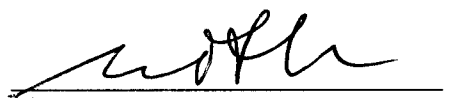
NOTING that the request to admit the Information Report is moot;

PURSUANT to Rules 54, 89(C) and 89(F) of the Rules,

- 1) **GRANTS** the Motion in part;
- 2) **GRANTS** the Prosecution leave to file the Reply and Pandurević leave to file the Sur-Reply;
- 3) **ADMITS** into evidence the Re-scanned Trivić Diary, reproduced in Appendices A and B of the Reply;
- 4) **ADMITS** into evidence the Stipulations in the Appendix to the Sur-Reply.

⁷ *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, paras. 279–283; Decision on Motion to Reopen the Prosecution Case, 9 May 2008, para. 23.

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



Carmel Agius
Presiding Judge

Dated this 26th day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]