



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: 1 July 2009

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

Order of: 1 July 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON STIPULATION BETWEEN THE PROSECUTION AND
MILETIĆ CONCERNING CONVOY-RELATED DOCUMENTS**

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. Aleksandar Lazarević and Mr. Christopher Gosnell 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 “Stipulation Between the Office of the Prosecutor and the Accused Radivoje Miletić Concerning Convoy-related Documents with Appendix” filed on 2 June 2009 (“Stipulation”), wherein the Prosecution and the Miletić Defence request that the Stipulation be entered into evidence;¹

NOTING the “Response on Behalf of Milan Gvero to the Proposed Stipulation Between the Prosecution and Radivoje Miletić” filed on 12 June 2009 (“Gvero Response”);

NOTING the Stipulation pertains to the contents of 353 convoy-related documents issued by the VRS Main Staff;

NOTING the Prosecution and the Miletić Defence agree on the relevance and materiality of the information contained in the Stipulation;²

NOTING that the Gvero Defence “objects to the admission of the stipulation, the annex or any of the related documents (save those already admitted into evidence) which are said to have any evidential or other effect in the case of General Gvero”³;

NOTING that Rule 65 *ter* (H) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that the pre-trial Judge shall record the points of agreement on matters of law and fact during the pre-trial phase of the proceedings but that Rule 65 *ter* (M) enables the Trial Chamber to perform any of the functions of the pre-trial Judge;⁴

CONSIDERING that in light of the agreement between the Prosecution and the Miletić Defence and having due regard to the established practice of this Trial Chamber, the Stipulation, including its appended Annex 1, shall be entered into evidence;

¹ Stipulation, para. 2.

² *Ibid.*, para. 3.

³ Gvero Response, para. 2.

⁴ *See Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 13: “Although the language of Rule 65 *ter* (H) directs itself to the pre-trial phase, Rule 65 *ter* (M) permits the Trial Chamber to fulfil any of the functions listed in Rule 65 *ter*. The Trial Chamber finds, therefore, that there is no barrier to it recording points of agreement once the proceedings have entered the trial phase.”

CONSIDERING further that the evidence arising from the Stipulation only applies between the Prosecution and the Miletić Defence as the only two Parties having entered the Stipulation;

CONSIDERING that the Prosecution and the Miletić Defence do not seek the admission of the documents referred to in the Stipulation;

PURSUANT TO Rule 65 *ter* (H) and 65 *ter* (M)

HEREBY ADMITS into evidence the Stipulation to the extent provided in the present decision and **REQUESTS** that a single exhibit number be assigned by the Registry.

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



Carmel Agius
Presiding

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

[Seal of the Tribunal]