



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: 30 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:** 30 July 2009

**PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON EXHIBITS TENDERED BY THE PROSECUTION IN THE  
CROSS-EXAMINATION OF WITNESSES CALLED BY GVERO**

**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 Prosecution’s oral motions on 2 July for the admission of the Exhibit with Rule 65 *ter* number 04586 (“65 *ter* 04586”)<sup>1</sup> and on 3 July 2009 for the admission of 65 *ter* 04559 and 65 *ter* 04587,<sup>2</sup> wherein the Prosecution seeks to admit these three documents which were used by the Prosecution in its cross-examination of two witnesses called by the Gvero Defence, Slavko Ćulić and Nedeljko Zoranović;<sup>3</sup>

**NOTING** that on 2 July 2009 the Gvero Defence objected to the admission of 65 *ter* 04586 which was put in cross-examination to the witness Slavko Ćulić and tendered by the Prosecution at the end of his testimony<sup>4</sup> and that on 3 July 2009 it also objected to the admission of 65 *ter* 04559 and 65 *ter* 04587 which were put in cross-examination of the witness Nedeljko Zoranović;<sup>5</sup>

**NOTING** that the Gvero Defence submits that:

- (1) the Trial Chamber should assess the admissibility of the three documents tendered by the Prosecution in light of the recent Appeals Chamber decision in the Prlić case, “Decision on Interlocutory Appeal Against the Trial Chamber’s Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses”, issued on 26 February 2009 (“Appeals Chamber Decision”);<sup>6</sup>
- (2) the three documents tendered by the Prosecution (65 *ter* 04586, 65 *ter* 04559, and 65 *ter* 04587) do not satisfy the test for admission outlined in Appeals Chamber Decision and thus should not be admitted into evidence;<sup>7</sup>

**CONSIDERING** that in the Appeals Chamber Decision, the Appeals Chamber:

<sup>1</sup> T. 33880 (2 July 2009). 65 *ter* 04586 is a VRS Main Staff document date 11 October 1995.

<sup>2</sup> T. 33910 (3 July 2009). 65 *ter* 04559 is an intercept dated 23 July 1995 and 65 *ter* 04587 is an old map of the Žepa area.

<sup>3</sup> T. 33875–33880 (2 July 2009); T. 33897–33899 (3 July 2009).

<sup>4</sup> T. 33880–33881 (2 July 2009).

<sup>5</sup> T. 33910 (3 July 2009).

<sup>6</sup> T. 33881 (2 July 2009); T. 33910 (3 July 2009).

<sup>7</sup> T. 33881 (2 July 2009); T. 33910 (3 July 2009). With respect to 65 *ter* 04586, the Gvero Defence argues that the document “falls foul of that decision, both as to credibility and as to substance or guilt in both regards”. T. 33881 (2 July 2009). The Gvero Defence also noted that the Trial Chamber had already ruled on 65 *ter* 4559 on 10 March 2009. T. 33910 (3 July 2009).

(1) recognized the discretionary nature of decisions on the admissibility of documentary evidence and accepted that a Trial Chamber may allow fresh evidence in exceptional circumstances where the interests of justice so require;<sup>8</sup>

(2) reiterated its position in “Decision on Rasim Delić’s Interlocutory Appeal Against Trial Chamber’s Oral Decision on Admission of Exhibits 1316 and 1317”, issued on 15 April 2008 in *Prosecutor v. Rasim Delić*, that where the accused opposes the admission of evidence during cross-examination due to an alleged breach of his right to a fair trial, a Trial Chamber must consider how it intends to strike the appropriate balance between the need to ensure the rights of the accused and its decision to admit such evidence;<sup>9</sup>

(3) stressed that in deciding on admissibility, a Trial Chamber should assess not the contents of the document but the purpose of its admissibility;<sup>10</sup>

**CONSIDERING** that with respect to 65 ter 04586, the Trial Chamber finds that:

(1) the use of this document in the Prosecution’s cross-examination of the witness Slavko Ćulić relates directly to earlier comments that the witness had made in the course of his testimony;

(2) the document goes both to credibility of the witness and to the substance of the Prosecution case;

(3) the document was used to address a very limited issue and thus the Trial Chamber does not consider that its admission would in any way prejudice the Defence;

**CONSIDERING** with respect to 65 ter 04559, the Trial Chamber recalls that on 10 March 2009 it held that the admission of this document was rendered unnecessary because the contents of the document were almost entirely read out into the record,<sup>11</sup> and that on 3 July 1995 the contents of the document were again read out during the cross-examination of Nedeljko Zoranović;<sup>12</sup>

<sup>8</sup> Appeals Chamber Decision, para. 24.

<sup>9</sup> Appeals Chamber Decision, para. 25.

<sup>10</sup> Appeals Chamber Decision, paras. 27-29.

<sup>11</sup> T. 33546–33547 (10 March 2009).


<sup>12</sup> T. 33898 (3 July 2009).

**CONSIDERING** that 65 *ter* 04587 was put to the witness Nedeljko Zoranović by the Prosecution in connection with an earlier response that he had made<sup>13</sup> and that the Trial Chamber finds that the document was used for a very limited purpose and as such causes no prejudice to the Defence;

**PURSUANT TO** Rule 89,

**HEREBY GRANTS IN PART** the oral motions **AND ORDERS** the admission of the documents identified as 65 *ter* 04586 and 65 *ter* 04587 into evidence and **DENIES** the admission of 65 *ter* 04559 into evidence.

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



Carmel Agius  
Presiding

Dated this 30th day of July 2009  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>13</sup> T. 33898–33899 (3 July 2009).