



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: 18 January 2007

Original: English

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**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge O-Gon Kwon  
Judge Kimberly Prost  
Judge Ole Bjørn Støle – Reserve Judge

**Registrar:** Mr. Hans Holthuis

**Decision of:** 18 January 2007

**PROSECUTOR**

v.

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

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**DECISION ON PROSECUTION MOTION FOR SUBPOENA**

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**Office of the Prosecutor**

Mr. Peter McCloskey

**Counsel for the Accused**

Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović  
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara  
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić  
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin  
Ms. Natacha Fauveau Ivanović for Radivoje Miletić  
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero  
Mr. Peter Haynes and Mr. Đorđe Sarapa 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 Urgent Motion for Issuance of a Subpoena with Confidential and *Ex Parte* Annexes”, filed on 15 January 2007 (“Motion”), in which the Prosecution requests that the Trial Chamber issue a subpoena ordering Witness PW-136 to appear before the Chamber to give oral testimony between 24 and 26 January 2007,<sup>1</sup> and attaches a confidential and *ex parte* annex describing the reasons purportedly justifying the issuance of such a subpoena (“Annex”);<sup>2</sup>

**NOTING** that none of the Accused objects to the granting of the Motion;<sup>3</sup>

**NOTING** Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), which provides that, “[a]t the request of either party[,] a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for [...] the preparation or conduct of the trial”;

**NOTING** the Appeals Chamber’s holding that, for a subpoena to be “necessary” for purposes of Rule 54, the party seeking the subpoena must show a “legitimate forensic purpose” for having the information sought—that is, the applicant must demonstrate “a reasonable basis for [its] belief that there is a good chance that the prospective witness will be able to give information which will materially assist [it] in [its] case, in relation to clearly identified issues relevant to the [] trial”;<sup>4</sup>

**NOTING** Article 29 of the Statute of the Tribunal, which obliges states to “co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”,<sup>5</sup> and that this obligation includes the specific duty to “comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including [...] the taking of testimony [and] the service of documents”;<sup>6</sup>

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<sup>1</sup> Motion, paras. 1, 9.

<sup>2</sup> *Ibid.*, Confidential and *Ex Parte* Annex B.

<sup>3</sup> *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević*, Case No. IT-05-88-T (“*Popović et al.*”), T. 5871 (16 January 2007).

<sup>4</sup> *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003, para. 10 (internal citation omitted).

<sup>5</sup> Statute, Art. 29(1).

<sup>6</sup> *Ibid.*, Art. 29(2). See also *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108bis, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, 29 October 1997, para. 26 (“The exceptional

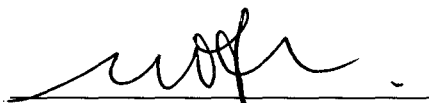
**CONSIDERING** that, as the Trial Chamber held in an oral decision of 16 January 2007,<sup>7</sup> the Motion and Annex adequately demonstrate that there exists a good chance that Witness PW-136 will be able to give information that materially assists the Prosecution in the presentation of its case, in relation to clearly identified and relevant issues;

**CONSIDERING** that the assistance of the authorities of Republika Srpska is required to ensure that the subpoena is enforced, and that the Trial Chamber must therefore also issue an order to them requesting such assistance;

**PURSUANT TO** Rule 54 of the Rules,

**HEREBY REAFFIRMS** the oral decision of 16 January 2007 granting the Motion; **ORDERS** the Registry of the Tribunal to take whatever steps are reasonably necessary to ensure that the subpoena and order relating to this matter are transmitted immediately to the Government of Bosnia and Herzegovina and the responsible authorities of Republika Srpska; and requests the Victims and Witnesses Section of the Tribunal to provide any necessary assistance in the implementation of this decision.

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



Carmel Agius  
Presiding

Dated this eighteenth day of January 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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legal basis of Article 29 accounts for the novel and indeed unique power granted to the International Tribunal to issue orders to sovereign States (under customary international law, States, as a matter of principle, cannot be 'ordered' either by other States or by international bodies).")

<sup>7</sup> *Popović et al.*, T. 5871 (16 January 2007).