



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: 12 November 2008

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. Hans Holthuis

Decision of: 12 November 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON JOINT MOTION BY MILETIĆ AND PANDUREVIĆ TO
RESCIND THE PROTECTIVE MEASURES GRANTED TO A WITNESS
IN A PREVIOUS 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. 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. 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 “Joint Motion by the Defence for General Miletić and the Defence for Vinko Pandurević to Rescind the Protective Measures Granted to Defence Witness [5DW-16 in the Miletić Witness List and 7DW-8 in the Pandurević Witness List (“Witness”)]¹ in [a Previous Case Before the Tribunal (“Previous Case”)]”, filed confidentially by Miletić and Pandurević on 22 October 2008, pursuant to Rules 75 (F) (i) and 75 (G) (ii) of the Rules of Procedure and Evidence (“Rules”) (“Motion”);

NOTING that the Witness is to give testimony before the Trial Chamber as a common witness of Miletić and Pandurević, and that he had testified in the Previous Case as a protected witness;²

NOTING that the Witness informed the Defence of Miletić and Pandurević that the protective measures requested and granted in the Previous Case are no longer needed, because the situation justifying the request for those measures has changed, and that in the current trial he would like to testify without any protective measures;³

NOTING that Miletić and Pandurević submit that the rescission of the protective measures would be in the interests of justice as it would allow full transparency of the Witness’s testimony;⁴

NOTING that the Prosecution responded orally on 23 October 2008 that it has no objection to the Motion;⁵

NOTING that on 29 October 2008 the Victims and Witnesses Section informed the Trial Chamber that the Witness was consulted and confirmed that he does not need protective measures any longer;

NOTING that pursuant to Rule 75 (F) (i), “[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures [...] shall continue to have effect *mutatis mutandis* in any other proceedings

¹ Notice of General Miletić Pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence with Confidential Annexes, 7 May 2008, Confidential Annex 1 (“Miletić Witness List”), p. 2; Submission Pursuant to Rule 65 *ter* Filed on Behalf of the Accused Vinko Pandurević, partly confidential, 1 May 2008, Confidential Annex 1 (“Pandurević Witness List”), p. 6.

² Motion, para. 1.

³ *Ibid.*, para. 3.

⁴ *Ibid.*, para. 4.

⁵ T. 27268 (23 October 2008).

before the Tribunal (“second proceedings”) or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule [...]”;

NOTING that pursuant to Rule 75 (G) (ii), “[a] party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply [...] if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings”;

NOTING that pursuant to Rule 75 (I), “[b]efore determining an application under paragraph (G) (ii) [...], the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal”;

NOTING that Rule 75 (J) provides that “[t]he Chamber determining an application under paragraph [...] G [...] shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures[...];”;

CONSIDERING that no Chamber remains seised of the first proceedings;

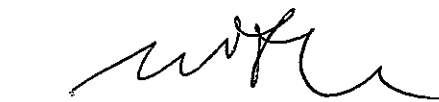
CONSIDERING that the Trial Chamber has complied with the obligations set forth in Rule 75 (I) and (J);

CONSIDERING that the circumstances as set out in the Motion demonstrate that the facts that justified the order of protective measures for the Witness in the first proceedings no longer exist and that the Witness desires to testify in the current trial without any protective measures;

PURSUANT TO Rule 75 of the Rules,

HEREBY GRANTS the Motion and **ORDERS** the rescission of the protective measures granted to the Witness in the Previous Case.

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



Carmel Agius
Presiding

Dated this twelfth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]