



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: 27 May 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

Decision of: 27 May 2009

PROSECUTOR

v.

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

PUBLIC

**CONSOLIDATED DECISION ON MOTION ON BEHALF OF MILAN
GVERO SEEKING AN ADJOURNMENT AND POPOVIĆ'S REQUEST
FOR AN EXTENSION OF THE DEADLINE FOR THE FINAL BRIEF**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušević 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 “Motion on Behalf of Milan Gvero Seeking an Adjournment”, filed confidentially on 15 May 2009 (“Gvero Motion”), and “Vujadin Popović’s Request for an Extension of the Deadline for the Final Trial Brief”, filed on 21 May 2009 (“Popović Motion”);

NOTING the “Order on Final Trial Briefs and Closing Arguments” issued by the Trial Chamber on 27 March 2009 (“Order”);

NOTING the “Decision on Prosecution Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal,” issued confidentially by the Trial Chamber on 8 May 2009 (“Decision”), in which, *inter alia*, video footage of Mladić and Krstić with Gvero and Pandurević at a UN checkpoint at Bokšanica on 26 July 1995 (“Bokšanica Footage”) was admitted into evidence;

NOTING that with the admission of the Bokšanica Footage the Gvero Defence submits that the “trial is now disfigured”, that the trial process envisaged in Rule 85 of the Rules of Procedure and Evidence (“Rules”) is “quite literally shot to pieces”¹ and that it will take at least four weeks to undertake the investigations and preparatory work required as a consequence of the Decision;²

NOTING that the Gvero Defence submits that due to the introduction into evidence of the Bokšanica Footage, additional time to finalise the final brief is required,³ and that furthermore a very careful examination of the new evidence provided by the Prosecution and discussion of it with Gvero is necessary;⁴

NOTING that the Gvero Motion was filed confidentially because the Decision was issued on that basis, but that the Gvero Defence urges the Trial Chamber to lift the confidentiality relating to the evidence and to its admission;⁵

NOTING that the Gvero Defence seeks in the Gvero Motion (i) the grant of a four-week adjournment, which should commence at the point the Trial Chamber decides on the Gvero Motion, (ii) the suspension of the Order and (iii) the lifting of the confidentiality of the Decision;⁶

¹ *Ibid.*, para. 7.

² *Ibid.*, para. 9–10.

³ *Ibid.*, para. 11.

⁴ *Ibid.*, paras. 12–13.

⁵ *Ibid.*, para. 16.

NOTING the “Joinder of Vinko Pandurević to the Motion of Milan Gvero seeking an Adjournment” filed on 19 May 2009 (“Pandurević Joinder”), in which the Pandurević Defence joins the Gvero Motion as to the relief sought or, in the alternative, seeks the modification of the timetable in the Order and requests that the Trial Chamber order that any motion in rejoinder be filed by such date as the Trial Chamber deems appropriate and/or consistent with the revised timetable;⁷

NOTING that Pandurević submits that he is the Accused most affected by the Decision and that further investigation arising from the admitted material involves a great deal of work in addition to the preparation of the final trial briefs;⁸

NOTING that Pandurević submits that the evidence given by Momir Nikolić, which consumed a great amount of court time, opened a number of issues relevant to individual Accused, including Pandurević;⁹

NOTING the “Response on behalf of Drago Nikolić to Motion on behalf of Milan Gvero seeking an Adjournment”, filed on 20 May 2009 (“Nikolić Response”), in which the Nikolić Defence supports the requests of the Gvero and Pandurević Defences for an adjournment of four weeks;¹⁰

NOTING that the Nikolić Defence further submits that circumstances have changed since the issuance of the Order¹¹ in various ways affecting the Defence;¹²

NOTING that the Nikolić Defence suggests that all deadlines in the Order be delayed by four weeks so that final trial briefs are submitted on 28 July 2009 and the beginning of closing arguments takes place not before 18 August 2009;¹³

NOTING the “Réponse du Général Miletic à la demande de renvoi déposée par la défense de Milan Gvero”, filed on 21 May 2009 (“Miletic Response”), in which the Miletic Defence does not oppose the Gvero Motion;¹⁴

⁶ *Ibid.*, para. 17.

⁷ Pandurević Joinder, paras. 10–11.

⁸ *Ibid.*, paras. 3–5.

⁹ *Ibid.*, paras. 6–7.

¹⁰ Nikolić Response, para. 3.

¹¹ *Ibid.*, para. 4.

¹² *Ibid.*, paras. 5–7.

¹³ *Ibid.*, para. 9.

¹⁴ Miletic Response, para. 2 (English translation still pending)

NOTING that the Miletić Defence submits that there are valid grounds for modifying the time-lines in the Order because recently admitted exhibits have an impact on all the parties in the case, some parties have not yet finished the presentation of their evidence and the date of completion of the presentation of evidence is uncertain and unknown;¹⁵

NOTING “Ljubiša Beara’s Response to Motion on behalf of Milan Gvero seeking an Adjournment”, filed on 21 May 2009 (“Beara Response”), in which the Beara Defence joins the Nikolić Response and adopts all the submissions made in it;¹⁶

NOTING the “Prosecution’s Response to Motion on Behalf of Milan Gvero Seeking an Adjournment”, filed on 19 May 2009 (“Prosecution’s Response”), in which the Prosecution does not object to the requested four-week adjournment and requests that the Trial Chamber require that any motion by Gvero to reopen be filed at the earliest possible date and, in any event, no later than the last day of the adjournment;¹⁷

NOTING the “Request for Leave to Reply and Reply to Drago Nikolić’s Response to Milan Gvero’s Application for an Adjournment”, filed on 22 May 2009 (“Reply”), in which Gvero invites the Trial Chamber, in the event that it agrees to the request for adjournment, not to schedule final trial briefs and closing arguments until it is clear how much further evidence is to be presented in the trial;¹⁸

NOTING that the Popović Motion requests that Popović be granted three months from the final witness testimony to be heard in the case for writing the final trial brief;¹⁹

NOTING that Popović submits that:

- a. since 27 March 2009 he has been engaged in a series of activities that have effectively prevented him from devoting sufficient resources to the preparation of the final trial brief;²⁰
- b. the specific nature of the evidence, heard only after the Order, and the evidence still to be heard, prevents him from taking any final decision on the final trial brief;²¹

¹⁵ *Ibid.*, para. 2.

¹⁶ Beara Response, para. 2.

¹⁷ Prosecution’s Response, para. 2.

¹⁸ Reply, para. 4.

¹⁹ Popović Motion, para. 25.

²⁰ *Ibid.*, paras. 5–10.

²¹ *Ibid.*, paras. 11–17.

c. he has had less time than the other Accused to spend on the final trial brief and some of the other Accused will have been able to use the time that they have had more meaningfully because all the evidence relevant to their acts and conduct had been heard at the time of the issuance of the Order;²²

CONSIDERING that in the present circumstances it is in the interests of justice that the time for filing final trial briefs should be extended and that closing arguments should be postponed;

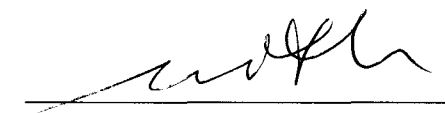
CONSIDERING that the reason for the confidential status of the Decision no longer exists;

PURSUANT TO Articles 20 and 21 of the Statute of the Tribunal and Rules 54, 85 and 86 of the Rules,

GRANTS the Gvero Motion and the Popović Motion **IN PART** and **ORDERS** as follows:

- a. The Order shall be varied in that the Accused shall file their final trial briefs by no later than 20 July 2009 and the Trial Chamber shall hear closing arguments from 24 August 2009. The Order shall remain unchanged in all other respects.
- b. Such motions as may seek the presentation of evidence as a consequence of the evidence introduced pursuant to the Decision shall be filed no later than 3 June 2009.
- c. The confidential status of the Decision shall be lifted.
- d. Gvero is granted leave to reply.
- e. The Gvero Motion and the Popović Motion are denied in all other respects.

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



Carmel Agius
Presiding

Dated this 27th day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

²² *Ibid.*, paras. 18–21.