



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: 3 June 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:** 3 June 2009

**PROSECUTOR**

v.

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

**PUBLIC**

**DECISION ON GVERO MOTION SEEKING CERTIFICATION TO  
APPEAL THE DECISION ON THE PROSECUTION'S SECOND MOTION  
TO REOPEN ITS 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 “Motion on behalf of Milan Gvero Seeking Certification to Appeal the Decision on the Prosecution’s Second Motion to Reopen its Case”, filed confidentially on 15 May 2009 (“Motion”);

**NOTING** that Gvero seeks certification from the Trial Chamber for interlocutory appeal of its “Decision on Prosecution’s Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal”, rendered on 8 May 2009 (“Impugned Decision”), pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”);

**NOTING** that Gvero submits that the admission of the Bokšanica Footage, which places Gvero in the area of Žepa in late July 1995, is a significant development in his case and purportedly undermines it; that its admission at this late stage of the proceedings is prejudicial to him and significantly affects the fair conduct of the proceedings and the outcome of the trial;<sup>1</sup>

**NOTING** that Gvero further submits that it is not certain that this will result in a delay in the trial pending the resolution of the matter by the Appeals Chamber and it may save time as it will avoid Gvero asking for an adjournment and seeking the recalling of witnesses;<sup>2</sup>

**NOTING** that Gvero argues that the Impugned Decision relates to “matters of such fundamental importance” that an immediate resolution by the Appeals Chamber may materially advance the proceedings;<sup>3</sup>

**NOTING** that Gvero requests, *inter alia*, that the confidentiality of the Motion be lifted;<sup>4</sup>

**NOTING** the “Consolidated Response of the Pandurević Defence to the Motions of Vujadin Popović and Milan Gvero Seeking Certification to Appeal the Trial Chamber’s Decision on the Prosecution’s Second Motion to Reopen its Case,” filed confidentially on 19 May 2009 (“Pandurević Response”), not opposing the Motion;

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<sup>1</sup> Motion, paras. 5–6, 9.

<sup>2</sup> *Ibid.*, paras. 7–8.

<sup>3</sup> *Ibid.*, para. 10.

<sup>4</sup> *Ibid.*, para. 11–12.

**NOTING** the “Prosecution Response to Motion on behalf of Milan Gvero Seeking Certification to appeal the Decision on the Prosecution’s Second Motion to Reopen its Case”, filed confidentially on 27 May 2009 (“Prosecution Response”), requesting the Trial Chamber to dismiss the Motion because it does not satisfy the test for certification pursuant to Rule 73(B);

**NOTING** that, pursuant to Rule 73(B), “[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which [...] an immediate resolution by the Appeals Chamber may materially advance the proceedings”;

**NOTING** that Rule 73(B) precludes certification unless the Trial Chamber finds that both of its requirements are satisfied, and that even where both requirements of Rule 73(B) are satisfied certification remains in the discretion of the Trial Chamber,<sup>5</sup> and that certification pursuant to Rule 73(B) is not concerned with whether a decision was correctly reasoned or not;<sup>6</sup>

**CONSIDERING** that the decision to permit reopening to allow, *inter alia*, the admission of the Bokšanica Footage is of a limited nature and not one which significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial;

**CONSIDERING FURTHER** that the Trial Chamber is not satisfied that, at this late stage of the proceedings, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**PURSUANT TO** Rule 73(B) of the Rules,

**HEREBY PARTLY GRANTS** the Motion to the extent that it **ORDERS** the lifting of the confidentiality of the Motion, the Pandurević Response and the Prosecution Response, but denies the Motion in all other respects.

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<sup>5</sup> *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

<sup>6</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for Voir Dire Proceedings, 20 June 2005, para. 4.

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



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O-gon Kwon  
Judge

Dated this third day of June 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**