



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: 29 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: 29 June 2009

PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

**FURTHER DECISION ON GVERO MOTION SEEKING TO RECALL
PROSECUTION WITNESSES AND TO REOPEN THE CASE**

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. 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 “Motion on behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero’s Case”, filed on 12 June 2009 (“Motion”), with confidential *ex parte* Annex;

NOTING that in the Motion Gvero requests the Trial Chamber, *inter alia*, to order the recall of four Prosecution witnesses and to allow the Defence to re-open its case as set out in the confidential *ex parte* Annex;¹

NOTING the “Prosecution’s Response to Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero’s Case,” filed on 15 June 2009;

NOTING the “Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case,” issued on 15 June 2009 (“Partial Decision”), in which the Trial Chamber denied Gvero’s request to recall witnesses, that the Registry lift the *ex parte* nature of the Annex and that the Prosecution further respond to the Motion by the end of 19 June and in so doing consider the possible use of Rule 92*bis* or Rule 92*ter* of the Rules of Procedure and Evidence (“Rules”);

NOTING the “Prosecution’s Further Response to Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero’s Case,” filed on 19 June 2009 (“Further Response”);

NOTING that, with the exception of the proposed 92*bis* testimony of [Redacted], the Prosecution is willing to consider the admission of the written evidence of the proposed reopening witnesses pursuant to Rules 92*bis* or 92*ter*² but that the Prosecution opposes the admission of the written evidence of [Redacted] pursuant to Rule 92*bis*, on the grounds that his evidence would involve core factual issues in the Indictment and bear directly on the criminal responsibility of the Accused, in addition to raising serious self-incrimination issues;³

¹ Motion, para. 16.

² Further Response, para. 2.

³ Further Response, para. 4.

CONSIDERING that it is in the interests of justice that the case for Gvero be reopened so as to introduce the evidence of the proposed witnesses identified in the Annex to the Motion (“reopening witnesses”);

CONSIDERING that the Prosecution advances valid grounds for not admitting the evidence of [Redacted] pursuant to Rule 92bis;

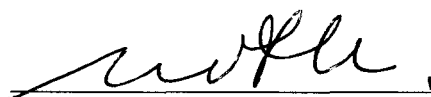
CONSIDERING the need for the Trial Chamber to ensure a fair and expeditious trial;

PURSUANT TO Rules 54, 85 and 92bis,

HEREBY GRANTS the Motion in part, **DENIES** the request to present the evidence of [Redacted] pursuant to Rule 92bis and **ORDERS** in regard to the reopening witnesses apart from [Redacted] that:

1. the case for Gvero be reopened;
2. Gvero should either file a motion pursuant to Rule 92bis for the admission of statements by 2 July 2009 or arrange for the *viva voce* testimony to commence on 2 July 2009.

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



Carmel Agius

Presiding

Dated this twenty-ninth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]