



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: 31 July 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

Acting Registrar: Mr. John Hocking

Decision of: 31 July 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON BEARA'S MOTION AND NOTICE OF FILING OF THREE
92 *BIS* WITNESS STATEMENTS AND WITHDRAWAL OF FIVE 92 *BIS*
WITNESS STATEMENTS**

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. 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 “Ljubiša Beara’s Second Revised Motion and Notice of Filing of Three (3) Witness Statements Pursuant to Rule 92 *bis* and Withdrawal of Five (5) Witness Statements Previously Submitted Pursuant to Rule 92 *bis*”, filed confidentially on 12 June 2009 (“Motion”);

NOTING the “Decision on Beara’s Request for Admission of Written Evidence in Lieu of *Viva Voce* Testimony”, filed on 10 July 2008 (“Decision”), in which the Trial Chamber provisionally admitted the statements of witnesses 2DW–2, 2DW–40, 2DW–58, 2DW–98, and 2DW–105 without requiring the witnesses to appear for cross-examination;¹

NOTING that Beara requests the admission of the notarised statements pursuant to Rule 92 *bis* of witnesses 2DW–2, 2DW–98, and 2DW–105 and that these statements are attached to the Motion;²

NOTING that Beara states that he has not procured the notarized statements of witnesses 2DW–40 and 2DW–58, but considers that their acquisition is possible in the next 30 days;³ and that Beara requests the admission of the existing statements of 2DW–40 and 2DW–58 or a stay of the decision regarding them for 30 days in order to “secure proper 92 *bis* notary”;⁴

NOTING that Beara requests the withdrawal of five witnesses previously tendered as 92 *bis* witnesses, namely witnesses 2DW–22, 2DW–23, 2DW–29, 2DW–57 and 2DW–62;⁵

CONSIDERING that no Response was filed to the Motion;

PURSUANT TO Rules 89 and 92 *bis* of the Rules of Procedure and Evidence,

HEREBY GRANTS the Motion **IN PART**, and **ORDERS** as follows:

1. The statements of witnesses 2DW–2, 2DW–98, and 2DW–105 are admitted, without requiring them to appear for cross-examination.
2. Witnesses 2DW–22, 2DW–23, 2DW–29, 2DW–57 and 2DW–62 are withdrawn.

¹ Decision, p. 5.

² Motion, para. 13(b), Annex A.

³ Motion, para. 9.

⁴ *Ibid.*, para. 13(c), (d).

⁵ *Ibid.*, para. 13(e).

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



Carmel Agius
Presiding

Dated this 31st day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]