



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: 19 January 2007

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: 19 January 2007

PROSECUTOR

v.

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

DECISION ON PROSECUTION MOTION FOR SUBPOENA

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović 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 “Prosecution’s Motion for Issuance of Subpoenas with Confidential and *Ex Parte* Annexes”, filed on 17 January 2007 (“Motion”), in which the Prosecution requests that the Trial Chamber issue a subpoena ordering Witness nr. 68 to appear before the Chamber to give oral testimony between 31 January and 2 February 2007, or on a date and time to be notified,¹ and attaches a confidential and *ex parte* annex describing the reasons purportedly justifying the issuance of such a subpoena (“Annex”);²

NOTING that none of the Accused objects to the granting of the Motion;³

NOTING Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), which provides that, “[a]t the request of either party[,] a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for [...] the preparation or conduct of the trial”;

NOTING the Appeals Chamber’s holding that, for a subpoena to be “necessary” for purposes of Rule 54, the party seeking the subpoena must show a “legitimate forensic purpose” for having the information sought—that is, the applicant must demonstrate “a reasonable basis for [its] belief that there is a good chance that the prospective witness will be able to give information which will materially assist [it] in [its] case, in relation to clearly identified issues relevant to the [] trial”;⁴

NOTING Article 29 of the Statute of the Tribunal, which obliges states to “co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”,⁵ and that this obligation includes the specific duty to “comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including [...] the taking of testimony [and] the service of documents”;⁶

¹ Motion, para. 1.

² *Ibid.*, Confidential and *Ex Parte* Annex B.

³ *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević*, Case No. IT-05-88-T (“*Popović et al.*”), T. 6061 (18 January 2007).

⁴ *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003, para. 10 (internal citation omitted).

⁵ Statute, Art. 29(1).

⁶ *Ibid.*, Art. 29(2). See also *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108bis, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, 29 October 1997, para. 26 (“The exceptional

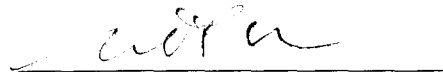
CONSIDERING that, as the Trial Chamber held in an oral decision of 18 January 2007,⁷ the Motion and Annex adequately demonstrate that there exists a good chance that Witness 68 will be able to give information that materially assists the Prosecution in the presentation of its case, in relation to clearly identified and relevant issues;

CONSIDERING that the assistance of the Government of Bosnia and Herzegovina is required to ensure that the subpoena is enforced, and that the Trial Chamber must therefore also issue an order to them requesting such assistance;

PURSUANT TO Rule 54 of the Rules,

HEREBY REAFFIRMS the oral decision of 18 January 2007 granting the Motion; **ORDERS** the Registry of the Tribunal to take whatever steps are reasonably necessary to ensure that the subpoena and order relating to this matter are transmitted immediately to the Government of Bosnia and Herzegovina; and requests the Victims and Witnesses Section of the Tribunal to provide any necessary assistance in the implementation of this decision.

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



Carmel Agius
Presiding

Dated this nineteenth day of January 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

legal basis of Article 29 accounts for the novel and indeed unique power granted to the International Tribunal to issue orders to sovereign States (under customary international law, States, as a matter of principle, cannot be 'ordered' either by other States or by international bodies).").

⁷ *Popović et al.*, T. 6061 (18 January 2007).