



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: 25 June 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: 25 June 2007

PROSECUTOR

v.

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

Public

**DECISION ON POPOVIĆ MOTION FOR RELIEF FROM SEARCHES
CONDUCTED WITH EXCESSIVE FORCE**

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 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 of Accused Vujadin Popović for Relief from Searches Conducted with Excessive Force”, filed by counsel for Vujadin Popović (“Accused”) on 4 May 2007 (“Motion”), in which the Accused requests the Trial Chamber to enter an order enjoining the UN Security Officers working at the premises of the Tribunal (“Security Officers”) “to cease all unreasonable, unnecessary and/or aggressive searches of the Accused” and “to ensure that searches and treatment of the accused are in strict accordance with existing security policy”;¹

NOTING that the Accused submits in support of the Motion that (1) the manner in which the searches are conducted by Security Officers is “egregious and bordering on harassment”;² (2) these searches are characterised by “excessive roughness, specifically in relation to the treatment of his clothes”;³ (3) this treatment is offensive and a violation of the Accused’s personal rights and dignity;⁴ and (4) these concerns arose with the arrival of new Security Officers assigned to search the accused;⁵

NOTING the “Deputy Registrar’s Submission on Motion of Accused Vujadin Popović for Relief from Searches Conducted with Excessive Force”, filed on 16 May 2007 (“Deputy Registrar’s Submission”) pursuant to Rule 33 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), in which the Registry had requested the Accused to provide further details in describing the allegations raised in the Motion, and that, in response, the Defence co-Counsel had reiterated that the Accused’s “grievance relates to the roughness in respect of his clothing” and had stated that the Accused was unable to specify dates and time when the unwarranted searches took place and that the target of his complaints were newly employed Security Officers;⁶

NOTING that upon request of the Deputy Registrar, the Tribunal’s Chief of Security has conducted an investigation with respect to searches conducted on the Accused⁷ and, as a result of it, she submitted a memorandum⁸ in which she reports the following:

¹ Motion, para. 4.

² *Ibid.*, para. 2.

³ *Ibid.*, para. 2. The Accused states that his clothes are treated “in a disrespectful manner”. *Ibid.*

⁴ *Ibid.*, para. 3.

⁵ *Ibid.*, para. 1.

⁶ *Ibid.*, para. 3.

⁷ Deputy Registrar’s Submission, para. 4.

⁸ See Chief of Security’s memorandum from Chief of Security to Deputy Registrar, dated 9 May 2007, attached to the Deputy Registrar’s Submission.

- (1) based on the lack of specific information provided, “it is extremely difficult to . . . assess whether or not our security officers have violated the search procedures or policies”;⁹
- (2) Security Officers are required to “physically (by touch) inspect the outer coat of the accused for weapons, etc.”;¹⁰
- (3) a review of the security logs found no incident or complaint regarding the treatment provided to the Accused’s clothing and/or to himself;¹¹
- (4) the Chief of Security questioned her officers and none could recall the alleged incidents;¹²
- (5) it is the policy of the Security Section that Security Officers who are assigned to search an accused “have at least six months experience” and are accompanied by one or two supervisors; furthermore, they rotate shifts periodically so that an “officer that is new to an accused does not mean that he or she is new in the position”;¹³

NOTING that the Deputy Registrar finally stated that “[t]he Registry takes issues of security and treatment of accused very seriously”, but is “unable to pursue the investigation without further details as to the nature of the complaint and/or the date and time of the alleged incident”;¹⁴

NOTING further that the Deputy Registrar indicated that “[s]hould the Accused have similar complaints in the future, he is requested to raise the issue immediately with his counsel who can report directly to the Court Officer” and that the “Security Section will be informed and can address the incident immediately”;¹⁵

CONSIDERING that the responsibility for issues of security lies primarily with the Registry;

NOTING that the Accused did not provide details about the alleged incidents although having been requested by the Registry to do so;

NOTING further that the Registry’s Security Section has conducted an investigation and no facts supporting those incidents were identified, and that, because of lack of specificity with respect to the allegations, the Registry’s Security Section was unable to pursue the investigation;

⁹ *Ibid.*, para. 2.

¹⁰ *Ibid.*, para. 2.

¹¹ *Ibid.*, para. 3.

¹² *Ibid.*, para. 3.

¹³ *Ibid.*, para. 4.

¹⁴ Deputy Registrar’s Submission, para. 6.

¹⁵ *Ibid.*, para. 4.

NOTING that the Deputy Registrar in its Submission sets out the complaints procedure that the Accused shall follow in the future should incidents involving issues of security occur while he is in the premises of the Tribunal;¹⁶

CONSIDERING that the Accused did not provide any details about his allegations despite the Registrar's request to do so, and that he did not file any further submission following the Deputy Registrar's Submission, and therefore the Trial Chamber is not satisfied that the allegations of the Accused are substantiated;

PURSUANT TO Rule 73 of the Rules,

HEREBY DISMISSES the Motion.

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



Carmel Agius
Presiding

Dated this 25 day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁶ See Deputy Registrar's Submission, para. 6.