



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: 11 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: 11 June 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTION ON BEHALF OF MILAN GVERO SEEKING A
VARIATION OF THE TRIAL CHAMBER'S ORDER**

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 a Variation to the Trial Chamber’s Order of 27 May 2009”, filed on 5 June 2009 (“Motion”);

NOTING the “Decision on Prosecution Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal”, issued confidentially on 8 May 2009 (“Decision of 8 May”);

NOTING the “Consolidated Decision on Motion on Behalf of Milan Gvero Seeking an Adjournment and Popović’s Request for an Extension of the Deadline for the Final Brief” issued on 27 May 2009 (“Consolidated Decision”), in which the Trial Chamber ordered, *inter alia*, that such motions as may seek the presentation of evidence as a consequence of the evidence introduced pursuant to the Decision of 8 May shall be filed no later than 3 June 2009;¹

NOTING that on 29 May 2009 Gvero orally sought a variation of the order in the Consolidated Decision so as to be allowed to file by 12 June 2009 a motion seeking the presentation of evidence as a consequence of the evidence introduced pursuant to the Decision of 8 May, on the grounds that he needed more time to respond to the new evidence;²

NOTING the oral decision of the Trial Chamber of 29 May 2009, in which the Trial Chamber granted Gvero’s request and extended to 12 June 2009 the period for filing such motions seeking the presentation of evidence as a consequence of the evidence introduced pursuant to the Decision of 8 May (“oral decision”);³

NOTING that Gvero submits that he should not be prejudiced by being forced to reveal to the other parties to this case which witnesses he intends to call until he has completed the cross-examination of those witnesses whom he has recalled;⁴

NOTING that Gvero is requesting a variation of the oral decision so as to allow him to file by 12 June 2009 any motion to recall witnesses who have hitherto given evidence in the trial and then,

¹ Consolidated Decision, p. 4.

² T. 33734–33739 (29 May 2009).

³ T. 33739–33741 (29 May 2009).

⁴ Motion, para. 6.

within two working days of the completion of the hearing of any such recalled witnesses, to be allowed to file any motion seeking the reopening of the case and the calling of new witnesses;⁵

NOTING that Gvero acknowledges that it would have been preferable if matters contained in the Motion had been raised earlier but submits that it was only in the couple of days before the filing of the Motion that he came to appreciate the prejudice caused to his case if the requested relief were not to be granted;⁶

NOTING the “Prosecution’s Response to Motion on Behalf of Milan Gvero Seeking a Variation to the Trial Chamber’s Order of 27 May 2009” filed on 9 June 2009, in which the Prosecution does not object to the relief sought in the Motion, but requests that it be afforded adequate time to prepare for any Defence witness testimony;⁷

NOTING the “Pandurević Defence Response to Motion on Behalf of Milan Gvero Seeking a Variation to the Trial Chamber’s Order of 27 May 2009” filed on 10 June 2009, in which Pandurević takes no position in relation to the relief sought in the Motion;⁸

NOTING the order of presentation of evidence as laid down in Rule 85 of the Rules of Procedure and Evidence (“Rules”) which can be varied if “otherwise directed by the Trial Chamber in the interests of justice”;⁹

CONSIDERING the narrow scope and implications of the Decision of 8 May, the procedural consequences of the reopening of the Prosecution case and the nature of the prejudice Gvero is claiming he would suffer should the Motion be denied;

CONSIDERING that adherence to the timing set forth in the oral decision does not prejudice Gvero in fact and there is no compelling justification for the variation sought in the Motion;

PURSUANT TO Articles 20 and 21 of the Statute of the Tribunal and Rules 85 and 54,

HEREBY DENIES the Motion.

⁵ Motion, paras. 3, 11, 13.

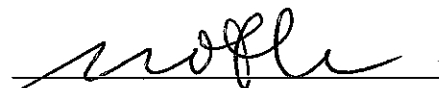
⁶ Motion, para. 8.

⁷ Response, para. 2.

⁸ Response, para. 2.

⁹ Rule 85(A).

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



Carmel Agius
Presiding

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

[Seal of the Tribunal]