



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: 15 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: 15 June 2009

PROSECUTOR

v.

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

PUBLIC

**PARTIAL DECISION ON GVERO MOTION SEEKING THE RECALL OF
CERTAIN PROSECUTION WITNESSES AND THE REOPENING OF 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. 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 the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero’s Case”, filed on 12 June 2009 (“Motion”), with confidential and *ex parte* Annex;”

NOTING that Gvero requests that the Prosecution witnesses Rupert Smith, Edward Joseph, Thomas Dibb and Emma Sayers (collectively, “Recalling Witnesses”), be recalled so that the Bokšanica Footage be put to them in part or in whole;

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;

CONSIDERING that Gvero has not given any reasons or shown good cause as to why recalling the Recalling Witnesses is justified in order to challenge the Bokšanica Footage which records an event limited as to time and place and at which none of the Recalling Witnesses were present;

NOTING that Gvero filed an *ex parte* Annex containing the names of the witnesses he sought to call by way of re-opening of his case (“Reopening Witnesses”);

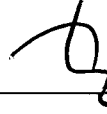
CONSIDERING that there is no reason for the Annex to remain *ex parte*;

PURSUANT TO Rules 54, 85, and 89 of the Rules of Procedure and Evidence,

HEREBY PARTIALLY DENIES the Motion, and without prejudice to any decision on reopening **ORDERS** that:

1. The request to recall the Recalling Witnesses be denied;
2. The Registry lift the *ex parte* nature of the Annex while keeping it confidential;
3. The Prosecution further respond to the Motion by the end of Friday 19 June 2009 and in so doing consider the possibility of the use of Rule 92 *bis* or Rule 92 *ter* in relation to the proposed Reopening Witnesses

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



O-Gon Kwon
Judge

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

[Seal of the Tribunal]