



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 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

**Registrar:** Mr. John Hocking

**Decision of:** 15 July 2009

**PROSECUTOR**

v.

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

**PUBLIC**

**DECISION ON GVERO MOTION SEEKING CERTIFICATION TO  
APPEAL THE DECISION ON THE EXTENSION OF TIME FOR FILING  
THE FINAL TRIAL BRIEF**

**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** the “Motion on Behalf of Milan Gvero Seeking Certification to Appeal the Decision on the Extension of Filing of the Final Brief”, filed on 9 July 2009 (“Certification Motion”);

**NOTING** that Gvero seeks pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) certification of the oral decision of 2 July 2009<sup>1</sup> (“Impugned Decision”), in which the Trial Chamber extended the period of time for filing the final trial briefs by 10 days rather than the four weeks sought;<sup>2</sup>

**NOTING** that Gvero submits that he has not had “remotely enough” time to prepare his final trial brief and this is an issue going to the fairness of the trial<sup>3</sup>, that an appeal may result in a retrial which would not be in the interests of justice or the expeditious conduct of the proceedings<sup>4</sup> and that, in the alternative, his inability to prepare an adequate final trial brief significantly affects the outcome of the trial;<sup>5</sup>

**NOTING** that Gvero further submits that the Impugned Decision is clearly of such fundamental importance that an immediate resolution by the Appeals Chamber may materially advance the proceedings;<sup>6</sup>

**NOTING** the “Prosecution Response to ‘Motion on Behalf of Milan Gvero Seeking Certification to Appeal the Decision on the Extension of Filing of the Final Brief’”, filed on 9 July 2009 (“Prosecution Response”), in which the Prosecution takes no position regarding what is sought in the Certification Motion;<sup>7</sup>

**NOTING** that, pursuant to Rule 73(B), “[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings

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<sup>1</sup> T. 33835--33838 (2 July 2009).

<sup>2</sup> Certification Motion, paras. 1, 9.

<sup>3</sup> *Ibid.*, paras. 4, 5.

<sup>4</sup> *Ibid.*, para. 6.

<sup>5</sup> *Ibid.*, para. 7.

<sup>6</sup> *Ibid.*, para. 8.

<sup>7</sup> Prosecution Response, para. 2.

or the outcome of the trial, and for which [...] an immediate resolution by the Appeals Chamber may materially advance the proceedings”;

**NOTING** that Rule 73(B) precludes certification unless the Trial Chamber finds that both of its requirements are satisfied, and that even where both requirements of Rule 73(B) are satisfied certification remains in the discretion of the Trial Chamber,<sup>8</sup> and that certification pursuant to Rule 73(B) is not concerned with whether a decision was correctly reasoned or not;<sup>9</sup>

**CONSIDERING** that the issue in the Impugned Decision—a discretionary determination as to an extension of the time for the filing of final trial briefs—is not one which significantly affects the fairness or expeditious conduct of the proceedings or the outcome of the trial;

**CONSIDERING** that at this late stage of the proceedings before the Trial Chamber the consideration by the Appeals Chamber of the question addressed in the Impugned Decision would impede, as opposed to, materially advance the proceedings;

**CONSIDERING**, therefore, that the Impugned Decision does not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial or for which an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**PURSUANT TO** Rule 73(B) of the Rules,

**HEREBY DENIES** the Certification Motion.

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



Carmel Agius  
Presiding

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

**[Seal of the Tribunal]**

<sup>8</sup> *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

<sup>9</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for Voir Dire Proceedings, 20 June 2005, para. 4.