



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: 22 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: 22 July 2009

PROSECUTOR

v.

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

PUBLIC

**CONSOLIDATED DECISION ON MOTIONS FOR THE ADMISSION OF
EVIDENCE AND OTHER RELATED MOTIONS**

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 “Vujadin Popović’s Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with Confidential Annexes”, filed partly confidentially on 23 June 2009 (“Popović Bar Table Motion”); “Motion on behalf of Milan Gvero Seeking the Admission of five Documents from the Bar Table”, filed on 10 July 2009 (“Gvero Bar Table Motion”); “Prosecution’s Motion for Admission of Exhibits from the Bar Table”, filed confidentially on 10 July 2009 (“Prosecution Bar Table Motion”); “Vujadin Popović’s Motion to Reopen his Case, with Confidential Annexes,” filed, confidentially in part, on 10 July 2009 (“Popović Reopening Motion”) and “Miletić’s Third Motion to Reopen the Defence Case”, filed confidentially in the original French on 14 July 2009 (“Miletić Bar Table Motion”)¹ (collectively “Bar Table and Reopening Motions”);

BEING FURTHER SEISED OF “Prosecution Motion Seeking a Variation of Time Limits to Respond to ‘Vujadin Popović’s Motion to Reopen His Case, with Confidential Annexes’”, filed confidentially on 14 July 2009 (“Prosecution Time Limit Motion”); “Borovčanin Motion Seeking a Variation of Time Limits to Respond to ‘Prosecution’s Motion for Admission of Exhibits from the Bar Table’”, filed confidentially on 16 July 2009 (“Borovčanin Time Limit Motion”), and “Vujadin Popović’s Urgent Motion for a Brief Postponement of the Final Brief’s Deadline or in the Alternative for Severance of the Trial”, filed on 21 July 2009 (“Popović Postponement Motion”);

NOTING “Vujadin Popović’s Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with Annexes”, filed partly confidentially on 25 June 2009; “Vujadin Popović’s Further Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table”, filed confidentially on 29 June 2009; “Prosecution’s Response to ‘Vujadin Popović’s Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with Confidential Annexes’, Addendum, and Further Addendum”, filed confidentially on 7 July 2009; “Response on Behalf of Milan Gvero to Vujadin Popović’s Bar Table Motion”, filed on 7 July 2009; “Vujadin Popović’s Consolidated Request for Leave to Reply and Reply to the Prosecution’s and Gvero’s Responses to the ‘Vujadin Popović’s Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table,

¹ Original French entitled “Troisième requête du Général Miletić aux fins de réouverture de la présentation des moyens de preuve de la défense”, 14 juillet 2009.

with Confidential Annexes, Addendum and Further Addendum’”, filed confidentially on 14 July 2009;

NOTING “General Miletić’s Response to Prosecution Motion for Admission by Way of Written Motion”, filed confidentially in the original French on 14 July 2009;² and “Vujadin Popović’s Response to the Prosecution Motion for Admission of Exhibits from the Bar Table, with confidential Appendix”, filed confidentially on 21 July;

NOTING the “Corrigendum to the Vujadin Popović’s Motion to Reopen his Case, with Confidential Annex”, filed partly confidentially on 14 July 2009;

NOTING the “Response on Behalf of Milan Gvero to ‘Prosecution’s Motion Seeking a Variation of Time Limits to Respond to ‘Vujadin Popović’s Motion to Reopen His Case, with Confidential Annexes’””, filed on 15 July 2009;

NOTING the “Response on Behalf of Milan Gvero to ‘Vujadin Popović’s Urgent Motion for a Brief Postponement of the Final Brief’s Deadline or in the Alternative for Severance of the Trial’”, filed on 22 July 2009;

NOTING that the Bar Table and Reopening Motions seek the admission of evidence either from the Bar Table or by the reopening of a party’s case;

NOTING that in the Prosecution Time Limit Motion the Prosecution seeks an extension until 7 August 2009 of the deadline to file a response to the Popović Reopening Motion in light of the final briefs being due on 30 July 2009;³

NOTING that, in the Borovčanin Time Limit Motion, Borovčanin requests an extension of time until 6 August 2009 to file a Response to the Prosecution Bar Table Motion⁴ or, in the alternative, the dismissal of the Prosecution Bar Table Motion as “untimely, vexatious, and procedurally improper”;⁵

NOTING that, in the Popović Postponement Motion, Popović submits that, because the Popović Bar Table Motion, the Prosecution Bar Table Motion, the Miletić Bar Table Motion and the Popović Reopening Motion have not been decided, Popovic does not know a few days before the

² Original French entitled “Réponse du Général Miletić à la requête du procureur aux fins d’admission des pièces par voie de la requête écrite”, 14 juillet 2009.

³ Prosecution Time Limit Motion, paras. 1-2.

⁴ Borovčanin Time Limit Motion, para. 1.

⁵ Borovčanin Time Limit Motion, para. 6.

submission of his final trial brief all the evidence that the Trial Chamber will examine in rendering the Trial Judgement,⁶ and therefore he proposes that there should be a short postponement of the deadline for the final trial brief⁷ or, as an alternative, he seeks severance from the case;⁸

NOTING that, pursuant to the oral order of the Trial Chamber, the final trial briefs shall be filed by 30 July 2009 and the Trial Chamber shall hear closing arguments from 2 September 2009;⁹

NOTING that, pursuant to Rule 89(D), a Trial Chamber may exclude evidence if its probative value is significantly outweighed by its prejudicial effect;

CONSIDERING that the Trial Chamber is not persuaded that any of the new evidence sought to be admitted in the Bar Table and Reopening Motions is of significant probative value;

CONSIDERING that, in light of the late stage reached in the trial and, in particular, the impending deadline for filing final trial briefs, it is not in the interests of justice for further evidence to be admitted from the Bar Table or for the case of any party to be reopened;

CONSIDERING that, with the denial of the Prosecution Bar Table Motion, the Borovčanin Time Limit Motion is now moot;

CONSIDERING that, with the denial of the Popović Reopening Motion, the Prosecution Time Limit Motion is now moot;

CONSIDERING that with the denial of the Bar Table and Reopening Motions, the parties have a sufficiently extensive knowledge of the evidence that needs to be considered in the preparation of their final trial briefs and that, therefore, the postponement of the deadline for filing final trial briefs sought in the Popović Postponement Motion is not warranted;

PURSUANT TO Rules 54, 89 and 127(A),

HEREBY DENIES the Bar Table and Reopening Motions, **FINDS** that the Prosecution Time Limit Motion, the Borovčanin Time Limit Motion and the Popović Postponement Motion are moot and **GIVES NOTICE** that the Trial Chamber shall not entertain any further Motions seeking the introduction of additional evidence.

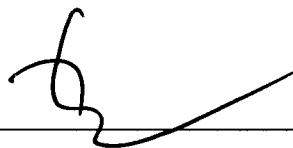
⁶ Popović Postponement Motion, paras. 14–19.

⁷ Popović Postponement Motion, paras. 20–21.

⁸ Popović Postponement Motion, paras. 22–24.

⁹ T. 33836–33838 (2 July 2009).

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



O-Gon Kwon
Judge

Dated this 22nd day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]