



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: 12 November 2008

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:** 12 November 2008

**PROSECUTOR**

v.

**VUJADIN POPOVIĆ  
LJUBIŠA BEARA  
DRAGO NIKOLIĆ  
LJUBOMIR BOROVČANIN  
RADIOVOJE MILETIĆ  
MILAN GVERO  
VINKO PANDUREVIĆ**

***PUBLIC***

**DECISION ON JOINT MOTION BY MILETIĆ AND PANDUREVIĆ TO  
RESCIND THE PROTECTIVE MEASURES GRANTED TO A WITNESS  
IN A PREVIOUS CASE**

**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 "Joint Motion by the Defence for General Miletić and the Defence for Vinko Pandurević to Rescind the Protective Measures Granted to Defence Witness [5DW-16 in the Miletić Witness List and 7DW-8 in the Pandurević Witness List ("Witness")]<sup>1</sup> in [a Previous Case Before the Tribunal ("Previous Case")]", filed confidentially by Miletić and Pandurević on 22 October 2008, pursuant to Rules 75 (F) (i) and 75 (G) (ii) of the Rules of Procedure and Evidence ("Rules") ("Motion");

**NOTING** that the Witness is to give testimony before the Trial Chamber as a common witness of Miletić and Pandurević, and that he had testified in the Previous Case as a protected witness;<sup>2</sup>

**NOTING** that the Witness informed the Defence of Miletić and Pandurević that the protective measures requested and granted in the Previous Case are no longer needed, because the situation justifying the request for those measures has changed, and that in the current trial he would like to testify without any protective measures;<sup>3</sup>

**NOTING** that Miletić and Pandurević submit that the rescission of the protective measures would be in the interests of justice as it would allow full transparency of the Witness's testimony;<sup>4</sup>

**NOTING** that the Prosecution responded orally on 23 October 2008 that it has no objection to the Motion;<sup>5</sup>

**NOTING** that on 29 October 2008 the Victims and Witnesses Section informed the Trial Chamber that the Witness was consulted and confirmed that he does not need protective measures any longer;

**NOTING** that pursuant to Rule 75 (F) (i), "[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures [...] shall continue to have effect *mutatis mutandis* in any other proceedings

<sup>1</sup> Notice of General Miletić Pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence with Confidential Annexes, 7 May 2008, Confidential Annex 1 ("Miletić Witness List"), p. 2; Submission Pursuant to Rule 65 *ter* Filed on Behalf of the Accused Vinko Pandurević, partly confidential, 1 May 2008, Confidential Annex 1 ("Pandurević Witness List"), p. 6.

<sup>2</sup> Motion, para. 1.

<sup>3</sup> *Ibid.*, para. 3.

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

<sup>5</sup> T. 27268 (23 October 2008).

before the Tribunal (“second proceedings”) or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule [...]”;

**NOTING** that pursuant to Rule 75 (G) (ii), “[a] party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply [...] if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings”;

**NOTING** that pursuant to Rule 75 (I), “[b]efore determining an application under paragraph (G) (ii) [...], the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal”;

**NOTING** that Rule 75 (J) provides that “[t]he Chamber determining an application under paragraph [...] G [...] shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures[...].”;

**CONSIDERING** that no Chamber remains seised of the first proceedings;


**CONSIDERING** that the Trial Chamber has complied with the obligations set forth in Rule 75 (I) and (J);

**CONSIDERING** that the circumstances as set out in the Motion demonstrate that the facts that justified the order of protective measures for the Witness in the first proceedings no longer exist and that the Witness desires to testify in the current trial without any protective measures;

**PURSUANT TO** Rule 75 of the Rules,

**HEREBY GRANTS** the Motion and **ORDERS** the rescission of the protective measures granted to the Witness in the Previous Case.

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



Carmel Agius  
Presiding

Dated this twelfth day of November 2008  
At The Hague  
The Netherlands

[Seal of the Tribunal]