



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-95-14/2-T
Date: 30 November 1999
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 30 November 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

DECISION ON PROSECUTION REQUEST TO PROCEED BY DEPOSITION

The Office of the Prosecutor:

Mr. Geoffrey Nice
Mr. Kenneth Scott
Ms. Susan Somers
Mr. Patrick Lopez-Terres

Counsel for the Accused:

Mr. Mitko Naumovski, Mr. Leo Andreis, Mr. David F. Geneson, Mr. Turner T. Smith, Jr.,
Mr. Robert A. Stein, Mr. Stephen M. Sayers and Ms. Ksenija Turković, for Dario Kordić
Mr. Božidar Kovačić and Mr. Goran Mikuličić, for Mario Čerkez

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 (“the International Tribunal”),

BEING SEISED of an Application to proceed by deposition filed by the Office of the Prosecutor (“Prosecution”) on 26 November 1999 in respect of the Prosecution witnesses to be heard during the week of 29 November to 3 December 1999 (“the Request”) for the taking of deposition evidence in accordance with Rule 71 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), due to the temporary unavailability of Judge Patrick Robinson,

NOTING the agreement of the parties to the use of this procedure for direct- and cross-examination of the witness Ole Brix Andersen, subject to matters of admissibility being reserved to the Trial Chamber as reflected in the transcripts of 29 and 30 November 1999, and in the Notices of Consent filed on 30 November 1999,

CONSIDERING that the unavailability of one of the members of the Trial Chamber must not prejudice the right of the accused to be tried without undue delay, as provided in Article 21, paragraph 4(c), of the Statute of the International Tribunal (the “Statute”),

CONSIDERING that, pursuant to Rule 71 (A) of the Rules, at the request of either party, the Trial Chamber may, in exceptional circumstances and in the interests of justice, order that deposition evidence be taken before a duly appointed Presiding Officer;

CONSIDERING the guidance on the interpretation of Rule 71 (A) by the Appeals Chamber of the International Tribunal in its Decision of 15 July 1999 in *Prosecutor v. Zoran Kupreškić et al.*¹,

FOR THE FOREGOING REASONS

AND WITH THE AGREEMENT OF THE PARTIES

PURSUANT to Article 21 of the Statute and Rules 54 and 71 of the Rules,

¹ Decision on Appeal by Dragan Papić against Ruling to Proceed by Deposition, *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-AR73, A. Ch., 15 July 1999.

GRANTS the Request in respect of the witness Ole Brix Andersen, subject to matters of admissibility being reserved to the Trial Chamber, and **APPOINTS** as Presiding Officers for that purpose Judge Richard May and Judge Mohammed Bennouna; and

ORDERS that the evidence of the witness Ole Brix Andersen will be taken pursuant to Rule 71 and that the deposition procedure shall be as follows:

1. The Presiding Officers and the parties shall be robed as usual;
2. The hearings shall be public subject to any protective measures that may be ordered;
3. The record shall be transmitted to the Trial Chamber, consisting of three Judges, pursuant to Rule 71 (E).

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



Richard May
Presiding

Dated this thirtieth day of November 1999
At The Hague
The Netherlands

[Seal of the Tribunal]