



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-00-39 & 40-PT
Date: 16 November 2001
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge Mohamed Fassi Fihri

Registrar: Mr. Hans Holthuis

Decision of: 16 November 2001

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

DECISION TO PROCEED BY WAY OF DEPOSITION PURSUANT TO RULE 71

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Deyan Brashich and Mr. Goran Nešković, for Momčilo Krajišnik
Mr. Robert J. Pavich and Mr. Eugene O'Sullivan, for Biljana Plavšić

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 entitled “Notice of Motion to Allow for the Taking of a Deposition and to Preserve Testimony” filed on behalf of the accused, Momčilo Krajišnik, on 8 October 2001 (“the Motion”), in which the Defence seeks an order for the examination of a named defence witness by way of deposition, pursuant to Rule 71 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), the response of the Office of the Prosecutor (“Prosecution”) filed on 19 October 2001, and the “Notice of Motion for Leave to File a Reply in Further Support of Motion for a Deposition” filed by the Defence on 23 October 2001,

NOTING that, at the request of the parties, the date for submission of the Prosecution pre-trial brief has been vacated and that consequently the Trial Chamber is precluded from setting a date for trial,

CONSIDERING the reasons stated by the Defence in support of the Motion, namely the age and infirmity of the witness, and the length of time before the defence case is likely to be heard,

CONSIDERING that it would be in the interests of justice to permit the taking of deposition evidence in these circumstances,

CONSIDERING also that the Prosecution has noted that the Motion does not set out in full “a statement of the matters on which the person is to be examined”, in accordance with Rule 71 (B),

HEREBY GRANTS THE MOTION and ORDERS as follows:

- (1) the evidence of the witness named in the Motion will be taken by way of deposition pursuant to Rule 71;
- (2) Ms. Yvonne Featherstone, Senior Legal Officer, is appointed as Presiding Officer, pursuant to the terms of Rule 71 (A);
- (3) the Presiding Officer shall call the parties in this case to a conference to consider matters relating to the taking of depositions, including dates, venue, travel and accommodation;
- (4) the Presiding Officer is empowered, in consultation with the Registry of the International Tribunal, to make all practical arrangements in respect of the deposition, including arrangements for the deposition to be taken by way of video-conference, save that the deposition evidence shall be taken at a secure location in Belgrade, shall be taken in closed

session, and the accused shall not be present;

- (5) not less than two weeks before the date fixed for the taking of the deposition, the Defence shall provide both the Prosecution and the Presiding Officer with a summary of the facts on which the witness will testify; and
- (6) the Presiding Officer shall present a written report to the Trial Chamber within two weeks of the taking of the deposition and, further, shall report immediately any difficulties in the implementation of this Decision to the Trial Chamber.

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



Richard May
Pre-trial Judge

Dated this sixteenth day of November 2001
At The Hague
The Netherlands

[Seal of the Tribunal]