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International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-01-48-PT  
Date: 11 June 2003  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Richard May, Presiding  
Judge Patrick Lipton Robinson  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Decision of:** 11 June 2003

**PROSECUTOR**

v.

**SEFER HALILOVIĆ**

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***CONFIDENTIAL***  
**DECISION ON PROSECUTOR'S MOTION TO TAKE  
DEPOSITION FOR USE AT TRIAL**

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**The Office of the Prosecutor:**

Mr. Ekkehard Withopf

**Counsel for the Accused:**

Mr. Ahmet Hodžić

**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 (“International Tribunal”),

**BEING SEISED** of the “Prosecution’s Motion To Take Deposition For Use at Trial” filed confidentially on 14 March 2003 (“Motion”) by the Office of the Prosecutor (“Prosecution”), requesting the Trial Chamber to grant an order for (i) a deposition be taken from Vehbija Karić (“Witness”) for use at trial and to appoint a Presiding Officer; (ii) the deposition be taken away from the seat of the International Tribunal without the presence of Sefer Halilović (“Accused”); and (iii) the deposition occurs within the next two months from filing the Motion;

**NOTING** that the pre-trial Judge ordered (i) a Status Conference to be held on 22 May 2003 (“Status Conference”) (ii) the Defence on behalf of the Accused to file a response, if any, to the Motion no later than 9 May 2003; and (iii) the Registrar to file any written observations as to the practical implementation of the Motion and the Defence response, no later than 19 May 2003,

**NOTING** the “Defence Response On Prosecution’s Motion To Take Deposition For Use at Trial” (“Response”) filed on 8 May 2003 by the Defence on behalf of the Accused, agreeing to all the requests in the Motion, except for the request that the deposition be taken without the presence of the Accused, and the “Observations of the Registry” filed on 16 May 2003 by the Registrar, presenting two available options for taking of a deposition,

**NOTING** that during the Status Conference held before the pre-trial Judge, the Prosecution posited that the physical presence of the Accused would cause psychological and emotional stress to the Witness, while the Defence posited that people who are ill speak the truth and if the truth is told during the taking of the deposition, it cannot have a negative effect on the health condition of the Witness<sup>1</sup>,

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<sup>1</sup> Status Conference, IT-01-48-PT, T.110-111.

**NOTING** that during the same Status Conference, the Prosecution and the Defence both agreed that a compromise solution where the Accused can monitor the deposition of the Witness by means of video link was acceptable<sup>2</sup>,

**NOTING** that the Witness, who is terminally ill, resides in Sarajevo, Bosnia Herzegovina and can not be wholly expected to be able to come to testify at the Tribunal now or in the future and that the Accused, who is on provisional release, also resides in Sarajevo, Bosnia Herzegovina,

**CONSIDERING** that a reason satisfying the deliberate exclusion of the presence of the Accused during the deposition has not been shown,

**CONSIDERING** the security assessment in a memo dated 5 June 2003 recommending that the deposition be taken at the Sarajevo Field Office with only the Witness, court officer and technician present<sup>3</sup>,

**CONSIDERING HOWEVER** that a deposition can be taken in the presence of the Accused by means of video conference link between a courtroom of the International Tribunal, where the Accused will be present, and the Sarajevo Field Office or Sarajevo Hospital, where the Witness will be deposed,

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<sup>2</sup> *Id.*

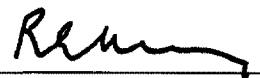
<sup>3</sup> Or at the Sarajevo hospital *only* if the medical condition of the Witness calls for such measure.

**PURSUANT TO** Rules 71 and 71bis of the Rules of Procedure and Evidence,

**HEREBY**

- (1) Orders that the deposition of the Witness be taken in the presence of the Accused, by means of video conference link between a courtroom of the International Tribunal and the Sarajevo Field Office or Sarajevo Hospital, on a date to be confirmed;
- (2) Appoints Ms. Yvonne Featherstone as the Presiding Officer ; and
- (3) Requests the Presiding Officer, to make all the necessary arrangements with this Decision in mind, including but not limited to, communicating with all the relevant parties and setting the appropriate dates for taking of the deposition and to inform the Chamber of the developments.

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



Richard May  
Presiding

Dated this eleventh day of June 2003  
At The Hague  
The Netherlands

[Seal of the Tribunal]