



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-05-87-T
Date: 22 September 2006
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 22 September 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

**DECISION ON PROSECUTION MOTION FOR ADDITIONAL
PROTECTIVE MEASURE FOR WITNESS K82**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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”), was seised of the “Prosecution’s Motion for Further Additional Trial Related Protective Measure for Witness K82 with Confidential Annex A”, filed on 14 September 2006 (“Motion”), seeking the additional protective measure of voice distortion to be granted to witness K82; and, the Chamber hereby issues this decision to confirm its oral ruling granting the Motion.¹

1. Witness K82 was previously granted protective measures in a previous proceeding before the Tribunal.² In the present case, the Prosecution filed a motion requesting that the witness’ testimony be heard via video-link and for additional protective measures,³ which motion this Chamber granted.⁴ These additional protective measures included a renewed request for image distortion.

2. As was made clear during the recent oral arguments on the Motion,⁵ however, both the renewed request and the Chamber’s grant of image distortion for a second time for the same witness are inconsistent with the Rules of Procedure and Evidence of the Tribunal (“Rules”). Rule 75(F) provides, in relevant part:

Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures:

- (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule[.]

3. Under this provision, and contrary to the Prosecution’s statements during the hearing,⁶ it is therefore clear that the Prosecution need not re-apply for identical protective measures for the same witnesses. Such an approach is not only inconsistent with the Rules, it risks confusion by inviting

¹ *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-T (“*Milutinović et al.*”), T. 3465–3466 (private session); T. 3468–3469 (open session).

² A more detailed procedural history is omitted in order to protect the anonymity of the witness.

³ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Confidential and Partially Ex Parte Prosecution Motion for Testimony to be Heard via Video-Link Conference and for Additional Protective Measures with Ex Parte Annex A, 14 July 2006.

⁴ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Protective Measures and for Testimony to be Heard via Video-Link Conference, 15 August 2006. The Chamber subsequently decided not to hear the evidence of K82. See T. 3513 (19 September 2006). Nonetheless, because of the importance of ensuring that orders related to protective measures for witnesses are as clear as possible, the Chamber will issue this written confirmation of its oral order.

⁵ T. 3461 (18 September 2006).

⁶ T. 3460–3461 (18 September 2006).

different results with regard to the same witnesses, and wastes the time and resources of all involved by engaging in unnecessary work. This and other Chambers have *repeatedly* pointed out the application of Rule 75(F) to the parties,⁷ and again instructs the Prosecution to comply with the Rules and avoid unnecessary procedural wrangling.

4. The witness was willing to testify in this trial, and, in order to ensure the witness' safety, the Prosecution applied for an additional protective measure so that the witness could testify with the use of voice distortion. There was no objection on the part of the Defence to the Motion, and the Chamber granted the Motion for this additional protective measure.⁸

5. Recalling the comments made by the Presiding Judge during the hearing, and in order to avoid future unnecessary disruption of the proceedings, the Chamber hereby instructs the parties to make any necessary motions for protective measures or other procedural requests sufficiently in advance of the expected testimony date to permit submissions from the other party or parties and the issuance of a oral or written decision by the Chamber. The fulfilment of this instruction may involve the parties (in this case, the Prosecution) contacting witnesses well in advance of their testimony to ascertain whether they are content with the conditions under which their testimony will be given, rather than waiting until the last minute when the witnesses arrive in The Hague to give evidence. As stated by the Chamber,

JUDGE BONOMY: Well, while the -- the way in which this application has been presented, and much of its content is unsatisfactory, nevertheless [there's] sufficient within the application to justify the request that's made. That may have been very difficult to sustain in the face of objection, but since there is consent on the part -- or at least no objection on the part of the accused and their counsel, who may know more about the circumstances than we do indeed, then we shall grant this application.

But we are going to be very difficult to persuade on future occasions when applications of this nature are made at the last minute with the explanations which lack detail, especially when these are disruptive of the process that we are trying to conduct with limited resources.⁹

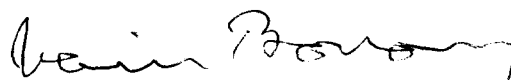
6. Pursuant to Rules 54 and 75, the Chamber hereby CONFIRMS its oral ruling granting the protective measure of voice distortion, NOTES that the other protective measures previously granted in connection with this witness remain in force, and INSTRUCTS the Registry to take all necessary measures to implement this Decision.

⁷ See, e.g., *Milutinović et al*, Order on Prosecution Motion for Additional Trial-Related Protective Measures for Witnesses K62 and K63, p. 1; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-PT, Decision on Prosecution Motion for Protective Measures For Witnesses, 27 May 2005, pp. 3–4; *Prosecutor v. Lazarević & Lukić*, Case No. IT-03-70-PT, Decision on Prosecution's Motion for Protective Measures and Request for Joint Decision on Protective Measures, 19 May 2005, p. 3.

⁸ T. 3468–3469 (18 September 2006).

⁹ T. 3465–3466 (18 September 2006) (private session).

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



Judge Iain Bony
Presiding

Dated this twenty-second day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]