



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
IT-02-54-T

Date: 11 October 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

Order of: 11 October 2006

PROSECUTOR

v.

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

**ORDER ON VARIATION OF PROTECTIVE MEASURES
IN RELATION TO WITNESS K25**

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. Aleksandar 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 confidential “Prosecution Additional Submissions Regarding Protective Measures for Witness K 25”, filed 10 October 2006 (“Motion”), and issues this order confirming its oral ruling thereon.

1. In the Motion, the Prosecution informed the Chamber that, although the witness had been granted the protective measure of closed session testimony in the *Milošević* case, he in fact testified in that proceeding in open session with image and voice distortion.¹ As a result, the Prosecution submitted that the same protective measures that were *de facto* in place for this witness in the first proceedings should apply in these the second proceedings. There was no objection on the part of the Defence to the Motion.

2. The Chamber notes the following relevant provisions of Rule 75 of the Rules of Procedure and Evidence of the Tribunal:

- (F) 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; but
 - (ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.
- (G) A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply:
 - (i) to any Chamber, however constituted, remaining seised of the first proceedings; or
 - (ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.
- (H) Before determining an application under paragraph (G)(ii) above, the Chamber seised of the second proceedings shall obtain all relevant information from the first 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.

¹ Motion, paras. 1–3; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Second Motion for Specific Protective Measures for Individual Witnesses Testifying During the Kosovo Phase of the Trial, 22 March 2002; *Prosecutor v. Milošević*, Case No. IT-02-54-T, T. 7812, *et seq.* (9 July 2002).

3. During the hearing held on 11 October 2006, the following transpired between the Chamber and the Prosecution:

JUDGE BONOMY: What you're really asking us to do is to rescind the protective measures that were granted in -- initially in Milosevic and make an order for different protective measures so that there's no doubt for the future.

MS. MOELLER: Yes.

JUDGE BONOMY: You see, this witness may give evidence again --

MS. MOELLER: Yes, yes.

JUDGE BONOMY: There are other trials -- at least one other trial in relation to Kosovo on the list of cases, and the problem that's arising now should be avoided for the future. And I think there should be a clear order in relation to these protective measures for the avoidance of doubt.

MS. MOELLER: Yes, I fully agree with Your Honours.

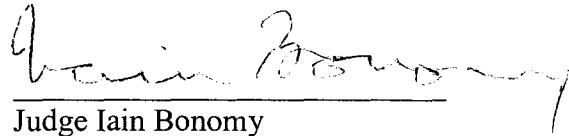
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[JUDGE BONOMY]: Now, there is a provision here requiring this Chamber to consult with any surviving Judge of the Milosevic Chamber who was involved in that decision, but -- and I wasn't involved -- the decision was made before I was ever part of the Milosevic Chamber. But since Judges Robinson and Kwon were satisfied that was the course to be followed in relation to the witnesses in that trial, we can take it there's no need for that consultation to take place specifically. They plainly were satisfied with these arrangements. And we shall, therefore, vary the -- I think the best way is to vary the previous order and provide that instead of giving evidence in closed session, this witness will give evidence in open session with voice and image distortion.

4. The Chamber considers that Rule 75(G)(ii) applies in the present case and recalls that it orally granted the Motion during the hearing.

5. Pursuant to Rules 54 and 75, the Chamber hereby CONFIRMS its oral ruling; VARIES the protective measures for the testimony of the witness such that the witness shall give evidence in open session with image and voice distortion; ORDERS that all other protective measures previously granted shall remain in effect; and INSTRUCTS the Registry to take all necessary measures to implement this Order.

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



Judge Iain Bomy
Presiding

Dated this eleventh day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

