



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: 16 November 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: 16 November 2006

PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR TESTIMONY OF K74
TO BE HEARD VIA VIDEO-LINK CONFERENCE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

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”) is seized of the partly confidential “Prosecution’s Motion for Testimony to be Heard via Video-Link Conference with Confidential Annexes” (“Motion”), filed on 9 November 2006, requesting the reception of the testimony of K74 by video-link conference, and hereby renders its decision thereon.

1. The Trial Chamber considers that the Prosecution, as the moving party, has, on the basis of the material in the Confidential Annexes to its Motion, satisfied its burden of demonstrating that the request should be granted and notes that no objection has been taken by any of the Accused.¹

2. The Prosecution requests that the testimony of the witness be conducted by video-link conference from the ICTY Priština Field Office. The jurisprudence of the Tribunal supports the arguments that the testimony of witnesses by video-link conference should be given as much probative value as testimony presented in the courtroom, and that such measures do not violate the rights of the accused to cross-examine the witness and to confront the witness directly.

3. The Chamber, pursuant to Rules 54 and 71 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

(a) The testimony of the witness identified as K74 shall be received through video-link conference in the week of 29 November 2006, or as agreed upon by the parties, provided that the necessary equipment can be made available to the Tribunal. The Registrar is directed to take all steps reasonably necessary to ensure that the video-link conference is established under the following conditions:²

- i. The party making the application for video-link testimony shall make arrangements for an appropriate location from which to conduct the proceedings. The venue must be conducive to the giving of truthful and open testimony.
- ii. The safety and solemnity of the proceedings at the location must be guaranteed.
- iii. The non-moving party and the Registry must be informed at every stage of the efforts of the moving party, and they must be in agreement with the

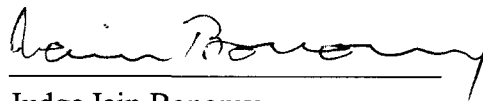
¹ No response was filed by the Defence teams within the time period set by the Chamber’s oral ruling. *See* T. 6305–6306 (10 November 2006).

² *Cf. Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and On the Giving of Evidence by Video-Link, 25 June 1996, para. 22.

proposed location. Where no agreement is reached on an appropriate location, the Trial Chamber shall hear the parties and the Registry and make a final decision.

- iv. The Trial Chamber will appoint a Presiding Officer to ensure that the testimony is given freely and voluntarily. The Presiding Officer will identify the witness and explain the nature of the proceedings and the obligation to speak the truth. The Presiding Officer will inform the witness that he or she is liable to prosecution for perjury in case of false testimony, will administer the taking of the oath, and will keep the Trial Chamber informed at all times of the conditions at the location.
- v. The testimony shall be given in the physical presence only of the Presiding Officer and, if necessary, of a member of the Registry technical staff, unless the Trial Chamber decides otherwise.
- vi. The witness must, through a monitor, be able to see, at various times, the Judges, the Accused, and the questioner. The Judges, the Accused, and the questioner must each be able to observe the witness on their monitor.
- vii. A statement made under solemn declaration by a witness shall be treated as having been made in the courtroom and the witness shall be liable to prosecution for perjury in exactly the same way as if he or she had given evidence at the seat of the Tribunal.

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



Judge Iain Bonomy
Presiding

Dated this sixteenth day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]