



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: 28 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:** 28 November 2006

**PROSECUTOR**

v.

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

**DECISION ON PROSECUTION MOTION FOR TESTIMONY OF DUŠAN LONČAR  
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”) was seised of the partly confidential “Prosecution Motion for Testimony to be Heard via Video-Link Conference with Confidential Annexes”, filed on 22 November 2006 (“Motion”), requesting the reception of the testimony of Dušan Lončar by video-link conference, and hereby confirms its oral ruling thereon.

1. The Trial Chamber considers that the Defence, despite its “general opinion ... that important witness, such as the one in question, should be heard in person”, did not oppose the witness’ evidence being give via video-link conference, but did suggest that his evidence be adduced at a later date if his health situation improved.<sup>1</sup>

2. The Chamber notes that the Prosecution requested that the testimony of the witness be conducted by video-link conference from the ICTY Belgrade Field Office and that 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. After having deliberated upon the Motion and confirmed with the Prosecution that the witness was fit to give evidence via video-link at the proposed time and place, the Chamber issued the following oral ruling during the hearing held on 27 November 2006:

We interpret the [Prosecution’s] response [to the Chamber’s enquiry] as acknowledging that there’s a measure of fragility about the health of the witness that would merit the unusual course of taking his evidence by videolink. We note also the expression of concern that the Defence have made about the witness’s health. However, in this situation in an adversarial process, rather than an inquisitorial process, the onus of satisfying the Bench that the witness’s condition is such as to permit him to give evidence lies with the party tendering the witness, in this case the Prosecution. We have confidence that if, as a result of the further investigation that is to be carried out just mentioned by Mr. Hannis, it is discovered that it would not be appropriate for reasons of health for the witness to give evidence [later] this week, then we will be advised of that and appropriate arrangements made if we wish to check it or to postpone the evidence. But in the light of these considerations and in the state of our current knowledge, we authorise the testimony of Loncar to be given by videolink conference.

4. The Chamber, pursuant to Rules 54 and 71 *bis* of the Rules of Procedure and Evidence of the Tribunal, CONFIRMS its oral ruling granting the Motion in the interests of justice, and hereby ORDERS as follows:

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<sup>1</sup> Confidential Joint Defence Response: “Partially Confidential Prosecution Motion for Testimony to Be Heard via Video-Link Conference with Confidential Annexes”, filed 27 November 2006, paras. 3, 9.

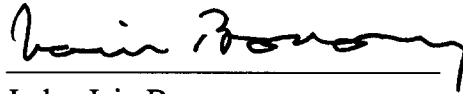
- (a) The testimony of Dušan Lončar shall be received through video-link conference in the week of 27 November 2006, or as agreed upon by the parties, provided that the necessary equipment can be made available to the Tribunal. The Registrar is directed to take all steps reasonably necessary to ensure that the video-link conference is established under the following conditions:<sup>2</sup>
- 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 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

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<sup>2</sup> 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.

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 twenty-eighth day of November 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**