



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: 1 December 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: 1 December 2006

PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR TRIAL-RELATED
PROTECTIVE MEASURES FOR K64**

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 seised of the confidential “Motion for Trial-Related Protective Measures for Witness K64,” filed on 24 November 2006 (“Motion”), requesting the protective measures of image- and voice-distortion, and hereby renders its decision thereon.

1. Pursuant to Rule 75(A), the Chamber may “order appropriate measures for the privacy and protective of victims and witnesses, provided that the measures are consistent with the rights of the accused.” With respect to granting a measure of anonymity, the jurisprudence of the Tribunal requires that “not only must the testimony of the witness be important to the Prosecution’s case but the applicant must show that, should it become publicly known that the witness has testified, there is a real risk to her/his security or that of his/her family, *rather than a general expression of fear by the witness.*”¹

2. The Trial Chamber notes its concerns regarding whether the fears of the witness satisfy the requisite legal test for the granting of the requested protective measures. The witness’ fears—that he or his family will suffer retaliation or revenge—are based solely on the content of his evidence, should it become publicly known that he himself gave it. The Chamber doubts that this basis alone, without more, demonstrates a “real risk to [his] security.”

3. These concerns notwithstanding, the Trial Chamber considers that, on the basis of its independent assessment of the circumstances surrounding this witness in combination with the fact that no objection has been taken by any of the Accused,² the Prosecution’s request should be granted.

4. Pursuant to Rules 54 and 75 of the Rules of Procedure and Evidence of the Tribunal, the Chamber hereby **ORDERS** as follows:

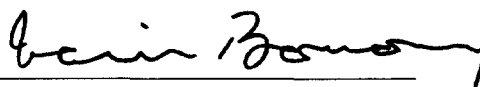
- (a) Witness K64 shall give his testimony with the use of image distortion.
- (b) Witness K64 shall give his testimony with the use of voice distortion.

¹ *Prosecutor v. Limaj, Bala, and Musliu*, Case No. IT-03-66-T, Decision on the Prosecution’s Motion for Protective Measures at Trial, 22 November 2004, p. 3, para. 6 (citing *Prosecutor v. Duško Tadić*, Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, paras. 62–66; *Prosecutor v. Blaškić*, Case No. IT-95-14, Decision on the Application of the Prosecutor dated 17 October 1996 Requesting Protective Measures for Victims and Witnesses, 5 November 1996, para. 41.; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses (Bosnia), 30 July 2002, para. 5) [emphasis added].

² No response was filed by the Defence teams within the time period set by the Chamber’s oral ruling. *See* T. 7431 (27 November 2006).

5. The Chamber hereby **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge Iain Bonomy
Presiding

Dated this first day of December 2006
At The Hague
The Netherlands

[Seal of the Tribunal]