



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: 24 April 2007

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: 24 April 2007

PROSECUTOR

v.

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

DECISION ON ADMISSION OF EVIDENCE TENDERED THROUGH SHAUN BYRNES

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”) recalls its “Decision on Prosecution Second Renewed Motion for Leave to Amend Its Rule 65 *ter* List to Add Michael Phillips and Shaun Byrnes”, issued on 12 March 2007, in which it stated that no unfair prejudice to the Defence will arise if these witnesses were added to the Prosecution Rule 65 *ter* list but that it would review the situation, pursuant to Rule 70(G), after the evidence had been adduced.¹ Having now heard the evidence of Shaun Byrnes, the Chamber finds it appropriate to issue its decision on whether it should be admitted.

1. Witness Shaun Byrnes, a United States Rule 70 witness, gave evidence before this Trial Chamber on 16 and 17 April 2007. As mentioned above, he was added to the Prosecution’s Rule 65 *ter* witness list on 12 March 2007, following the Chamber’s ruling that the Defence would not be unduly prejudiced by this course of action, despite some Rule 70 restrictions upon his testimony.² Nevertheless, in order to avert the possibility of undue prejudice, the Chamber decided to remain vigilant throughout the evidence of Mr. Byrnes and to review the situation after his evidence has been adduced.³

2. The Chamber notes that most of Mr. Byrnes’s evidence was conducted in open session and that only one exhibit was tendered for admission, namely P414, by the Ojdanić Defence.⁴ The Chamber also notes that two documents, namely 6D202 and 6D206, were discussed in legal argument as being the foundation for certain questions asked by the Lukić Defence.⁵ However, neither was tendered and no question of their admission arises at this stage.⁶

3. The Chamber has now reviewed Mr. Byrnes’ evidence and is of the view that its probative value is not substantially outweighed by the need to ensure a fair trial, pursuant to Rules 70(G) and 89(D).

4. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 70, and 89, hereby **ADMITS** the evidence of Shaun Byrnes, including the transcript of his testimony and exhibit P414.

¹ Decision on Prosecution Second Renewed Motion for Leave to Amend its Rule 65 *ter* List to Add Michael Phillips and Shaun Byrnes, 12 March 2007, para. 36.

² Decision on Admission and Publication of Evidence Tendered Through Michael Phillips, 24 April 2007, para. 1.

³ Decision on Prosecution Second Renewed Motion for Leave to Amend its Rule 65 *ter* List to Add Michael Phillips and Shaun Byrnes, 12 March 2007, para. 36.

⁴ T. 12195 (16 April 2007).

⁵ T. 12223–12228 (17 April 2007).

⁶ T. 12226 (17 April 2007).

The closed session portions of the transcript will remain confidential until such time as the Chamber makes a determination otherwise, if at all.

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

Judge Iain Bony
Presiding

Dated this twenty fourth day of April 2007
At The Hague
The Netherlands

[Seal of the Tribunal]