



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: 25 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: 25 April 2007

PROSECUTOR

v.

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

**DECISION ON PUBLICATION 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”) is seised of the “Prosecution’s Submission Regarding the Testimony of US Rule 70 Witness Shaun Byrnes”, filed on 24 April 2007 (“Motion”), and hereby renders its decision thereon.

1. Witness Shaun Byrnes, a United States Rule 70 witness, 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.¹ 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 had been adduced.² The Chamber had also issued a decision granting the Prosecution’s motion, on behalf of the United States (“Rule 70 provider”), requesting non-disclosure and confidentiality of certain Rule 65 *ter* materials in connection with Mr. Byrnes.³

2. Mr. Byrnes gave evidence before this Trial Chamber on 16 and 17 April 2007. Only a small portion of that evidence was heard in private session in order to protect the material covered by the decisions on non-disclosure.⁴ Upon the completion of Mr. Byrnes’ testimony, the Chamber instructed the Prosecution to advise it and the Defence, by 27 April 2007, which portions of the testimony, if any, should remain confidential.⁵

3. On 24 April 2007, the Chamber reviewed Mr. Byrnes’ evidence and determined that its probative value was not outweighed by the need to ensure a fair trial. As a result, the Chamber issued a decision admitting the evidence.⁶

4. The present Motion has been filed in accordance with the Chamber’s instructions relating to the evidence heard in private session. In the Motion, the Prosecution informs the Chamber that the Rule 70 provider has reviewed the transcript of Mr. Byrnes’ evidence and has approved the confidential evidence, in its entirety, for public release. As a result, the Prosecution requests the

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. *See also* Decision on Admission and Publication of Evidence Tendered Through Michael Phillips, 24 April 2007, para. 1, note 3.

² 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.

³ Decision on Prosecution Motion for Non-disclosure in Relation to Shaun Byrnes, 15 February 2007.

⁴ T. 12252–12269 (17 April 2007).


⁵ T. 12269 (17 April 2007).

⁶ Decision on Admission of Evidence Tendered Through Shaun Byrnes, 24 April 2007.

Chamber to order the Registry to make public the following transcript pages: T. 12252, line 19 through to T. 12269, line 11.⁷

5. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 70, hereby GRANTS the Motion and ORDERS that the status of the transcript pages referenced above be changed from confidential to public.

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



Judge Iain Bony
Presiding

Dated this twenty-fifth day of April 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Motion, para. 2.