



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: 2 July 2008

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

Order of: 2 July 2008

PROSECUTOR

v.

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

PUBLIC

ORDER TO THE GOVERNMENT OF THE REPUBLIC OF SERBIA

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Government of the Republic of Serbia

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”),

NOTING the “Summons Pursuant to Rules 54 and 98” issued by the Trial Chamber on 25 June 2008 (“Summons”), ordering Mr. Dimitrijević to appear and testify before the Tribunal in the above-captioned matter on Tuesday, 8 July 2008,

NOTING the report received from the Government of the Republic of Serbia on the successful service of the summons on Mr. Dimitrijević on 30 June 2008,

NOTING the comments made in the report on the health condition of Mr. Dimitrijević,

NOTING Rules 54 and 98 of the Rules of Procedure and Evidence of the Tribunal, which provide as follows:

Rule 54
General Rule

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 98
Power of Chambers to Order Production of Additional Evidence

A Trial Chamber may order either party to produce additional evidence. It may *proprio motu* summon witnesses and order their attendance.

NOTING Article 29 of the Statute of the Tribunal, which provides as follows:

Article 29
Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal.

NOTING the Tribunal's facilities for video-conference link,

CONSIDERING that, in light of the witness's condition of health, the Trial Chamber issued on 1 July 2008 an order to the Registry of the Tribunal (**attached**) to make arrangements for the testimony of Mr. Dimitrijević via video-conference link on 8 and 9 July 2008 at the Tribunal's Belgrade Field Office,

PURSUANT TO Rules 54, 81 *bis*, and 98 of the Rules of Procedure and Evidence of the Tribunal and Article 29 of the Statute of the Tribunal,

HEREBY ORDERS the Government of the Republic of Serbia to take all necessary and reasonable steps to ensure the attendance of Mr. Dimitrijević at the Tribunal's Belgrade Field Office on 8 and 9 July 2008 by 1:30 p.m., located at Jevrema Grujića 11, Belgrade, Tel.: +381 11 306 5467.

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



Judge Iain Bonomy

Presiding

Dated this second day of July 2008
At The Hague
Netherlands

[Seal of the Tribunal]



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Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

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Order of: 1 July 2008

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
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SRETEN LUKIĆ

PUBLIC

**ORDER ON TESTIMONY VIA VIDEO-CONFERENCE LINK
FOR ALEKSANDAR DIMITRIJEVIĆ
AND
DECISION ON DEFENCE REQUEST TO INTERVIEW HIM
PRIOR TO HIS TESTIMONY**

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
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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") hereby (1) issues this order *ex proprio motu* regarding the testimony of Aleksandar Dimitrijević via video-conference link, and (2) is seized of an "Ojdanic Urgent Request to Interview Aleksandar Dimitrijevic Prior to His Testimony as a Trial Chamber Witness," filed 30 June 2008 ("Request"), and hereby renders its decision thereon.

Video-conference link

1. The Chamber first invited, and then summoned, Aleksandar Dimitrijević ("witness") to give evidence in the above-captioned proceeding. On 30 June 2008, the Chamber received a report from the Government of the Republic of Serbia that the summons has been served upon the witness, along with a report regarding the poor health of the witness, which purportedly prevent him from travelling to the Hague to testify.

2. Where a trial chamber is satisfied that a witness is unable or unwilling to come to the Tribunal, and that his or her testimony is sufficiently important to make it unfair to proceed without it, it may allow testimony to be conducted via video-conference link.¹ The Chamber considers that a video-conference link is appropriate in the present set of circumstances, based upon the fact that the information furnished to the Chamber indicates that the witness is fit enough to give evidence, although not to travel to the seat of the Tribunal to do so. The witness may arrange for the attendance of medical personnel during the taking of the testimony.

3. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby **ORDERS** that the testimony of the witness shall be received through video-conference link on 8 and 9 July 2008 (or on a date to be communicated later to the witness and the parties), provided that the necessary equipment can be made available to the Tribunal, and **DIRECTS** the Registry to take all steps reasonably necessary to ensure that the video-conference link is established under the following conditions:

(a) The Registry shall make arrangements for an appropriate location from which to conduct the proceedings, in this case the Tribunal's Belgrade Field Office. The venue must be conducive to the giving of truthful and open testimony.

(b) The safety and solemnity of the proceedings at the location must be guaranteed.

¹ *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. 19; *Prosecutor v. Kvočka et al.*, Case

- (c) 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 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.
- (d) 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. The witness may also arrange for any necessary medical personnel to be present in order to monitor his condition, should he so desire.
- (e) 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.
- (f) 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.

Request for pre-testimony interview

4. The Trial Chamber ordered, on 13 March 2008, that the parties were to have no contact with the witness until his evidence was completed by the Chamber.² In its Request, which has been joined by the Lukić, Pavković, and Šainović Defence, the Ojdanić Defence asks that it be allowed to conduct an interview of the witness prior to his testimony.³ The Chamber has reviewed the *Stakić* decision cited by the Ojdanić Defence in support of the Motion,⁴ as well other jurisprudence of the Tribunal.⁵ The Chamber can discern no reasoned, *per se* rule that a party has a right to

No. IT-98-30/1-A, Confidential Appeals Chamber Decision on Prosecution's Request for Testimony by Video-Conference Link and Protective Measures, 2 July 2004, p. 3.

² Order Regarding Potential Witnesses to be Called by Trial Chamber, 13 March 2008.

³ Sreten Lukić Joinder to Ojdanić Urgent Request to Interview Aleksandar Dimitrijević prior to his Testimony as a Trial Chamber Witness, 30 June 2008; Pavković Joinder in General Ojdanić's Urgent Request to Interview Aleksandar Dimitrijević prior to his Testimony as a Trial Chamber Witness, 30 June 2008; Šainović Defence Submission Joining Ojdanić Urgent Request to Interview Aleksandar Dimitrijević prior to his Testimony as a Trial Chamber Witness, 30 June 2008.

⁴ *Prosecutor v. Stakić*, Decision to Summon a Witness *Proprio Motu*, 20 September 2005, p. 4.

⁵ *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Finalized Procedure on Chamber Witnesses; Decisions and Orders on Several Evidentiary and Procedural Matters, 24 April 2006; *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision of Trial Chamber I to Call Colonel Šerif Patković as a Witness of the Trial Chamber, 21 May 1999; *Prosecutor v.*

interview a witness called by the Chamber to give evidence pursuant to Rule 98. Having considered all the circumstances, the Chamber finds that it would not be appropriate to allow the parties to conduct interviews of the witness prior to his giving evidence.

5. Accordingly, the Trial Chamber, pursuant to Rules 54 and 98 of the Rules of Procedure and Evidence, hereby DENIES the Request.

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

Judge Iain Bony
Presiding

Dated this first day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

Blaškić, Case No. IT-95-14-T, Decision of Trial Chamber I in Respect of the Appearance of General Enver Hadzihasanović, 25 March 1999; *Prosecutor v. Orić*, Case No. IT-03-68-T, Proprio Motu Order to Call a Handwriting Expert, 25 January 2006; *Prosecutor v. Orić*, Case No. IT-03-68-T, Further Proprio Motu Order to Call a Handwriting Expert, 3 February 2006; *Prosecutor v. Orić*, Case No. IT-03-68-T, Amended Further Proprio Motu Order to Call a Handwriting Expert, 7 February 2006; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision to Summon a Witness *Proprio Motu*, 19 November 2003.