

UNITED
NATIONS

IT-02-60-T
D 23392 - D 23383
30 JULY 2004

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International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-60-T
Date: 30 July 2004
Original: English

IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassilenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Decision of: 30 July 2004

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

DECISION ON VIDOJE BLAGOJEVIĆ'S ORAL REQUEST

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Mr. Branko Lukić for Dragan Jokić

TRIAL CHAMBER I, SECTION A, (“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”),

BEING SEISED OF an oral request by Vidoje Blagojević (“Accused”) to waive his right to remain silent and be heard (“Request”),¹

CONSIDERING that in light of the particular circumstances of this case in relation to the defence of the Accused, and specifically, the fact that he has refused to communicate with his assigned defence throughout his trial, the Trial Chamber must decide on the Request in order to fulfil its duty to ensure a fair trial for the Accused in which the rights accorded to him under Article 21 of the Statute are fully respected,

CONSIDERING that under Article 21(4)(d) of the Statute, the Accused has the right:

to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it,²

NOTING that the Accused was arrested on 10 August 2001 and had his initial appearance on 16 August 2001, at which he was represented by duty counsel,

RECALLING that on 31 August 2001, in accordance with a request from the Accused,³ Michael Karnavas, a lawyer on the Registrar’s list of available counsel,⁴ was appointed as counsel for the Accused,⁵

¹ See, Procedural Matters, 23 July 2004, Transcript pages (“T.”) 12265-77 (Private Session).

² See also, Criminal Procedure Code of Bosnia and Herzegovina, Arts. 45 and 46. Article 45 (“Mandatory Defence”) of this Code provides, in part: “(3) After an indictment has been brought for a criminal offense for which a prison sentence of ten (10) years or more may be pronounced, the accused must have a defense attorney at the time of delivery of the indictment. (4) If the suspect, or the accused in the case of mandatory defense, does not retain a defense attorney [...] the preliminary proceeding judge, preliminary hearing judge, the judge or the Presiding judge shall appoint him a defense attorney in the proceedings. In this case, the suspect or the accused shall have the right to a defense attorney until the verdict becomes final, and if a long-term imprisonment is pronounced for proceedings under legal remedies.”

³ See, Request for the Assignment of Defence Counsel *ex officio*, signed by Vidoje Blagojević on 31 August 2001, and the “Request” by Vidoje Blagojević, dated 28 August 2001 to the Registry in which he states: “I kindly ask you to invite Mr. Michael Karnavas (SAD) to come to the UNDU on Thursday 30.08.2001 and also to make it possible that I meet with him because I intend to engage him on my defence according to the indictment that was raised against me. This request should be prioritised in relation to the previous one which I submitted to you and which concerned the legal counselling with [names redacted].” (Both documents are on file with Registry)

⁴ Rules 44 and 45 of the Rules of Procedure and Evidence (“Rules”) governs the assignment of counsel. Rule 44 (“Appointment, Qualifications and Duties of Counsel”) provides, in part:

(A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. Subject to any determination by a Chamber pursuant to Rule 46 or 77, a counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that the counsel is admitted to the practice of law in a State, or is a University professor of law, speaks one of the two working languages of the Tribunal, and is a member of an association of counsel practising at the Tribunal recognised by the Registrar.

NOTING that the issue of the assignment of counsel and co-counsel⁶ was raised by the Accused during the pre-trial stage and during the opening days of the trial proceedings,⁷ culminating in a motion by the Accused for the replacement of Michael Karnavas and Suzana Tomanović ("Defence Team"),⁸ which was denied by the Trial Chamber,⁹

CONSIDERING that the Appeals Chamber dismissed the Accused's appeal of the Trial Chamber's Counsel Decision,¹⁰

RECALLING that the Trial Chamber, "in an effort to promote better communication between the accused and counsel,"¹¹ requested that a legal representative be appointed "to assist the Accused and his defence team in the preparation of his defence,"¹²

CONSIDERING that the Accused has rejected the option to appoint a legal representative to assist in the preparation of his defence,¹³

(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate. A suspect or accused may appeal a decision of the Registrar to the President.

(C) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Professional Conduct for Defence Counsel and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel set out by the Registrar and approved by the permanent Judges.

Rule 45 ("Assignment of Counsel") provides, in part:

A) Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges.

(B) A list of counsel who, in addition to fulfilling the requirements of Rule 44, have shown that they possess reasonable experience in criminal and/or international law and have indicated their willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel, shall be kept by the Registrar.

(C) In particular circumstances, upon the request of a person lacking the means to remunerate counsel, the Registrar may assign counsel whose name does not appear on the list but who otherwise fulfils the requirements of Rule 44.

⁵ Decision by the Registrar Assigning Counsel as of 31 August 2001, dated 3 September 2001 and filed 5 September 2001. The initial appointment of Mr. Karnavas was for 120 days, pending the review of Mr. Blagojević's financial status. The appointment of Mr. Karnavas was renewed on 24 December 2001.

⁶ Suzana Tomanović was assigned as co-counsel to Mr. Blagojević on 25 September 2002. See, Decision by the Registrar Assigning Counsel as of 25 September 2002, dated 2 October 2002 and filed 3 October 2002.

⁷ See, Decision on Independent Counsel for Vidoje Blagojević Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003 ("Counsel Decision"), paras 1-22 for an overview of the issue of assignment of counsel to the Accused.

⁸ Independent Counsel for Vidoje Blagojević's Motion to Instruct Registrar to Appoint New Lead and Co-Counsel, on an *ex parte* and confidential basis on 5 June 2003.

⁹ See, Counsel Decision.

¹⁰ See, Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 15 September 2003; *ex parte* and Confidential Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003; and Public and Redacted Reasons for Decision on Appeal by Blagojević to Replace his Defence Team, 15 December 2003.

¹¹ Counsel Decision, para. 114.

¹² Counsel Decision, Disposition, (1). See Disposition generally for the terms of appointment and scope of assignment of the legal representative.

CONSIDERING that the Accused has refused to meet with his Defence Team since the commencement of the trial proceedings,¹⁴ save once, when he met briefly with Mr. Karnavas and a representative of OLAD in early 2004,

CONSIDERING that the Accused has consistently stated that he does not seek to represent himself,¹⁵

CONSIDERING that Michael Karnavas conducted cross-examination of witness during the presentation of evidence for the prosecution and conducted the examination-in-chief of witnesses during the presentation of evidence for the defence, in accordance with Rule 85 (A) and (B) of the Rules,

NOTING that Article 21 ("Rights of the Accused") of the Statute of the Tribunal provides, in part, in paragraph 4: "the accused shall be entitled to the following minimum guarantees, in full equity: (g) not to be compelled to testify against himself or to confess guilt,"¹⁶

NOTING that Rule 84 *bis* ("Statement of the Accused") of the Rules provides:

- (A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.
- (B) The Trial Chamber shall decide on the probative value, if any, of the statement.

NOTING that Rule 85 ("Presentation of Evidence") of the Rules provides, in part:

- (B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine such witness in chief, but a Judge may at any stage put any question to the witness.
- (C) If the accused so desires, the accused may appear as a witness in his or her own defence.

NOTING that Rule 90 ("Testimony of Witnesses") of the Rules governs the procedure for the presentation of evidence through a *viva voce* witness and provides that:

¹³See, Memorandum from the Acting Deputy Chief of the Office of Legal Aid and Detention Matters ("OLAD") to the Presiding Judge, 22 December 2003 ("22 December 2003 OLAD Memo"), in which the Acting Deputy Chief of OLAD reports that at a meeting held between himself and Mr. Blagojević held on 18 December 2003, Mr. Blagojević refused to consider the list of counsel provided by the Registry in order to choose another counsel to act as legal representative.

¹⁴ See, e.g., Trial Proceedings, 19 September 2003, T. 1587; Trial Proceedings, 2 December 2003, T. 5459; Motion Hearing, 17 June 2004, T. 10921 (Private Session); 22 December 2003 OLAD Memo, paras 3, 6-7. It is noteworthy that during the meeting held on 18 December 2003, Mr. Blagojević stated that he did not contest the professionalism of Mr. Karnavas' legal work as a counsel.

¹⁵ See, e.g., Pre-Trial Conference, 5 May 2003, T. 258; *ex parte* Hearing, 13 July 2004, T. 11860 (Private Session).

¹⁶ See also, International Covenant on Civil and Political Rights, Art. 14(3)(g); Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia (1977-1990), Art. 10; and Criminal Procedure Code of Bosnia and Herzegovina, Art. 6 which provides in part: (2) The suspect or accused must be provided with an opportunity to make a

(A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".

[...]

(E) A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony.

(F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to

- (i) make the interrogation and presentation effective for the ascertainment of the truth; and
- (ii) avoid needless consumption of time.

[...]

(H) (i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case.

(ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness.

(iii) The Trial Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

NOTING that on 3 October 2003, during the testimony of former co-accused Momir Nikolić, the Accused addressed the Trial Chamber stating:

I have a very profound interest in the truth being established. I think that I will testify in these proceedings, but I don't know how. Under these circumstances, I don't see how I can. I do wish to testify. I do wish to convey my understanding of the situation and my role in it in the interest of truth so that you would have that point of view to consider as well for establishing the truth. What I've heard here so far I think is of such a scope that would warrant my participation, that would benefit all, and would throw light on my situation, my position, my commanding and my work in that critical period.¹⁷

NOTING that on 7 April 2004, during the Pre-Defence Conference for his defence, the Accused addressed the Trial Chamber stating:

I also want to touch upon the question raised by the Prosecutor, whether I would be testifying or not. I think the Rules are clear. I have the right to testify, but how? Under what circumstances? In which way? I would say a lot under oath, because an oath is a thing to be believed. Truth stands behind an oath, and I know the truth.

[...]

I have no fear of self-incrimination. I have no dilemma whatsoever in this respect. I will say what I have to say, and that is the only thing that I can say. I will say what I know. I have no fears and I don't need advice of a lawyer who doesn't wish me good. That advice would be superfluous. I will say all that I know with regard to the relevant time, my role, my position, what I did, where I was, all my communications, and all the rest. I can state all that the best way I know how as I understand it. I can recount all the events and how it came about, that I became the commander of the Bratunac Brigade at the relevant time. I have no concern about that whatsoever, and I expect

statement regarding all the facts and evidence incriminating him and to present all facts and evidence in his favor. (3) The suspect or accused shall not be bound to present his defence or to answer questions posed to him."

¹⁷ Procedural Matters, 1 October 2003, T. 2322-23.

from you to give me a chance to present all these facts, because that could perhaps dispel all the doubts and suspicions that we can hear being voiced here as to whether this or that person is lying or not. I am entitled also to present certain facts regarding myself, and whether I'm guilty or innocent is something that is up to you to judge after hearing my testimony under oath. Because of all the things that are being orchestrated here and the resulting circumstances, I kindly ask you not to limit any further my rights which have deteriorated considerably as it is. I wish to exercise the rights given me by the Rules of Procedure and Evidence and the statute, because it is my historic role and duty to present you with my view, with my statement.¹⁸

RECALLING that on 7 April 2004, the Trial Chamber advised the Accused that whether he makes a statement or testifies in his case "depends on your free will" and strongly advised the Accused to consult with his counsel on this issue, warning him that "you may not understand the implications of your testimony or your statement on the merits."¹⁹

NOTING that on 4 June 2004, in the final weeks of his defence case, the Accused addressed the Trial Chamber stating:

Your Honour, since I see that the time is quite limited and very strictly set up, because that's what I hear from you, and since you mentioned the 30th of July, I don't see anywhere an opportunity for exercising my fundamental right, although it says it may be exercised, but I believe that under these complex circumstances, the situation is no less complicated now than it was at the time of my arrest. Please, I have the right to testify under oath before this Tribunal, and I believe that if all these written or oral statements carry weight, then my testimony should also carry certain weight in the light of this whole complex matter. I don't see that happening. I said that I have entered this stage of the proceedings totally unprepared, disoriented and uninformed, because everything is being done without my knowledge, as if I am not interested at all. However, I am very much interested, primarily because the truth that has to be uncovered in the name of justice is crucial for me too. Therefore, I wouldn't like to be pushed or remain aside for a single moment. I want to remain as much as honest as upon in this proceedings as I had been in my former life, previous life. Therefore, I would like to know what opportunities I have in this respect so that I can act accordingly. Thank you, Your Honours.²⁰

RECALLING that on 4 June 2004, the Trial Chamber recognised that the decision to testify as a witness in his case was one to be made by the Accused, while underscoring its obligation to guarantee the rights of the Accused, including the right not to incriminate himself, and therefore "strongly advised" the Accused to consult with his counsel and be advised of all the consequences of testifying in his case, concluding that without ensuring that the Accused is well-informed about the consequences of his testimony and without the agreement of counsel that he testify, the Trial Chamber would be in a very difficult position to grant the Accused's request to testify in his case,²¹

CONSIDERING that the Trial Chamber has an obligation to ensure that any waiver of the privilege against self-incrimination by the Accused is knowing, voluntary and based on sufficient awareness of the consequences of such waiver,

¹⁸ Pre-Defence Conference, 7 April 2004, T. 38-42.

¹⁹ Pre-Defence Conference, 7 April 2004, T. 41, 43.

²⁰ Trial Proceedings, 4 June 2004, T. 10356-58.

²¹ Trial Proceedings, 4 June 2004, T. 10357-58.

CONSIDERING that on 17 June 2004, the Trial Chamber held a motion hearing, pursuant to Rules 84 *bis* and 85 of the Rules, at which it explained to the Accused the options available to him in relation to his right to remain silent and his right to address the Trial Chamber, informing him:

The three options available to you are: First, to exercise your right to remain silent; secondly, to make a statement under the control of the Trial Chamber, the content of which you will not be examined about; or thirdly, to testify under oath like any other witnesses in this case.

In relation to the first option to remain silent, Article 21(4)(g) of the Statute guarantees that you will not be compelled to testify against yourself or to confess guilt. This right is related to the right you enjoy, to be presumed innocent until proven guilty. The burden is on the Prosecution to prove you guilty beyond a reasonable doubt; it is not upon you to prove that you are innocent. No negative inference will be drawn by this Trial Chamber if you choose to remain silent. Along with your counsel, you should, therefore, carefully consider what evidence is before the Trial Chamber before deciding to add your testimony to the evidence that the Trial Chamber will consider when making its final judgement in your case.

The second option, to make an unsworn statement is provided in the Rules of Procedure and Evidence, especially Rule 84 *bis*. While under the exact language of the rule, an unsworn statement is generally made after the opening statement of the parties, the Trial Chamber does not find any reason to deny you the opportunity to make an unsworn statement at a later time. What is meant by making an unsworn statement is that you do not have to make the solemn declaration, although you may if you like make the solemn declaration at the start of your statement, and you should not be examined by either parties or the Bench about the content of the statement. There are no guidelines given for the length of such narrative statement, although the Trial Chamber may limit the length if your statement exceeds a reasonable length. Furthermore, the statement is made under the control of the Trial Chamber. This means, for example, that if necessary to stop you for your protection or for the protection of others at a certain point or in relation to a certain topic, the Trial Chamber can do so. Based on your conduct in the proceedings to date, the Trial Chamber has no reason to believe that you could use your statement to call into question the dignity of the proceedings, but it reminds you of its right and its duty to ensure that the dignity of the proceedings are not called into question. As a statement under Rule 84 *bis* is generally unsworn and is not subject of cross-examination or inquiry from the Bench, it generally will carry somewhat less weight than the testimony given under oath that is subject to cross-examination and inquiry from the Trial Chamber.

The third option available to you is to testify as a witness in your case. Rule 85(C) of the Rules specifically allows for you to testify. If you were to testify as a witness, you would be required to take a solemn declaration, like any other witnesses in this trial. It is required that the party calling the witness examine the witness. Therefore, in your case Mr. Karnavas would lead you through the examination-in-chief, in question-and-answer format. The Rules further require that cross-examination is permitted for each witness; accordingly, both the Jokic Defence and the Prosecution would be permitted to ask you questions. Under Rule 90(H)(i), cross-examination can cover any evidence which you may be in a position to provide that is relevant to the Prosecution's case. Of course, you may invoke your right to remain silent on certain questions if you believe that the answer may have negative consequences for you. But this could possibly lead to, in some circumstances, less favourable consideration of that aspect of testimony by the Trial Chamber when it assesses your testimony. Finally, the Trial Chamber may ask you questions following your testimony. You should be warned that any incriminating testimony you give may be used against you.²²

CONSIDERING that the Accused stated that he understood the options and that: he found the second option unacceptable since his statement would not carry the weight he would like it to carry since it would not be subject to cross-examination or questions from the judges;²³ and that he would

²² Motion Hearing, 17 June 2004, T. 10922-25.

²³ Motion Hearing, 17 June 2004, T. 10928 (Private Session).

like to take the third option but does not think that Mr. Karnavas should be allowed to ask him questions,²⁴

CONSIDERING that the Trial Chamber further explained to the Accused that while it was in a position to inform him of the options available to him from an objective perspective, only his counsel, Mr. Karnavas, would be in a position to advise him on which option was most appropriate for him in the circumstances of this case,²⁵

CONSIDERING THEREFORE that the Trial Chamber ordered the Accused to meet with Mr. Karnavas to discuss the three options available to him “to determine which option is the best for you in the current circumstances of your case,” and, in the event that he chose to make a statement, urged him to discuss the contents of the statement with Mr. Karnavas, and if he chose to testify, required him to meet with Mr. Karnavas “at any time and as many times as necessary to ensure that you are fully and sufficiently prepared to come before this Trial Chamber as a witness,”²⁶

RECALLING that the Trial Chamber instructed the Accused to inform it about the first such meeting by 7 July 2004,

CONSIDERING that the Accused refused to meet with Mr. Karnavas, as instructed by the Trial Chamber,²⁷

CONSIDERING that the Trial Chamber held an *ex parte* hearing on 13 July 2004 to discuss the matter further and to determine whether the Accused made an informed decision about whether or not to testify in his trial, at which Mr. Karnavas reported to the Trial Chamber on his unsuccessful efforts to meet with the Accused,²⁸

CONSIDERING that the Accused indicated that he wishes to testify under oath before the Trial Chamber in open session,²⁹ but that it would be “absolutely impossible” for him to answer questions put to him by Mr. Karnavas,³⁰

CONSIDERING FURTHER that the Accused again asserted his wish that “all the possibilities [...] be exhausted before [the Trial Chamber] reaches the conclusion that Blagojević is guilty to such and such extent,”³¹

²⁴ Motion Hearing, 17 June 2004, T. 10928 (Private Session).

²⁵ Motion Hearing, 17 June 2004, T. 10922.

²⁶ Motion Hearing, 17 June 2004, T. 10929.

²⁷ See, Memorandum from Registry/OLAD to the Trial Chamber, 7 July 2004; and Memorandum from Registry/OLAD to the Trial Chamber, 9 July 2004.

²⁸ *Ex parte* Hearing, 13 July 2004, T. 11856-57 (Private Session).

²⁹ *Ex parte* Hearing, 13 July 2004, T. 11862 (Private Session).

³⁰ *Ex parte* Hearing, 13 July 2004, T. 11862 (Private Session).

CONSIDERING that the Trial Chamber again instructed the Accused to meet with Mr. Karnavas to discuss the issue of whether he would testify in this case,³²

CONSIDERING that during the *ex parte* hearing, Mr. Karnavas provided the Accused with his professional opinion on the three options available to Mr. Blagojević, indicated which option he believed to be most appropriate and in the best interest of Mr. Blagojević, in light of the proceedings to date,³³

CONSIDERING that the Trial Chamber subsequently requested that the Registry provide the Accused with a written translation of that section of the transcript of the *ex parte* hearing in which Mr. Karnavas provided his professional opinion on the issue of remaining silent, making a statement or testifying as a witness to the Accused,³⁴

FINDING THEREFORE that the Trial Chamber considers that the Accused has been provided with the opportunities, resources, advice and information to make an informed decision about whether to waive his right to remain silent and to appear as a witness in his trial, including the consequences of such waiver; that his decision to accept or reject the resources, advice and information provided to him by the Trial Chamber and his counsel must be respected; and that the Accused has indicated that he wishes to waive his right to remain silent, a waiver for which there is no basis before this Trial Chamber to conclude that his waiver is not voluntary,

CONSIDERING that the issue of whether Mr. Blagojević would testify in this case was raised again on 23 July 2004, during which the Accused stated that his decision to testify was "final",³⁵

CONSIDERING that the Trial Chamber reviewed the issues implicated in this decision, including making the solemn declaration and being questioned by all parties with the Accused,³⁶

CONSIDERING that in response to the Trial Chamber's question of whether he would answer the questions put to him by all the parties, the Accused responded initially that he would answer all questions put to him in examination-in-chief and cross-examination,³⁷

CONSIDERING that Mr. Karnavas indicated he would be prepared to proceed with direct examination on the next day of the proceedings, indicating that it would be Mr. Blagojević's choice of whether to prepare for the direct examination with him,³⁸

³¹ *Ex parte* Hearing, 13 July 2004, T. 11864 (Private Session).

³² *Ex parte* Hearing, 13 July 2004, T. 11867 (Private Session).

³³ *Ex parte* Hearing, 13 July 2004, T. 11864-66 (Private Session).

³⁴ Trial Proceedings, 22 July 2004, T. 12120 (Private Session).

³⁵ Procedural Matters, 23 July 2004, T. 12266 (Private Session).

CONSIDERING that after the Accused indicated that he needs preparation before his testimony but would not conduct any preparations with Mr. Karnavas, the Trial Chamber asked the direct question of whether he would follow the procedure for examination-in-chief as set-out in Rule 85(B) of the Rules, namely that the party calling the witness examine the witness, i.e., Mr. Karnavas would examine Mr. Blagojević, to which the Accused responded that he would not answer any questions put to him on direct examination by Mr. Karnavas,³⁹

FINDING THEREFORE that the Accused's refusal to follow the procedure established in the Rules for the presentation of testimonial evidence, as endorsed by the Trial Chamber, constitutes an effective waiver to appear as a witness in his case,

PURSUANT TO Rules 84 *bis*, 85 and 90 of the Rules, and Articles 20 and 21 of the Statute,

HEREBY DETERMINES that, unless there is a change of circumstances, the following two options remain available to Vidoje Blagojević:

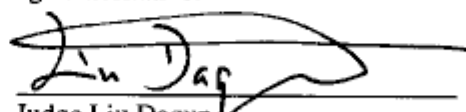
1. To make a sworn or unsworn statement under the control of the Trial Chamber, the contents of which he shall not be examined about, pursuant to Rule 84 *bis*; or
2. To remain silent;

AND FURTHER DECIDES that should Mr. Blagojević choose to make a statement:

1. The statement shall be made on **Wednesday, 1 September 2004**;
2. The statement shall not exceed 4.5 hours; and
3. The statement shall be limited to those matters raised by the Indictment brought against him of 26 May 2003;

AND REQUESTS that this Decision is translated into B/C/S and provided to the Accused as soon as practicable.

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


Judge Liu Daqun
Presiding

Dated this thirtieth day of July 2004,
At The Hague
The Netherlands

[Seal of the Tribunal]

³⁶ Procedural Matters, 23 July 2004, T. 12266-67 (Private Session).

³⁷ Procedural Matters, 23 July 2004, T. 12267 (Private Session).

³⁸ Procedural Matters, 23 July 2004, T. 12268-69 (Private Session).

³⁹ Procedural Matters, 23 July 2004, T. 12273-77 (Private Session).