



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: 27 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: 27 April 2007

PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF
ORAL DECISION DATED 24 APRIL 2007 REGARDING EVIDENCE OF ZORAN LILIĆ**

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 a confidential “Prosecution’s Urgent Motion Requesting Reconsideration of Trial Chamber’s Oral Decision Dated 24 April 2007 and Leave to Tender Zoran Lilić’s Previous Testimony and Statement Pursuant to Rule 92 *ter* with Annex A,” filed 26 April 2007 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Prosecution requests the Chamber to reconsider its oral ruling rendered on 24 April 2007 upon the Prosecution’s motion to tender the evidence of Zoran Lilić pursuant to Rule 92 *ter*, rather than leading him *viva voce*, as was indicated upon its Rule 65 *ter* witness list on 10 May 2006.¹ After having heard oral argumentation from the parties,² the Chamber issued the following oral ruling:

JUDGE BONOMOY: In light of the Defence submissions about the additional difficulties created by the Prosecution failure to relate the exhibits to the evidence of the witness, and in view of the potential importance of the evidence of the witness, we consider that it’s appropriate -- and this is a decision in principle -- that his evidence should be given live. However, it will remain open to the Prosecution to suggest, in the course of his evidence, the admission of portions in writing, and we will review any such reasonable request made at the time.³

2. The Prosecution argues, in support of its Motion, that it has received additional information since the oral ruling and that this information justifies reconsideration. This information comes in the form of a letter dated 25 April 2007 to the Prosecution from Mr. Lilić, stating,

I am not willing to take the stand and give testimony regarding dossier IT-05-87-T, since during my testimony in 2003, I told everything known to me related to dossier IT-05-87-T.

Of course, appreciating such high institution of United Nations and with respect to subpoena of the court, on the 29th of April, I will arrive in [the] Hague.⁴

Mr. Lilić also stated that his “health condition and ... private obligations” did not permit him to give evidence beyond 4 May 2007.⁵ The Prosecution also informed the Chamber that it intended to tender as evidence documents constituting parts of Mr. Lilić’s evidence from the *Milošević* trial while the witness was present in court and after he had taken the oath. The Prosecution submits

¹ Prosecution’s Submission Pursuant to Rule 65 *ter* (E) with Confidential Annex A and Annexes B and C, 10 May 2006.

² T. 12295–12297 (24 April 2007).

³ T. 12297 (24 April 2007).

⁴ Motion, paras. 5–6, confidential Annex A.

⁵ *Ibid.*

that the witness will be available for cross-examination.⁶ Finally, the Prosecution argues that tendering the evidence in the manner it proposes will permit the witness's evidence to be completed by 4 May 2007, and thus would avoid any prejudice to the Defence or delay in the proceedings that might be caused by Mr. Lilić having to return to the Hague to complete his testimony.⁷

3. On 27 April 2007, the Defence filed its response to the Motion, requesting the Chamber to deny the Prosecution's request for reconsideration.⁸ The Defence reiterates therein arguments made upon this matter at the oral hearing on 24 April 2007 and argues further that, *inter alia*, the circumstances in existence when the Chamber made its oral ruling have not changed since that time.⁹

4. The legal standard for reconsideration is as follows: "a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.'"¹⁰

5. The Chamber reminds the Prosecution that, as was clearly stated in the oral ruling, it may make a motion, in the course of Mr. Lilić's evidence, for the admission of portions of his evidence from the *Milošević* trial, and that the Chamber will consider such a motion at that time and under the circumstances of the evidence. When the witness is here in the Hague and on the stand (after having taken the solemn oath), the Chamber will be in an appropriate position to entertain any motions for the admission of his evidence pursuant to Rule 92 *ter*. The Chamber also recalls that Mr. Lilić has been compelled, upon motion of the Prosecution, to give evidence before the Trial Chamber via the subpoena issued to him on 15 February 2007.¹¹

6. Moreover, the Prosecution has not demonstrated (a) how reconsideration of the oral ruling is necessary in order to prevent injustice or (b) any change in circumstances since the Chamber issued its oral ruling that justify reconsideration of this matter.

⁶ Motion, para. 9.

⁷ Motion, paras. 10–13.

⁸ Confidential Defence Response: "Confidential Prosecution's Urgent Motion Requesting Reconsideration of Trial Chamber's Oral Decision Dated 24 April 2007 and Leave to Tender Zoran Lilić's Previous Testimony and Statement Pursuant to Rule 92 *ter* with Annex A," with Annex A, 27 April 2007.

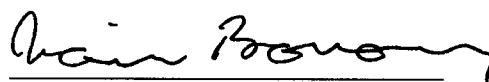
⁹ *Ibid.*, para. 7.

¹⁰ See confidential Decision on Prosecution Motion for Reconsideration of Decision of Fifth Prosecution Motion for Protective Measures, 21 June 2006 (citations omitted).

¹¹ Confidential and *ex parte* Subpoena Ad Testificandum, 15 February 2007. The Chamber considers that, although Mr. Lilić was subpoenaed in a confidential and *ex parte* manner, it is appropriate, under the present circumstances, to make this fact public and *inter partes*.

7. Pursuant to Rules 54 and Rule 92 *ter*, the Trial Chamber hereby DENIES the Motion.

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



Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]