



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: 17 April 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

Decision of: 17 April 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON LUKIĆ DEFENCE MOTION FOR PROTECTIVE MEASURES FOR
WITNESS 6D-1**

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”) was seised of the confidential “Motion of the Defence of the Accused Sreten Lukic for Protective Measures and Testimony via Video-Link with Exhibit A”, filed on 27 March 2008 (“Motion”), and issued oral rulings thereon on 9 and 14 April 2008. The Chamber now issues this written Decision, confirming those oral rulings.¹

1. In the Motion, the Lukić Defence requested that the witness be granted a pseudonym and closed session testimony, or alternatively voice and image distortion. The Defence also requested that the witness be permitted to testify via video-conference link.

2. In its “Prosecution Response to Sreten Lukić’s Motion for Protective Measures and Testimony via Video-Link,” filed confidentially on 4 April 2008, the Prosecution did not oppose the request for the pseudonym and voice and image distortion, but opposed the testimony in closed session and testimony via a video-conference link. However, during the hearing conducted on 9 April 2008, the Prosecution withdrew its objection to the testimony in closed session, provided that the witness appeared before the Tribunal to give evidence.² At this hearing, the Chamber denied the Motion in respect of the requested video-conference link.³

3. The Chamber notes that both the Lukić Defence and the Prosecution mistakenly refer to the old video-conference link Rule (Rule 71 *bis*), which has now been repealed and replaced by Rule 81 *bis*. The Chamber entertained the Motion under the relevant Rule.

4. At the hearing on 14 April 2008, the Lukić Defence informed the Chamber that the witness was now prepared to come to the Tribunal to give evidence, and renewed its motion for closed session testimony. The Chamber granted the Motion in this respect, on the basis that it was satisfied that the “voice and image distortion alone would not be sufficient to protect the identity of the witness.”⁴

¹ The Chamber considers it appropriate to file this decision publicly, although the filings were accomplished on a confidential basis. No confidential information is contained herein.

² T. 25008 (9 April 2008).

³ T. 25009 (9 April 2008).

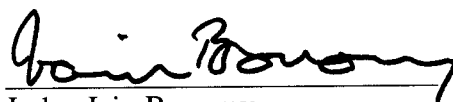
⁴ T. 25252 (14 April 2008).

5. Accordingly, the Trial Chamber, pursuant to Rules 54, 69, 75, 79, and 81 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby CONFIRMS its oral rulings and ORDERS as follows:

- (a) Representatives of the public shall not photograph, video-record, or sketch the witness while he/she is on the premises of the Tribunal.
- (b) The witness shall be identified by the pseudonym 6D-1 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witness 6D-1 shall give his/her testimony in closed session.
- (d) The parties shall not disclose to the public any protected material, including information and documents, pertaining to 6D-1 except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the case or the knowledge of the parties. If the parties find it directly and specifically necessary to make disclosures pursuant to this limited purpose, they shall inform each person among the public to whom non-public material or information is shown or disclosed that such person is not to copy, reproduce, or publicise such material or information, and is not to show, disclose, or convey it to any other person. If provided with the original or any copy or duplicate of such material or information, such person shall return it to the party when continued possession of the material or information is no longer necessary for the preparation and presentation of the case.
- (e) The Prosecution and Defence counsel for the co-Accused, and their representatives and agents who are acting pursuant to their instructions or requests, shall notify the Lukić Defence of any requested contact with the witness referred to herein, in order to enable the Lukić Defence to make the necessary arrangements for such contact, in the event the witness agrees to contact with the Prosecution or counsel for the co-Accused.
- (f) The names, whereabouts, and other identifying information concerning the witness shall be sealed and not included in any public record of the Tribunal. To the extent that the name and other identifying information concerning the witness are contained in existing public documents of the Tribunal, that information shall be expunged from those documents.
- (g) If a member of the Prosecution or any of the Defence teams withdraws from the case, all material in his or her possession shall be returned to the person serving as lead counsel for that party at that time.

- (h) All materials pertaining to 6D-1, including those materials disclosed under subsection (d) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.
- (i) Except as provided for by subsection (d) above, any person who knowingly and wilfully discloses the identifying information of 6D-1, or any other information sufficient to identify this witness, shall be in violation of this Order, and may be subject to prosecution for contempt of the Tribunal pursuant to Rule 77 of the Rules.
- (j) All provisions of this Decision shall apply equally to the Prosecution; the *Amici Curiae* (where necessary); the six Accused and their Defence counsel, co-counsel, and other members of the Defence teams; and the public.
- (k) For the purposes of this decision, the “public” means all persons, including corporations; governments and organs/departments thereof; organisations; entities; associations; groups; the Accused’s family members, friends, and associates; accused and defence counsel in other proceedings before the Tribunal; and the media. However, for the purposes of this Decision, the “public” does not mean Judges of the Tribunal; staff of the Registry and the Office of the Prosecutor; the *Amici Curiae* (where necessary); or the Accused and their Defence counsel, co-counsel, and other members of the Defence team.
5. The Chamber hereby **INSTRUCTS** the Registry to take all necessary measures to implement this Order.

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



Judge Iain Bonomy

Presiding

Dated this seventeenth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]