



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: 3 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

Decision of: 3 July 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON ŠAINOVIĆ DEFENCE MOTION FOR TRIAL CHAMBER TO SUMMON
CHRISTOPHER HILL AND BORIS MAYORSKI**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Government of the United States of America

Government of the Russian Federation

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 “Defence Request Seeking that the Trial Chamber Issues Binding Orders to the Governments of the United States of America and the Russian Federation & Summons to Christopher R. Hill and Boris Mayorski Pursuant to Rules 54 and 98,” filed 26 June 2008 (“Motion”), and hereby renders its decision thereon.

1. The Šainović Defence moves the Chamber, pursuant to Rules 54, 73, and 98, to issue summonses to Christopher Hill and Boris Mayorski, both of whom the Chamber invited to give evidence before it via letters to the United States of America and the Russian Federation, respectively. It is argued that “the exact same judiciary measures should be undertaken in respect of securing the presence of Mr. Hill and Mr. Mayorski, as were those used to secure the presence of General Dimitrijević” (*i.e.*, summons). Further, the Šainović Defence submits that it has *locus standi* to seek such relief, and emphasises the importance of the testimony of these two individuals to the above-captioned proceedings.¹

2. Rule 98 provides as follows: “A Trial Chamber may order either party to produce additional evidence. It may *proprio motu* summon witnesses and order their attendance.” A plain reading of this the Rule reveals that a Chamber may summon a witness it chooses to call and that this may be done *ex proprio motu*, not upon motion of a party to the proceedings. The Šainović Defence therefore has no standing to move the Chamber to summon Messrs Hill and Mayorski.

3. Moreover, it is squarely within the discretion of the Chamber to decide what steps it considers appropriate in relation to the attendance of witnesses in terms of Rule 98. The Chamber notes that the Šainović Defence was free to call both Messrs Hill and Mayorski during its case and even seek subpoenas pursuant to Rule 54 for their attendance, but decided not to adopt this course of action. The Šainović Defence even proposed these individuals as witnesses, during the hearing on 2 May 2007, but did not then call them during the presentation of its evidence.²

¹ Motion, paras. 8, 11, 14, 16.

² T. 12419 (2 May 2007).

4. Accordingly, the Trial Chamber, pursuant to Rules 54 and 98 of the Rules of Procedure and Evidence of the Tribunal, hereby DISMISSES the Motion.

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



Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]