

UNITED
NATIONS

IT-02-54-T
D1685 - D1682
08 APRIL 2002

IT-00-39/40-PT
D3431 - D3428
08 APRIL 2002

2481
SF
1685
SF



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-00-39 & 40-PT

Date: 8 April 2002

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 8 April 2002

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

**DECISION ON PROSECUTION'S REQUEST AND SECOND
REQUEST PURSUANT TO RULE 75(D) FOR VARIATION OF
PROTECTIVE MEASURES**

Office of the Prosecutor:

Prosecutor v Plavšić and Krajišnik

Mr. Mark Harmon and Mr. Alan Tieger

Prosecutor v. Milošević

Mr. Geoffrey Nice and
Mr. Dermot Groome

Accused:

Prosecutor v Plavšić and Krajišnik

Mr. Deyan Brashich and Mr. Nikola P. Kostich, for Momčilo Krajišnik

Mr. Robert J. Pavich, Mr. Eugene O'Sullivan and Mr. Peter Murphy, for Biljana Plavšić

Prosecutor v. Milošević

Slobodan Milošević



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 (“International Tribunal”),

BEING SEISED of a confidential and partly *ex parte* “Prosecution’s Request Pursuant to Rule 75(D) for Variation of Protective Measures”, filed by the Office of the Prosecutor (“Prosecution”) on 22 March 2002 (“the Request”), and a confidential “Second Prosecution Request Pursuant to Rule 75(D) for Variation of Protective Measures”, filed by the Prosecution on 3 April 2002 (“the Second Request”),

NOTING that the Prosecution seeks variation of the Trial Chamber’s “Decision on Prosecution’s Motion for Order of Non-Disclosure” issued by the Chamber on 30 October 2001 (“Non-Disclosure Order”), to the extent necessary to permit the Prosecution to disclose to the accused, Slobodan Milošević, the statements of witnesses referred to in the two Requests,

NOTING in particular that the Non-Disclosure Order prohibited the disclosure to the public of information, including the identity and whereabouts of witnesses, including the accused and defence counsel in other proceedings before the Tribunal and that one effect of this order is that the Prosecution is unable to fulfil its disclosure obligations in the *Prosecutor v. Milošević* proceedings concerning the Bosnia indictment,

NOTING that the specific witnesses who will be effected by the Non-Disclosure Order will vary depending upon the material disclosed by the Prosecution in these proceedings, and that the Prosecution therefore request a general order covering witnesses who are or become subject to the Non-Disclosure Order from time to time,

NOTING that this request is made pursuant to Rule 75 (D), which reads, in relevant part:

- (D) Once protective measures have been ordered in respect of a victim or witness, a party seeking to vary or rescind such an order must:
- (i) apply to the Chamber that granted such measures to vary or rescind them or to authorise the release of protected material to another Chamber for use in other proceedings; or
 - (ii) if, at the time of the request for variation or release, the original Chamber can no longer be constituted by the same Judges, apply to the President to authorise such variation or release who, after consulting with any Judge of the original Chamber who remains a Judge of the Tribunal and after giving due consideration to matters relating to witness protection, shall determine the matter.

CONSIDERING that whilst the original Chamber that rendered the Non-Disclosure Order was composed differently to its current composition, the Chamber interprets the reference in Rule 75 (D)(i) to “the original Chamber” as including a reference to the Trial Chamber however composed during the course of the pre-trial or trial proceedings,

CONSIDERING that the request made will not prejudice the privacy and protection of the victims and witnesses, the information proposed for disclosure being the subject of orders for non-disclosure to the public in *Prosecutor v. Milošević* proceedings,¹ and is consistent with the rights of the accused,

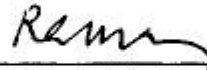
PURSUANT TO RULE 75 (D) of the Rules of Procedure and Evidence of the International Tribunal,

¹ See *Prosecutor v. Milošević*, “Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69”, Case No. IT-02-54-T, 19 February 2002,

HEREBY ORDERS AS FOLLOWS:

The Non-Disclosure Order is varied to the extent necessary to permit the Prosecution to disclose to the accused, Slobodan Milošević, the statements and related exhibits of witnesses who are now subject to the Non-Disclosure Order or become subject to it, and who are also proposed witnesses in the *Prosecutor v. Milošević* proceedings.

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



Richard May
Presiding

Dated this eighth day of April 2002
At The Hague
The Netherlands

[Seal of the Tribunal]

