

IT-98-32-T
D2189-D2185
16 MAY 2002

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UNITED
NATIONS



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: IT-98-32-T
Date: 16 May 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge David Hunt, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Liu Daqun

Registrar: Mr Hans Holthuis

Decision of: 16 May 2002

PROSECUTOR

v

Mitar VASILJEVIĆ

DECISION ON PROSECUTION MOTION PURSUANT TO RULE 75(D) IN *PROSECUTOR*
v MILOŠEVIĆ
(CASE IT-02-54-T)

Counsel:
(in *Prosecutor v Vasiljević*)

Mr Dermot Groome for the Prosecutor

Mr Vladimir Domazet for Milorad Krnojelac

(in *Prosecutor v Milošević*)

Mr Geoffrey Nice, for the Prosecutor

The Accused
Slobodan Milošević (unrepresented)

Amici Curiae
Mr Steven Kay, Mr Branislav Tapušković and Mr Mischa Wladimiroff

TRIAL CHAMBER II 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,

NOTING the “Prosecution Request Pursuant To Rule 75(D) For Variation of Protective Measures” filed on 14 May 2002 (“Motion”), in which the Prosecution seeks a variation of protective measures ordered by the Trial Chamber (“protective measures”) to allow it to disclose material to Slobodan Milošević (“Accused”) and others in *Prosecutor v Milošević*, Case IT-02-54-T (“*Milošević case*”), such material being statements, transcript of trial testimony and related exhibits of witnesses who are the subject of those protective measures, and to whom the following pseudonyms were given: VG-13, VG-14, VG-18, VG-22 and VG-59;

NOTING that in its “Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69” of 9 February 2002, the *Milošević* Trial Chamber ordered that “[t]hose witnesses granted protective measures in other cases before the Tribunal shall continue to be protected in accordance with those measures”, and that the prosecution now seeks a further variation of the protective measures of these witnesses to allow it also to disclose the transcripts of their testimony and related exhibits in the present case;¹

NOTING that it is intended that witnesses VG-13, VG-14, VG-18, VG-22 and VG-59 be called to testify in the *Milošević case*, and thus that their statements, transcripts of trial testimony and exhibits relating to these witnesses must be disclosed to the Accused in accordance with Rule 66(A)(ii);

NOTING FURTHER that the statements of these witnesses include the transcripts of testimony of those witnesses given during the present case, and thus that the transcript of their testimony must be disclosed to the Accused in accordance with Rule 66(A)(ii);

NOTING that the Prosecutor is under an obligation to disclose to the Accused the exhibits relating to the first and second group of witnesses in accordance with Rule 65ter(E)(iii);

NOTING that the *Amici Curiae* were appointed by the Trial Chamber to assist the Trial Chamber in the proper determination of the case;

NOTING that the *Milošević* Trial Chamber has ordered in the “Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69” issued on 19 February 2002 (“First *Milošević* Decision”), that witnesses granted protective measures in other cases before the Tribunal shall continue to be protected in accordance with those measures;

NOTING that the *Milošević* Trial Chamber has ordered in the “Decision on Prosecution Request to File Confidentially Rule 65ter Witness and Exhibit Lists and Witness Statements Required by Rule 66(A)(ii)” issued on 21 March 2002 (“Second *Milošević* Decision”), that the Accused and the *Amici Curiae* are prohibited from disclosing to the public material disclosed pursuant to Rule 65ter(E)(ii), Rule 65ter(iii) and Rule 66(A)(ii) of the Rules, except to the extent directly and specifically necessary for the preparation and presentation by the Accused of his defence, or in the case of the *Amici Curiae*, to the extent they satisfy the Trial Chamber that such disclosure is necessary for the discharge of their role in assisting the Trial Chamber;

NOTING FURTHER that the *Milošević* Trial Chamber in an Order issued on 16 April 2002 has identified lawyers Zdenko Tomanović and Dragoslav Ognjanović (“Legal Associates”) whom the Accused wishes to assist him in the conduct of his defence, as bound by all existing orders of the Trial Chamber, including all orders for protective measures;

CONSIDERING that, by the “Order On Protective Measures For Witnesses at Trial” issued by the Trial Chamber on 24 July 2001 (“*Vasiljević* Order”), this Trial Chamber ordered: (i) that the above witnesses be referred to by pseudonyms at all times in the course of their testimony, or whenever referred to in the course of the proceedings, whether during the hearing or in documents, including the transcript of the proceedings, and (ii) that they shall testify with the use of screening from the public and that the device of facial distortion shall be used in relation to the audio-visual recording and transmission of the testimony of those witnesses;

CONSIDERING that the *Vasiljević* Order was made subject to the continued application of the “Decision on Motion by Prosecution for Protective Measures” issued by this Trial Chamber on 8 September 2000 (“*Vasiljević* Decision on Protective Measures”), which provided that:

1. The accused, his defence counsel, and their representatives who are acting pursuant to their instructions or requests, be ordered not to disclose to the public, to the media or to family members and associates the names of witnesses, their whereabouts, copies of witness statements, the content of their witness statements or any information which would enable them

¹ Par 33(1).

to be identified and would breach the confidentiality of court proceedings unless necessary for the preparation of the defence; and

2. Such Order applies to all material disclosed to the accused, his defence counsel, and their representatives who are acting pursuant to their instructions or requests.
3. Nothing in this Decision shall preclude any part or person from seeking such other or additional protective measures as may be viewed as appropriate concerning a particular witness or other evidence.

CONSIDERING FURTHER that, in the event that any of these witnesses is called to give evidence in the *Milošević* case, they should be given a different pseudonym and that no direct reference should be made in a public hearing to the fact that they gave evidence in the *Vasiljević* trial;

CONSIDERING that Trial Chamber II is no longer constituted in its original form but that its members are available and the original Trial Chamber can be constituted within the terms of Rule 75(D);

PURSUANT TO Rule 75(D);

HEREBY grant the Request and **ORDERS:**

1. That the *Vasiljević* Order of the Trial Chamber be varied to the extent necessary to permit the prosecution to disclose the statements, transcripts of trial testimony and exhibits relating to these witnesses to the Accused, the *Amici Curiae* and the Legal Associates in the *Milošević* Trial. The Order should otherwise remain in place.
2. That the disclosure of the unredacted statements, transcripts of trial testimony and exhibits to the Accused, the *Amici Curiae* and the Legal Associates be subject to the conditions of the *Vasiljević* Decision on Protective Measures.
3. That in the event that any of these witnesses is called to give evidence in the *Milošević* case, they should be given a different pseudonym and that no direct reference should be made in a public hearing to the fact that they gave evidence in the *Vasiljević* trial.

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

Dated this 16th day of May 2002,
At The Hague,
The Netherlands.

David Hunt

Judge David Hunt
Presiding Judge

[Seal of the Tribunal]