



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-02-54-T
Date: 29 August 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: 29 August 2002

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION'S APPLICATION FOR CERTIFICATION UNDER
RULE 73 (B) CONCERNING RULE 70**

The Office of the Prosecutor

Mr. Geoffrey Nice
Mr. Dirk Ryneveld

The Accused

Slobodan Milošević

Amici Curiae

Mr. Steven Kay
Mr. Branislav Tapušković
Mr. Michail Wladimiroff

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 “Prosecution’s Application for Certification Under Rule 73 (B)” filed by the Office of the Prosecutor (“Prosecution”) on 1 August 2002 (“Application”), in which the Prosecution seeks certification from the Trial Chamber for interlocutory appeal of its decision of 25 July 2002 that Rule 70 did not apply to witness testimony which had been provided to the Prosecution by a government under the regime and protection of Rule 70,

NOTING the Prosecution’s arguments in favour of its Application, that:

- (a) The Decision raises important issues relating to the scope and purpose of Rule 70;
- (b) The Decision raises questions concerning the right of a Trial Chamber to review Rule 70 material to determine the purpose for which it was provided;
- (c) The Decision effects the practice of States in the provision of such information in this case in future investigations;
- (d) The Decision differs from previous Trial Chamber jurisprudence and it would be of benefit to settle the law and practice with respect to Rule 70 information; and
- (e) Immediate resolution of the issue by the Appeals Chamber will materially advance the proceedings,

NOTING that Rule 73 (B) requires two cumulative criteria to be satisfied before the Trial Chamber can exercise its discretion to certify a decision for interlocutory appeal: (1) that the issue would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial, *and* (2) an immediate resolution of the issue may, in the opinion of the Trial Chamber, materially advance the proceedings,


CONSIDERING that the nature of Rule 70 evidence, its origin and the manner in which the Trial Chamber is to apply it, impacts significantly on both the fair and expeditious conduct of proceedings and possibly the outcome of the trial,

CONSIDERING that this issue has not been determined by the Appeals Chamber and has been the subject of different practice in another Trial Chamber, and that there have been several similar applications in this trial and more are anticipated, the Trial Chamber considers that immediate resolution of this issue would materially advance the proceedings,

PURSUANT to Rule 73 (B) of the Rules of Procedure and Evidence

HEREBY CERTIFIES the interlocutory appeal of the Decision.

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


Richard May
Presiding

Dated this twenty-ninth day of August 2002
At The Hague
The Netherlands

[Seal of the Tribunal]