



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: 4 April 2003
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 4 April 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION REQUEST FOR RECONSIDERATION OF THE TRIAL
CHAMBER'S DECISION CONCERNING A HUMANITARIAN ORGANISATION OR
FOR CERTIFICATION OF APPEAL AGAINST THE DECISION**

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice
Mr. Dermot Groome

The Accused

Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Mr. Branislav Tapušković
Mr. Timothy L.H. McCormack

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 *ex parte* “Prosecution’s Request for Reconsideration of the Trial Chamber’s ‘Decision on Prosecution Motion for Protective Measures’ or for Certification of Appeal Against the Decision”, dated 20 March 2003 (“Request”),¹ in which the Prosecution requests the Trial Chamber either to reconsider its “Decision on Prosecution Motion for Protective Measures” of 13 March 2003 (“Decision”)² or, alternatively, to certify this issue for appeal pursuant to Rule 73(B),

– **HAVING CONSIDERED** the Prosecution submissions in its Request,

NOTING that Rule 73 (B) requires two 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,³

NOTING that a Trial Chamber may reconsider its own decisions in appropriate circumstances,

NOTING the argument of the Prosecution that different Trial Chambers have dealt with the issue under consideration differently, referring however only to one decision by the Trial Chamber in the *Blaškić* case,⁴

¹ This Request concerned evidence of a witness who had been in the employment of a humanitarian organisation and has been edited so as to exclude any reference to the name of that organisation, which is the subject of orders to protect its confidentiality.

² This Decision concerns the application referred to above and is altered for the same reason set out in footnote 1 above. A public version of this Decision was issued by the Trial Chamber on 1 April 2003.

³ See *Prosecutor v. Brđanin and Talić*, “Decision on Radislav Brđanin’s Motion for the Issuance of Rule 73(B) Certification Regarding the Chamber’s Rule 70 Confidential Decision”, 23 May 2002, in which it is stated – as noted by the Prosecution in its Request – that these two conditions are cumulative and constitute an exception to the principle that decisions on all motions are without interlocutory appeal.

⁴ *Prosecutor v. Blaškić*, “Decision of Trial Chamber I on Prosecutor’s Requests of 5 and 11 July (sic) 1997 for Protection of Witnesses”, IT-95-14-PT, 10 July 1997.

CONSIDERING that in its Decision, this Chamber explicitly distinguished the *Blaškić* Decision from the issues of relevance in the application before this Trial Chamber and that the Prosecution has failed to show any basis for submitting that the Chamber should reconsider its findings in respect of the *Blaškić* Decision,⁵

NOTING the argument of the Prosecution that the practice of Rule 70 information providers will be significantly affected by this Decision and that it “will most likely have a negative impact on the providing of information as the basis and conditions its being presented as evidence has been altered [sic]”,⁶

CONSIDERING that the question of whether or not the Decision will have an adverse impact on the practice of Rule 70 information providers other than the humanitarian organisation the subject of the Decision, does not provide justification for the Chamber to either reconsider its Decision or grant Rule 73 certification,

CONSIDERING that, whilst a Trial Chamber may reconsider its own decisions in certain circumstances, no legitimate basis for such reconsideration has been made out by the Prosecution in its Request,

CONSIDERING that the Prosecution has failed to satisfy the cumulative requirements for certification pursuant to Rule 73(B), that (1) 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,

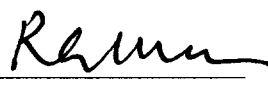
⁵ The Trial Chamber dealt with this in footnote 12 of its Decision, as follows: “This application differs materially from that which was the subject of a Decision relied on by the Prosecution: *Prosecutor v. Blaškić*, “Decision of Trial Chamber I on Prosecutor’s Requests of 5 and 11 July (sic) 1997 for Protection of Witnesses”, IT-95-14-PT, 10 July 1997. In the application before that Chamber, protection was sought and granted on behalf of two witnesses who – the Chamber accepted – would be “seriously threatened should their identity be disclosed to the public and the media”, para. 10. Therefore, whilst it was considered that the safety of staff of the humanitarian organisation would also be threatened by disclosure of the identity of the identified witnesses, there was a real threat attaching to the witnesses for whom protection was in fact sought. In this respect, the application before this Chamber is distinguishable from that underpinning the decision in the *Blaškić* case.”

⁶ Prosecution Request, para. 14.

PURSUANT TO Rules 54 and 73(B) of the Rules

HEREBY DENIES THE MOTION

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



Richard May
Presiding

Dated this fourth day of April 2003
At The Hague
The Netherlands

[Seal of the Tribunal]