



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: 1 May 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: 1 May 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION'S FURTHER MOTION TO AMEND WITNESS LIST
AND FOR PROTECTIVE MEASURES FOR SENSITIVE SOURCE WITNESSES**

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 partly confidential and *ex parte* “Prosecution’s Further Omnibus Motion for Leave to Amend the Witness List and Request Protective Measures for Sensitive Source Witnesses”, filed by the Prosecution on 11 April 2003 (“Motion”),

NOTING that the Motion seeks:

- (a) to add 6 witnesses to its witness list for the Croatia and Bosnia part of the trial and remove 20 witnesses from that witness list;
- (b) the protective measure of delayed disclosure for one witness who, it is said, faces risks to his safety and security; and
- (c) in-court protective measures of facial and voice distortion for another witness who has received threats not to testify about events witnessed,¹

CONSIDERING the Trial Chamber’s ruling subsequent to the filing of the prosecution’s pre-trial material for the Croatia and Bosnia part of these proceedings that it would only allow the admission of additional material by the Prosecution on good cause being shown,²

CONSIDERING the Trial Chamber accepts that the six additional witnesses the Prosecution seeks to add to the witness list, particularly in light of the security issues set out in its Motion and the fact that other 20 witnesses will be removed from that list, satisfies its requirement that good cause be shown, in that the witnesses have only been interviewed recently and since the original witness list was filed have only recently agreed to testify,

NOTING that with respect to the protective measures sought, the Prosecution relies upon Rules 69, 75 and 79 of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

¹ The specific relief sought is set out in the Motion, p. 6.

² “Decision on Prosecution Request for Agreement of Trial Chamber to Amend Schedule of Filings”, 18 April 2002, p.3.

NOTING the confidential and *ex part* Annexes to the Motion setting out the nature of the testimony the witnesses would give and the reasons for the application for protective measures by two of these witnesses,

CONSIDERING that the Trial Chamber set out in detail, in its Decision of 13 March 2003 and in previous decisions, the preconditions to be satisfied before the particular measures sought to will be granted,³ and will apply those preconditions to the relief sought in this application,

CONSIDERING that the Trial Chamber has applied the relevant criteria and has determined that the in-court protective measures sought for one witness referred to as B-1455 are appropriate, and that such orders are consistent with the rights of the accused. The reasons for this are the particular security risks attaching to this witness and the important nature of the testimony it is said the witness will give,

CONSIDERING FURTHER that, with respect to the application in respect of one witness referred to as C-062⁴ that the accused and his appointed associates not disclose the material to third parties except to the extent directly and specifically necessary for the preparation and presentation of the defence case (and the *amici curiae* do so to the extent necessary to assist the Trial Chamber), and that they obtain non-disclosure agreements before doing so, the Chamber will grant this request, on the basis that it applies to a special and limited category to which this witness belongs,⁵

³ See “Decision on Prosecution’s Further Motion to Amend Witness List and for Protective Measures for Sensitive Source Witnesses”, 13 March 2003. See also Decisions referred to by the Chamber in that Decision as follows: for Rule 69 measures, Prosecutor v. Milošević, “Decision on Prosecution Motion for Provisional Protective Measures” issued on 19 February 2002 (“First Decision”); “Decision on Prosecution Motion for Protective Measures for Victims and Witnesses” issued on 19 March 2002 (“Second Decision”), and “Second Decision on Protective Measures for Sensitive Witnesses”, 6 June 2003. For Rule 75 measures, “Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses (Bosnia)”, 30 July 2002. For Rule 79, Prosecutor v. Milošević, “Confidential Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses Testifying During the Croatia Phase of the Trial”, 17 September 2002, para.15.

⁴ This witness is described variously in the Motion as C-062 and C-063. The Prosecution should clarify the witness’s correct pseudonym.

⁵ This reflects the consistent position of the Chamber on these matters. See, in this case, “Decision on Prosecution’s Further Motion to Amend Witness List and for Protective Measures for Sensitive Source Witnesses”, 13 March 2003, and “First Decision on Protective Measures for Sensitive Source Witnesses”, 3 May 2002.

PURSUANT TO RULES 54, 69 and 75**HEREBY GRANTS THE MOTION and ORDERS** as follows:

- (1) The six witnesses identified in confidential Annex A to the Motion may be added to the witness list;
- (2) The 20 witnesses identified in confidential Annex A to the Motion may be deleted from the witness list;
- (3) As to the protective measures of delayed disclosure and third party agreements sought in respect of the witness identified as C-062 in confidential Annex A to the Motion
 - (a) disclosure of unredacted witness statements and related exhibits shall be made to the *amici curiae* not less than 30 days, and to the accused and his appointed associates not less than 10 days, before the witness is expected to testify;
 - (b) the accused and his appointed associates shall not disclose the witness statements and related exhibits to third parties except to the extent directly and specifically necessary for the preparation and presentation of the defence case (or, in the case of the *amici curiae*, the extent to which they are assisting the Trial Chamber), and
 - (c) the accused, his appointed associates and *amici curiae* shall obtain non-disclosure agreements from third parties (as provided by the Prosecution) as a precondition for release of the witness statements and related exhibits to them; and

- (4) The protective measures of pseudonym, face and voice distortion in respect of the witness identified as B-1455 in confidential Annex A to the Motion are granted.

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



Richard May
Presiding

Dated this first day of May 2003
At The Hague
The Netherlands

[Seal of the Tribunal]