



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: 8 July 2003

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 July 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON CONFIDENTIAL PROSECUTION MOTION
PURSUANT TO RULE 75(G) FOR VARIATION OF PROTECTIVE MEASURES**

The Office of the Prosecutor

Mr. Geoffrey Nice
Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groome

The Accused

Mr. Slobodan Milošević

Amicus Curiae

Mr. Steven Kay
Mr. Branislav Tapušković
Mr. Timothy 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 Prosecution Motion Pursuant to Rule 75(G) for Variation of Protective Measures, filed by the Office of the Prosecutor (“Prosecution”) on 27 June 2003 (“Motion”), requesting variations in the protective measures ordered in the *Krnojelac*¹ and *Kunarac*² cases (“first proceedings”) in respect of nine witnesses whose prior testimony in those cases will be admitted in the *Milošević* case³ (“present case”) under Rule 92 *bis* (D) (“protected witnesses”),

NOTING that the protective measures of the protected witnesses in the first proceedings continue to have effect in the present case, by operation of Rule 75(F)(i) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

NOTING that (1) the Appeals Chamber has handed down a judgment in the *Kunarac* case;⁴ (2) the Appeals Chamber has heard the appeal in the *Krnojelac* case,⁵ but has not yet handed down a judgement; and (3) as a result, no Chamber of the International Tribunal remains seised of the first proceedings, within the meaning of Rule 75(G)(i) of the Rules,

NOTING that the variations, as set out in the Motion, are appropriate and should be granted,

CONSIDERING that the protective measures of the protected witnesses in the first proceedings have the effect of (1) preventing the Trial Chamber from publicly admitting into evidence in the present case the protected witnesses’ transcripts and related exhibits and (2) making it difficult for the accused to cross-examine the protected witnesses in public,⁶

PURSUANT TO Rule 75 of the Rules,

¹ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A.

² *Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23-T & IT-96-23/1-T; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A.

³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T.

⁴ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, “Judgement”, 12 June 2002.

⁵ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A.

⁶ Motion, paras. 10, 15.

HEREBY ORDERS as follows:

- (1) The protective measures ordered in respect of witnesses FWS 104, FWS 111, FWS 33, FWS 71, FWS 109, FWS 69, and FWS 54 in the proceedings of the *Krnojelac* case on 26 October 2000, 12 February 2001, and 27 February 2001, as varied by the Order of 26 April 2002, are FURTHER VARIED to allow in the present case the following:
 - (a) public reference to the fact that these witnesses were witnesses in the *Krnojelac* case,
 - (b) public admission of and reference to open session transcripts, redacted where necessary, of trial testimony in the *Krnojelac* case, and
 - (c) public admission of and reference to exhibits publicly tendered or used in the course of the trial testimony in the *Krnojelac* case;

- (2) The protective measures ordered in respect of witnesses FWS 104, FWS 111, FWS 33, FWS 71, FWS 109, FWS 69, and FWS 54 in the proceedings of the *Krnojelac* case on 26 October 2000, 12 February 2001, and 27 February 2001, as varied by the Order of 26 April 2002, are FURTHER VARIED to allow in the present case reference to and use of the following:
 - (a) pseudonyms in the *Krnojelac* case in the course of testimony given by these or other witnesses in the present case,
 - (b) pseudonyms in the *Krnojelac* case in exhibits admitted or used in public by these or other witnesses in the present case, and
 - (c) pseudonyms in the *Krnojelac* case otherwise in the proceedings before the International Tribunal or in discussion between the parties, the *amici curiae*, and the legal associates of the accused;

- (3) The protective measures ordered in respect of witnesses FWS 33, FWS 75, and FWS 87 in the proceedings of the *Kunarac* case on 05 October 1998 and 21 March 2000, as varied by the Orders of 04 June 2002 and 29 July 2002, are FURTHER VARIED to allow in the present case the following:
 - (a) public reference to the fact that these witnesses were witnesses in the *Kunarac* case,
 - (b) public admission of and reference to open session transcripts, redacted where necessary, of trial testimony in the *Kunarac* case, and

- (c) public admission of and reference to exhibits publicly tendered or used in the course of trial testimony in the *Kunarac* case; and
- (4) The protective measures ordered in respect of witnesses FWS 33, FWS 75, and FWS 87 in the proceedings of the *Kunarac* case on 05 October 1998 and 21 March 2000, as varied by the Orders of 04 June 2002 and 29 July 2002, are FURTHER VARIED to allow in the present case reference to and use of the following:
 - (a) pseudonyms in the *Kunarac* case in the course of testimony given by these or other witnesses in the present case,
 - (b) pseudonyms in the *Kunarac* case in exhibits admitted or used in public by these or other witnesses in the present case, and
 - (c) pseudonyms in the *Kunarac* case otherwise in the proceedings before the International Tribunal or in discussion between the parties, the *amici curiae*, and the legal associates of the accused.
- (5) All provisions of this Decision shall apply equally to the *amici curiae* and the legal associates of the accused.

For the purpose of this decision, “the public” means and includes all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor, and the accused and the *amici curiae*. “The public” also includes, without limitation, families, friends, and associates of the accused; the accused and defence counsel in other cases or proceedings before the International Tribunal; the media; and journalists.

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


 Richard May
 Presiding

Dated this eighth day of July 2003
 At The Hague
 The Netherlands

[Seal of the Tribunal]