

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-60-T
Date: 14 November 2003
Original: English

IT-02-60-T
D19628 - D19626
14 NOVEMBER 2003

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IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassilenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Decision of: 14 November 2003

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

CONFIDENTIAL

**DECISION ON PROSECUTION'S EXTREMELY URGENT REQUEST FOR
VARIATION OF ORDERS REGARDING PRIVATE SESSION TESTIMONY**

The Office of the Prosecutor in *Prosecutor v. Radislav Krstić*:
Mr. Norman Farrell

The Office of the Prosecutor in *Prosecutor v. Vidoje Blagojević and Dragan Jokić*:
Mr. Peter McCloskey

Counsel for the Accused:
Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Ms. Cynthia Sinatra for Dragan Jokić

Counsel for Dragan Obrenović:
Mr. David Wilson and Mr. Dušan Slijepčević

Counsel for Momir Nikolić:
Mr. Veselin Londrović and Mr. Stefan Kirsch

TRIAL CHAMBER I, SECTION A, (“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 (“Tribunal”),

BEING SEISED of the “Prosecution’s Extremely Urgent Request for Variation of Orders Regarding Private Session Testimony,” filed confidentially by the Office of the Prosecution (“Prosecution”) on 12 November 2003 (“Request”),

NOTING that the Request informs the Trial Chamber that the Prosecution seeks to present materials in the pending appeal *Prosecutor v. Radislav Krstić* (Case No. IT-98-33-A) contained in the private session testimony of Dragan Obrenović in this case,¹

NOTING further that the Request informs the Trial Chamber that the Prosecution considers itself obliged to disclose private session testimonies of Dragan Obrenović and Momir Nikolić in the *Krstić* appeal pursuant to Rule 66(A) (ii),

NOTING the obligation of the Prosecution to disclose, as soon as practicable, to defence the existence of material known to the Prosecution which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of the prosecution evidence, pursuant to Rule 68,

NOTING that the Prosecution accordingly requests in accordance with Rules 54 and 79 variation of the Trial Chamber’s orders to enter private session during the testimonies of Dragan Obrenović and Momir Nikolić, including the Trial Chamber’s oral decision of 6 October 2003 to enter private session, so as to allow for confidential use of the private session testimonies in the *Krstić* appeal,

NOTING that the Prosecution’s proposal that measures for the protection of private information could be applied to the same extent as in the instant trial proceeding,

NOTING that the Trial Chamber is informed by the Prosecution that counsel for Dragan Obrenović and Momir Nikolić have been contacted and do not object to the Prosecution’s Request, provided that the material in question be kept confidential in the *Krstić* appeal proceedings,

CONSIDERING that Rule 54 allows a Judge or Trial Chamber to issue orders as may be necessary for purposes of an investigation or for the preparation or conduct of the trial,

CONSIDERING that Rule 79 allows a Trial Chamber to order the press and public be excluded from all or part of the proceedings for reason, *inter alia*, of the protection of the interests of justice,

¹ Testimony of Dragan Obrenović, 6 October 2003, T. 2566-70 (private session).

CONSIDERING Rule 75(F) of the Rules, according to which “[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures: (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but (ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measure ordered in the first proceedings”,

NOTING further that Rule 75(G)(i) provides that a party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply to any Chamber, however constituted, remaining seised of the first proceedings,

CONSIDERING that the Request does not seek to rescind, vary or augment the protective measures granted by the Trial Chamber in relation to the private session testimony of Dragan Obrenović or Momir Nikolić,

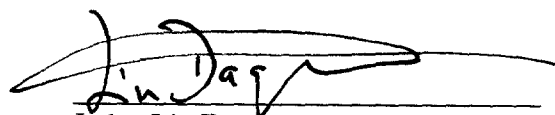
CONSIDERING that pursuant to Rule 75(F), the protective measures applied in the first proceedings shall apply *mutatis mutandis* in the *Krstić* appeal proceedings and the Prosecution is permitted to discharge its disclosure obligations under the Rules in the *Krstić* appeal proceedings, provided that it notifies the Defence for Radislav Krstić of the nature of the protective measure ordered in the first proceedings,

FINDING, therefore, that the action requested of the Trial Chamber in the Request is already provided for in the Rules,

PURSUANT TO Article 20 of the Statute of the Tribunal and Rule 54 and Rule 75 of the Rules,

HEREBY DISMISSES the Request.

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


 Judge Liu Daqun
 Presiding

Dated this fourteenth day of November 2003,
 At The Hague
 The Netherlands

[Seal of the Tribunal]