

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-99-37-PT  
Date: 14 November 2003  
Original: ENGLISH

IT-99-37-PT  
D 8863 - D 8861  
14 NOVEMBER 2003

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Decision:** 14 November 2003

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
DRAGOLJUB OJDANIĆ  
NIKOLA ŠAINOVIĆ**

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**DECISION ON PROSECUTION MOTION  
FOR RECONSIDERATION AND MODIFICATION OF TRIAL CHAMBER'S  
DECISION ON PROTECTIVE MEASURES**

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**The Office of the Prosecutor:**

Mr. Geoffrey Nice  
Ms. Cristina Romano  
Mr. Milbert Shin

**Counsel for the Accused:**

Mr. Eugene O'Sullivan and Mr. Radoje Stefanović, for Milan Milutinović  
Mr. Toma Fila, Mr. Zoran Jovanović, and Mr. Goran Petrović for Nikola Šainović  
Mr. Tomislav Višnjić, Mr. Peter Robinson, and Mr. Vojislav Seležan, for Dragoljub Ojdanić

**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’s Motion for Reconsideration and Modification of Trial Chamber’s Decision on Protective Measures and Further Suspension of Time Limit for an Application for Certification for Leave to Appeal with regard to Two Witnesses with Confidential and *Ex Parte* Annexes A and B” (“the Motion”), filed by the Office of the Prosecutor (“Prosecution”) on 19 September 2003,

**NOTING** the procedural history of these proceedings,<sup>1</sup>

**CONSIDERING** that, regarding the first witness referred to in Confidential Annex A, the Prosecution has not established to the satisfaction of the Trial Chamber the existence of new circumstances warranting the reconsideration of its Decision on Prosecution’s Motions for Protective Measures dated 17 July 2003 (“the Decision”); that disclosure of the identity of this witness to the Defence is protected by existing Orders for non-disclosure to the public of confidential information, including the identity of protected witnesses, and that the Trial Chamber has already approved the continued use of a pseudonym when referring to this witness in public,

**CONSIDERING**, however, that the circumstances alleged by the Prosecution in relation to the second witness referred to in Confidential Annex A may impact negatively upon the safety and security of the witness, and that this matter is still in the early stages of pre-trial preparation and is not expected to come to trial in the near future,


**HEREBY DENIES** the Motion with regard to the first witness, **GRANTS** the Motion in part with regard to the second witness, and **ORDERS** as follows:

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<sup>1</sup> See the Trial Chamber’s “Decision on Prosecution’s Motions for Protective Measures”, issued 18 July 2003, and the procedural history cited therein; confidential “Prosecution’s Motion for Stay of the Execution of the Trial Chamber’s Decision on Protective Measures and Suspension of the Time Limits for an Application for Certification for Leave to Appeal with Confidential and *Ex Parte* Annexes A and B”, filed 23 July 2003; Order Granting Prosecution Request for Stay of Execution and Suspension of Time Limit for an Application for Certification for Leave to Appeal”, issued 24 July 2003; confidential “Prosecution’s Motion for a Further Partial Stay of Execution of the Decision on Protective Measures and Suspension of Time Limit for an Application for Certification for Leave to Appeal with regard to Two Witnesses and Motion for Modification with Confidential and *Ex Parte* Annexes”, filed 22 August 2003; Order Granting Prosecution Request for Further Partial Stay and Suspension of Time Limit for Application for Certification for Appeal and Motion for Modification”, issued 29 August 2003.

- (1) the Prosecution shall, within seven days of the date of this Decision, either disclose the full and unredacted statement and identity of the first witness to the Defence, or withdraw that witness from the proposed list of witnesses; and
- (2) the Prosecution shall, within seven days of the date of this Decision, disclose the redacted statement but not the identity of the second witness to the Defence and shall report to the pre-trial Judge, on a *ex parte* basis at the end of each month, on the current circumstances of this witness, so that the pre-trial Judge may determine the appropriate time for disclosure of the full and unredacted statement and identity of this witness; and
- (3) the time-limit for an application for certification for leave to appeal is hereby extended to seven days from the date of filing of this Decision.

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

  
Richard May  
Presiding

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

**[Seal of the Tribunal]**