



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: 23 January 2004
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 23 January 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**ORDER ON PROSECUTION MOTION FOR ADMISSION OF A STATEMENT OF B-235
PURSUANT TO RULE 89 (F) AND FOR CERTAIN PROTECTIVE MEASURES**

The Office of the Prosecutor

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

The Accused

Mr. 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 (“the International Tribunal”),

BEING SEISED of a confidential “Prosecution Motion for the Admission of a Statement of (B-235) Pursuant to 89 (F) and for Protective Measures”, filed by the Prosecution on 21 January 2004 (“Motion”), requesting:

- (a) the admission of a statement of B-235 (“witness”) pursuant to Rule 89 (F) of the Rules of Procedure and Evidence (“Rules”) which is attached to the Motion as confidential Annex B; and
- (b) that the witness be permitted to testify under the protective measures of a pseudonym (already granted) and facial distortion;

Time at which the statement of the witness was disclosed to the Accused

NOTING that the statement of the witness was only served in the language of the Accused on 21 January 2004,

CONSIDERING that the Accused should have sufficient time in which to prepare for the testimony of this witness, who will give important evidence,

Admissibility of the statement under Rule 89 (F)

NOTING Rule 89 (F), which provides as follows: “A Chamber may receive the evidence of a witness orally or, where interests of justice allow, in written form”,

NOTING the decision of the Appeals Chamber, which held that Rule 89 (F) allows for the admission of a written witness statement when the witness:

- (a) is present in court;
- (b) is available for cross-examination and any questioning by the judges; and

- (c) attests that the statement accurately reflects his or her declaration and what he or she would say if examined,¹

CONSIDERING that the determination of whether the interests of justice favour the admission of a written statement under Rule 89 (F) as evidence-in-chief is made by the Trial Chamber in relation to each individual witness, in light of not only the surrounding circumstances, but also the evidence to be given by the witness,²

CONSIDERING that in circumstances in which the statement has been disclosed within a reasonable time before the witness is called to testify, the evidence contained in the statement is admissible pursuant to Rule 89 (F),

Protective measures

NOTING confidential and *ex parte* A to the Motion, a declaration of an investigator detailing express intimidation of the witness with respect to giving testimony before the International Tribunal,

CONSIDERING that the protective measures sought in respect of the witness, as set out in the Motion, are reasonable and appropriate for the protection of the witness and the family of the witness,

CONSIDERING that the Trial Chamber is satisfied that the measures sought are consistent with the rights of the Accused,

PURSUANT TO Rules 54, 75 and 89 (F) of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY ORDERS AS FOLLOWS:

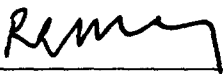
- (1) The witness may not be called to testify before 4 February 2004, being 14 days from the date upon which the statement was disclosed to the Accused in his own language;

¹ *Prosecutor v. Slobodan Milošević*, "Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements," Case No. IT-02-54-AR73.4, 30 September 2003, p.11.

² *Ibid.*, para. 21.

- (2) The statement of the witness attached as Annex A to the Motion may be admitted pursuant to Rule 89 (F);
- (3) The protective measures sought are granted:
- (a) The witness may testify with the use of that pseudonym and with image distortion;
 - (b) The name, address, whereabouts of and identifying data concerning the witness shall be sealed and not included in any of the public records of the International Tribunal;
 - (c) To the extent that the name, address, whereabouts or other identifying data concerning the witness are contained in existing public documents of the International Tribunal, that information shall be expunged from those documents;
 - (d) Documents of the International Tribunal identifying the witness shall not be disclosed to the public or the media;
 - (e) The public and the media may not photograph, video-record or sketch the witness while on the premises of the International Tribunal; and
 - (f) The name of the witness or other identifying data concerning the witness shall not be disclosed by the Accused, his legal associates or the *amici curiae* to the public or media, except to the limited extent such disclosure is necessary to prepare for cross-examination of the witness.

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


Richard May
Presiding

Dated this twenty-third day of January 2004
At The Hague
The Netherlands

[Seal of the Tribunal]