

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: 4 February 2004
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order: 4 February 2004

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
DRAGOLJUB OJDANIĆ
NIKOLA ŠAINOVIĆ**

**ORDER ON PROSECUTION MOTION
FOR VARIANCE OF PRIOR ORDERS OF NON-DISCLOSURE**

The Office of the Prosecutor:

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

Counsel for the Accused:

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević, for Milan Milutinović
Mr. Toma Fila 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 and partly *ex parte* “Prosecution’s Motion for Variance of Prior Orders of Non-Disclosure” filed on 12 December 2003 (“Motion”), seeking, in respect of specific Rule 68 materials (“materials”) provided to the Prosecution pursuant to Rule 70 by an information provider (and described in confidential and *ex parte* Annex A to the Motion), that the Trial Chamber order the accused and their defence teams to comply with two restrictions on use of the Rule 68 material:

- (a) That the material must continue to remain under the protection of Rule 70, and therefore may not be disclosed to others apart from the accused and their respective defence teams, without the prior approval of the information provider; and
- (b) That unless authorised by the provider, the information may only be introduced into the record under seal and referred to in trial in closed session.

NOTING the prior Orders of the Trial Chamber concerning non-disclosure of Rule 66 materials¹ and Rule 68 Materials,

CONSIDERING the Appeals Chamber has held that where it can be established that information is provided to the Prosecution on a confidential basis under Rule 70, then it is protected by paragraphs (C) and (D) of that Rule,² and the information provider may impose conditions upon the use of that information,

CONSIDERING that the content of the materials set out in an *ex parte* Annex to the Motion indicate that the information is important Rule 68 material and that the orders sought would allow the information to be provided to the Accused,

PURSUANT TO Rules 54, 68 and 70 of the Rules of Procedure and Evidence,


¹ 7 June 2002 and 17 July 2003.

² *Prosecutor v. Milošević*, “Decision on the Interpretation and Application of Rule 70”, IT-02-54-AR108 bis & AR73.3, 23 October 2002, para. 20.

HEREBY GRANTS THE MOTION and ORDERS AS FOLLOWS:

- (1) The material may not be disclosed to others apart from the accused and their respective defence teams without the prior approval of the information provider; and
- (2) Unless authorised by the information provider, the information may only be introduced into the record under seal and referred to in trial in closed session.

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



Patrick Robinson
Judge

Dated this fourth day of February 2004
At The Hague
The Netherlands

[Seal of the Tribunal]