

UNITED  
NATIONS

IT-99-37-PT  
D10237 - D10235  
23 SEPTEMBER 2004

10237  
AT



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: 22 September 2004  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**Order:** 22 September 2004

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
DRAGOLJUB OJDANIĆ  
NIKOLA ŠAINOVIĆ**

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

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**The Office of the Prosecutor:**

Mr. Geoffrey Nice  
Ms. Cristina Romano

**Counsel for the Accused:**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević, for Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir 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 Third Motion for Variance of Prior Orders of Non-Disclosure” filed on 7 September 2004 (“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 materials<sup>1</sup> 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,<sup>2</sup> 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 indicates that the information is important Rule 68 material and that the orders sought would allow the information to be provided to the Accused,

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<sup>1</sup> 7 June 2002 and 17 July 2003.

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

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

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.



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Patrick Robinson  
Presiding

Dated this twenty-second day of September 2004  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**