



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: 30 November 2004

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Order of:** 30 November 2004

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

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

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**Office of the Prosecutor:**

Ms. Carla Del Ponte  
Mr. Geoffrey Nice

**The Accused:**

Mr. Slobodan Milošević

**Court Assigned Counsel:**

Mr. Steven Kay, QC  
Ms. Gillian Higgins

**Amicus Curiae:**

Prof. Timothy 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 (“International Tribunal”),

**BEING SEISED OF** a confidential and partly *ex parte* “Prosecution’s Fifth Motion for Variance of Prior Orders of Non-Disclosure” filed on 2 November 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, his defence team and *Amici Curiae*, 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, his defence team and *Amici Curiae*, 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<sup>2</sup>,

**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>3</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 indicate that the information is important Rule 68 material and that the orders sought would allow the information to be provided to the Accused,

**NOTING** that the Trial Chamber reads the Motion as seeking to apply the information provider’s conditions on disclosure of the material in respect of the Accused, his court assigned counsel, his legal associates and the *Amicus Curiae*,

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<sup>1</sup> 19 July 2001 and 21 March 2002.

<sup>2</sup> 23 January 2003, 17 November 2003, 4 December 2003 and 24 September 2004, in which it issued the same orders sought in this Motion.


<sup>3</sup> *Prosecutor v. Milošević*, “Decision on the Interpretation and Application of Rule 70”, IT-02-54-AR108bis & AR73.3, 23 October 2002 (“*Milosevic Appeals Decision*”), 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, his court assigned counsel, his legal associates and the *Amicus Curiae*, 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 English and French, the English text being authoritative.



Patrick Robinson  
Presiding

Dated this thirtieth day of November 2004  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**