



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
IT-03-69-PT
Date: 11 March 2005
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 11 March 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON MOTION OF DEFENCE OF JOVICA STANIŠIĆ
FOR VARIANCE OF PROTECTIVE MEASURES PURSUANT
TO RULE 75(G)(i)**

Office of the Prosecutor:

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

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

Defence Counsel for Mr. Jovica Stanišić:

Mr. Geert-Jan Alexander Knoops
Mr. Wayne Jordash

Defence Counsel for Mr. Franko Simatović:

Mr. Zoran Jovanović

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 the “Request for Variance of Protective Measures Pursuant to Rule 75(G)(i) with Respect to Confidential Testimony and Exhibits in the Milosevic Case,” filed by the Defence of Jovica Stanišić (“Stanišić Defence”) on 9 February 2005 (“Motion”),

NOTING that the Motion specifically seeks “to vary the protective orders granted with respect to witnesses and exhibits tendered in the Milošević case to the extent necessary to enable the Defence of Mr. Jovica Stanišić to have access to such material, among which are the statements of General Vasiljević given in private sessions, which relates to the charges against him and his co-accused, either temporally, geographically, or in terms of structure and organization of the alleged Joint Criminal Enterprise and alleged Vojna Linija, or communications between Mr. Milošević and Mr. Stanišić or the DB,”¹

NOTING the “Prosecution Response to Defence ‘Request for Variance of Protective Measures Pursuant to Rule 75(G)(i) with Respect to Confidential Testimony and Exhibits in the Milosevic Case’ Dated 9 February 2005,” filed 23 February 2005 (“Response”), stating that the Prosecution has no objection to granting the Stanišić Defence access to the closed session testimony of General Vasiljević or any of the 67 witnesses in the Stanišić case who previously testified in the Milošević case, provided that such access is consistent with protective measures,² but that it opposes the Motion to the extent that it seeks unfettered access to the closed and private session transcripts from the Milošević case,³

NOTING that the Response suggests that “the Stanišić Defence can review the public testimony of the Milošević witnesses and make specific applications where it believes information exists in private session that may materially assist it,”⁴

NOTING ALSO the table attached as Annex 1 to the Motion, wherein the Stanišić Defence identifies, on the basis of its inferences from the subject matter of General Vasiljević’s public testimony, specific information presented in private session that the Stanišić Defence believes will materially assist it,⁵

¹ Motion, at para. 19.

² Response, at paras. 5-6.

³ Response, at para. 9.

⁴ Response, at para. 13(b).

⁵ Motion, Annex 1.

NOTING that the Prosecution requests to have the Registry amend the trial record in order to render the table attached as Annex 1 to the Motion a confidential document,⁶

CONSIDERING that the table attached as Annex 1 to the Motion contains no confidential information,

NOTING that the Response states that, in the event the Trial Chamber grants access to non-public materials to the Stanišić Defence, the Prosecution would oppose the disclosure of such material in an un-redacted form,⁷

CONSIDERING that access to confidential material from another case is granted if the party seeking it can establish that it may be of material assistance to its case,⁸

CONSIDERING that the relevance of the material sought by a party may be determined by showing the existence of a nexus between the applicant's case and the cases from which such material is sought, i.e. if the cases stem from events alleged to have occurred in the same geographic area and at the same time,⁹

CONSIDERING that "[a]ccess to confidential material may be granted whenever the Chamber is satisfied that the party seeking access has established that such material may be of material assistance to his case" and that "[i]t is sufficient that access to the material sought is likely to assist the applicant's case materially, or that there is at least a good chance that it would,"¹⁰

NOTING that the crimes charged in the Stanišić case are geographically and temporally related to crimes charged in the Milošević case and that there is at least a good chance the material sought by the Stanišić Defence would assist its case materially,

CONSIDERING that a party is always entitled to seek material from any source to assist in the preparation of its case if the document sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown,¹¹

⁶ Response, confidential annex.

⁷ Response, at para. 16.

⁸ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Appellants Dario Kordić and Mario Čerkez's Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in the *Prosecutor v. Blaškić*, 16 May 2002, at para. 14.

⁹ *Ibid* at para. 15.

¹⁰ *Ibid*.

¹¹ *Ibid* at para. 14.

CONSIDERING that protective measures of closed and private session testimony and confidential exhibits were ordered by the Trial Chamber in the Milošević case after the Trial Chamber was satisfied that such measures were consistent with the rights of the Accused,

NOTING that the Stanišić Defence has expressed to the Trial Chamber its intention to comply with all protective measure orders issued in relation to the requested material,¹²

NOTING that the Trial Chamber remains seised of the first proceeding, within the meaning of Rule 75(G)(i) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

NOTING the Trial Chamber’s “Decision on Defence Motion Filed by the Defence of Franko Simatović (IT-03-69-PT) for Access to Transcripts and Documents”, issued 20 October 2003,

PURSUANT to Rules 54 and 75 of the Rules,

HEREBY DENIES the Prosecution’s request to have the Registry amend the trial record in order to render the table attached as Annex 1 to the Motion a confidential document,

and **ORDERS** as follows:

- (1) The Stanišić Defence shall have access to all non-public testimony and exhibits pertaining to the charges against Jovica Stanišić or his co-accused, Franko Simatović, from the Bosnia and Herzegovina and Croatia parts of the Milošević case, after:
 - i. the Prosecution has had a reasonable opportunity to seek the consent of the witnesses who testified confidentially in the Milošević case for their un-redacted testimony to be disclosed to the Stanišić Defence; and,
 - ii. where such consent is not given by the witness, the Prosecution has redacted those parts of the testimony and exhibits that may reveal the identity of any protected person or that relate to a period other than 1 April 1991 to 31 December 1995.
- (2) The Prosecution shall within a reasonable time determine whether any of the confidential material falls under Rule 70 of the Rules and shall contact the providers of such materials to seek their consent for disclosure of that material.

¹² Motion, at para. 17.

- (3) The Stanišić Defence shall not disclose to the public any confidential or non-public material disclosed to it from the Milošević case.

For the purpose of this decision, “the public” means and includes, all persons, governments, organizations, entities, clients, associations and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor and her representatives, and the accused and his defence team. “The public” also includes, without limitation, families, friends, and associates of the accused; accused and defence counsels in other cases or proceedings before the International Tribunal; the media; and journalists.

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



Judge Robinson
Presiding

Dated this eleventh day of March 2005
At The Hague
The Netherlands

[Seal of the Tribunal]