



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-04-79-PT  
Date: 1 September 2005  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Krister Thelin  
Judge Christine Van Den Wyngaert

**Registrar:** Mr. Hans Holthuis

**Decision of:** 1 September 2005

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ**

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***EX PARTE***

**DECISION ON PROSECUTOR'S APPLICATION FOR  
VARIATION OF PROTECTIVE MEASURES**

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**The Office of the Prosecutor:**

Ms. Carla Del Ponte

**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 (“Tribunal”), is seized of an *ex parte* “Prosecutor’s Application for Variation of Protective Measures”, with confidential annexes, filed 26 August 2005 (“Motion”),

**NOTING** that in the Motion, the Prosecution has requested, pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 75 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), that this Trial Chamber (a) vary the protective measures for three prospective witnesses for the Prosecution in *The Prosecutor v. Mićo Stanišić*, i.e. witnesses ST16,<sup>1</sup> ST17<sup>2</sup> and ST18<sup>3</sup> (“witnesses”); (b) authorise the Prosecution to release the names, and contact information of the witnesses to the Chief Prosecutor of Bosnia and Herzegovina (“Chief Prosecutor of BiH”); and (c) order the Chief Prosecutor of BiH and the Government of Bosnia and Herzegovina to comply, upon release of the requested materials and information, with the conditions stated in the written undertaking attached to the Motion;

**NOTING** that the witnesses have already testified with protective measures in other proceedings before this Tribunal and that the Prosecution has, therefore, filed a similar application with other Chambers of the Tribunal;<sup>4</sup>

**NOTING** that the witnesses, as stated in the motion after having been contacted by the Prosecution, consented to the disclosure of their identities to the Chief Prosecutor of BiH and requested that the Tribunal ensure that any confidential information in relation to them be kept confidential;<sup>5</sup>

**NOTING** that the Chief Prosecutor of BiH already has furnished the Prosecution with a written undertaking (attached to the Motion) to respect the Orders and Decisions of the Trial Chamber concerning this matter, and specifically guaranteeing the following:

- (a) The information disclosed to this Office will be treated as confidential, and will be released to no one except members of the Special Department for War Crimes and the court of Bosnia and Herzegovina as necessary for the purposes of proceedings involving the suspect

<sup>1</sup> On 6 June 2005, the Trial Chamber ordered the following protective measures for witness ST16: pseudonym, image and voice distortion. *See*, Decision on Prosecution’s Motions For Protective Measures For Victims and Witnesses.

<sup>2</sup> On 6 June 2005, the Trial Chamber ordered the following protective measures for witness ST17: pseudonym and closed session. *See*, Decision on Prosecution’s Motions For Protective Measures For Victims and Witnesses.

<sup>3</sup> On 6 June 2005, the Trial Chamber ordered the following protective measures for witness ST18: pseudonym and closed session. *See*, Decision on Prosecution’s Motions For Protective Measures For Victims and Witnesses.

<sup>4</sup> “*Ex Parte* Application for Variation of Protective Measures”, with confidential annexes, filed on 23 August 2005 in *Prosecutor v. Milošević*, Case No.: IT-02-54-T; *Prosecutor v. Krajišnik*, Case No.: IT-00-39-T; *Prosecutor v. Brđanin*, Case No.: IT-99-36-A; and “*Ex Parte, Confidential Supplement and Corrigendum to Application for Variation of Protective Measures*”, filed on 26 August in *Prosecutor v. Milošević*, Case No.: IT-02-54-T; *Prosecutor v. Krajišnik*, Case No.: IT-00-39-T; *Prosecutor v. Brđanin*, Case No.: IT-99-36-A.

identified in Annex A to the Motion, who is currently in the custody of Bosnia and Herzegovina, and to that suspect and his counsel as specified in paragraph (b) below;

- (b) The information disclosed will not be released either to the suspect or his counsel unless this Office obtains assurances under threat of criminal sanction, as stipulated in Article 240 of the Criminal Code of Bosnia and Herzegovina, that the suspect or his counsel respectively will strictly maintain the confidentiality of the information; and
- (c) The Chief Prosecutor's Office will take all necessary legal and practical measures within its powers, as provided for in the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses and the Criminal Procedure Code of Bosnia and Herzegovina, to ensure the safety and security of the witnesses.

**NOTING** that the Government of Bosnia and Herzegovina, through its Minister of Justice, already has furnished the Prosecution with a written undertaking (attached to the Motion) to respect the Orders and Decisions of the Trial Chamber concerning this matter and to take all necessary measures within its authority, both legal and practical, to ensure the safety and security of the witnesses concerned;

**NOTING** that, in the event that the Chief Prosecutor of BiH eventually brings charges stemming from its current investigations, it may become necessary to disclose the confidential information to the accused in that case;

**CONSIDERING** that a Trial Chamber of the Tribunal that is seized of a proceeding has the inherent authority to modify orders made previously in the proceedings, including orders made pursuant to Rule 75(A). It is thus within the competence of the Chamber to vary the protective measures upon the request of the party that requested them, if that party has demonstrated a legitimate purpose for the variation;

**FINDING** that the purpose for variation described in the Motion is legitimate. The fact that there is good cause to vary the protective measures ordered is underscored by United Nations Security Council Resolutions stating that national institutions prosecuting violations of international humanitarian law in the former Yugoslavia are to be assisted in their work;<sup>6</sup>

**FOR THE FOREGOING REASONS**, the Trial Chamber, pursuant to Article 29 of the Statute and Rules 54 and 75 of the Rules,

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<sup>5</sup> Annex C attached to the Motion.

<sup>6</sup> See, United Nations Security Council Resolutions 1503/2003 and 1534/2004.

**GRANTS** the Motion;

**VARIES** the protective measures concerning the witnesses referenced herein so as to **AUTHORIZE** the Prosecution to release the names and contact information of the witnesses to the Chief Prosecutor of BiH; and **ORDER** the Chief Prosecutor of BiH and the Government of Bosnia and Herzegovina, upon release of the requested material to it, to comply with the conditions set forth in the written undertakings attached to the Motion.

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

Dated this first day of September 2005,

At The Hague,

The Netherlands



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Judge Kevin Parker

Presiding Judge

[Seal of the Tribunal]