



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-05-87-PT

Date: 21 November 2005

Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 21 November 2005

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ,
VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ**

**ORDER ARISING FROM PROSECUTION'S SUBMISSION REGARDING
THE ORDER OF PRE-TRIAL JUDGE FROM STATUS CONFERENCE**

The Office of the Prosecutor

**Mr. Thomas Hannis
Ms. Christina Moeller
Mr. Chester Stamp
Ms. Carolyn Edgerton**

Counsel for the Accused

**Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Theodore Scudder for Mr. Sreten Lukić**

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 (“the International Tribunal”),

NOTING the Order issued by the pre-trial Judge arising from the Status Conference held on 25 August 2005 (“Order from Status Conference”),¹ which ordered both the Prosecution and Defence to undertake various tasks for pre-trial preparation of the case,

NOTING the “Prosecution’s Submission Regarding the Order of Pre-Trial Judge Arising from Status Conference,” filed 30 September 2005 (“Prosecution’s Submission”), in which the Prosecution informs the Trial Chamber of its responses to individual orders contained in the Order from Status Conference,

NOTING, in particular, the following from the Prosecution’s Submission in response to the Order from Status Conference:

- (1) the Prosecution has reviewed all motions that were filed with respect to the cases IT-99-37-PT and IT-03-70-PT, and submits that all motions and decisions filed previously in these two cases continue to have effect in this now joint case IT-05-87-PT; the Prosecution is particularly concerned that all previously granted protective measures shall apply in this case to all accused and expressly requests the Trial Chamber to order that all protective measures previously granted in cases IT-99-37-PT and IT-03-70-PT shall apply in case IT-05-87-PT;
- (2) in relation to the Prosecution’s Fifth Motion on Protective Measures, filed on 11 February 2005, the Prosecution has contacted the Croatian Government which has re-iterated its request for protective measures; however, the Prosecution is in ongoing discussions with the Croatian Government and submits that it will further notify the Trial Chamber of any developments as soon as some progress can be anticipated. The Prosecution also request that

¹ “Order of Pre-Trial Judge Arising from Status Conference,” 1 September 2005.

this pending Fifth Motion on Protective Measures is extended to all six accused;

NOTING that no responses to the Prosecution's Submission have been received from the Defence for any of the Accused,

NOTING that counsel for Pavković and Lukić have expressed concern regarding certain difficulties in obtaining access to materials presented during closed sessions of *Prosecutor v. Milošević*, IT-02-54-T,²

NOTING that counsel for Pavković, Lazarević and Lukić reiterated this concern at a Rule 65 *ter* Conference on 8 November 2005, and previously stated³ that they desire the same access to material from *Prosecutor v. Milošević* that was granted to Ojdanić and Šainović by the *Milošević* Trial Chamber's Decision on Defence Motions for Access to Transcripts and Documents and for Disclosure of *Ex Parte* Filing, dated 14 June 2002,

NOTING that Milutinović subsequently obtained access to the same material without the issuance of an Order applicable to him,

NOTING that the Prosecution is willing to provide access to such material to all of the Accused in this case and has expressed its desire for an order directing as much,

NOTING Rule 65 *ter*(B) of the Rules of Procedure and Evidence ("Rules"), according to which the pre-trial Judge shall, under the authority and supervision of the Trial Chamber seized of the case, coordinate communication between the parties during the pre-trial phase, ensure that proceedings are not unduly delayed and take any measure necessary to prepare the case for a fair and expeditious trial,

CONSIDERING that it may assist the parties if the Trial Chamber clarifies the position in relation to the previous orders and decisions made in IT-99-37-PT and IT-

² See Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 7 November 2005, paras. 5-19; Sreten Lukić's Reponse in Support of Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 8 November 2005.

03-70-PT, prior to the Joinder Decision of 8 July 2005, and also in relation to the pending Prosecution's Fifth Motion on Protective Measures,

PURSUANT TO Rules 54 and 65 *ter* of the Rules,

HEREBY ORDERS as follows:

- (1) All orders and decisions filed previously in cases IT-99-37-PT and IT-03-70-PT, identified in Sections I through IV of the Annex to this Order, shall continue to have effect in case IT-05-87-PT;
- (2) All previously-granted protective measures in cases IT-99-37-PT and IT-03-70-PT, identified in Sections V and VI of the Annex to this Order,⁴ shall apply to all Accused in case IT-05-87-PT;
- (3) The currently-pending Prosecution's Fifth Motion on Protective Measures shall be extended to all Accused in case IT-05-87-PT, in accordance with the Prosecution's Submission;
- (4) The Prosecution shall inform the Trial Chamber as soon as is practicable as to the outcome of ongoing discussions with the Croatian Government in relation to the Prosecution's Fifth Motion on Protective Measures;
- (5) The Registrar shall provide, within fifteen days of this order, the defence teams of Pavković, Lazarević and Lukić with 1) remote access to electronic copies of all public and confidential—but not *ex parte*—documents filed before 8 July 2005 in case IT-99-37-PT and 2) hard copies of all orders and decisions identified in Section I of the Annex to this Order as well as of the Prosecution's Fifth Motion on Protective Measures;
- (6) The Registrar shall provide, within fifteen days of this order, the defence teams of Milutinović, Ojdanić and Šainović with 1) remote access to electronic copies of all public and confidential – but not *ex parte* – documents filed before 8 July 2005 in case IT-03-70-PT and 2) hard copies of all orders and decisions identified in Section III of the Annex to this Order;
- (7) Pavković, Lazarević and Lukić are invited to apply to the *Milošević* Trial Chamber for an order making that Chamber's 14 June 2002 Decision applicable to them.

³ See Transcript, Rule 65 *ter* Conference, 23 August 2005, at pp. 11-13.

⁴ These orders are also to be found in Sections I and III of the Annex to this order.

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



Judge Patrick Robinson
Presiding

Dated this twenty-first day of November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

Annex

I. Orders and Decisions other than related to provisional release filed previously in case IT-99-37-PT which shall continue to have effect in case IT-05-87-PT

Date	Title
30 June 2005	Order on pseudonym change for protected witness
10 February 2005	Order to Prosecution on modification of reporting regime on situation of witness
09 December 2004	Order on Prosecution's fourth motion for variance of prior orders of non-disclosure
23 September 2004	Order on Prosecution's third motion for variance of prior orders on non-disclosure
21 September 2004	Decision on motions of the defence in <i>Prosecutor v Milutinović, Ojdanić and Šainović</i> for access to certain confidential filings
30 August 2004	Order designating pre-trial judge
27 July 2004	Decision on Prosecution's motion for protective measures
27 July 2004	Decision on motions of the defence <i>Prosecutor v Milutinović, Ojdanić and Šainović</i> for access to certain confidential filings
04 February 2004	Order on Prosecution's second motion for variance of prior orders on non-disclosure
04 February 2004	Order on Prosecution's motion for variance of prior orders on non-disclosure
14 November 2003	Decision on Prosecution motion for reconsideration and modification of Trial Chamber's decision on protective measures
29 August 2003	Order granting Prosecution request for further partial stay and suspension of time limit for application for certification for appeal and motion for modification
18 July 2003	Decision on Prosecution's motion for protective measures
10 February 2003	Decision on defence motion to require disclosure of Rule 68 material obtained pursuant to Rule 70
20 June 2002	Corrigendum to decision on ex-parte and confidential Prosecution's motion for witness protection measures
14 June 2002	Decision on defence motions for access to transcripts
07 June 2002	Decision on Ex Parte and confidential Prosecution's motion for witness protection measures
07 June 2002	Decision on Prosecution's motion for order of non-disclosure to public of supporting materials disclosed pursuant to rule 66 (A)(i) ⁵
07 June 2002	Decision on Prosecution's motion for order of non-disclosure to public of supporting materials disclosed pursuant to rule 66 (A)(i) ⁶

⁵ Related to Ojdanić.

⁶ Related to Šainović.

II. Orders and Decisions related to provisional release filed previously in case IT-99-37-PT that shall continue to have effect in case IT-05-87-PT

Date	Title
30 June 2005	Order on General Ojdanić's urgent motion for modification of conditions of provisional release
14 April 2005	Decision on second application for provisional release
14 April 2005	Decision on General Ojdanić's fourth application for provisional release
14 April 2005	Decision on Third defence request for provisional release

III. Orders and Decisions other than related to provisional release filed previously in case IT-03-70-PT that shall continue to have effect in case IT-05-87-PT

Date	Title
29 June 2005	Decision on Prosecution's motion for reconsideration and corrigendum to 'Decision on Prosecution's motion for protective measures and request for joint decision on protective measures' of 19 May 2005
29 June 2005	Order changing status of decision on Prosecution's motion for protective measures and request for joint decision on protective measures
29 June 2005	Decision on Prosecution's motion for order of non-disclosure to public of materials disclosed pursuant to Rule 66(A) and Rule 68
19 May 2005	Decision on Prosecution's motion for protective measures and request for joint decision on protective measures
27 April 2005	Decision on Prosecution's request for order of non-disclosure to public of materials disclosed pursuant to Rule 66(A) and Rule 68
15 March 2005	Decision on Prosecution's motion for order of non-disclosure to public of materials disclosed pursuant to Rule 66(A) and Rule 68
07 March 2005	Order designating Pre-Trial Judge
24 February 2005	Order re-assigning a case before a Trial Chamber

IV. Decision related to provisional release filed previously in case IT-03-70-PT that shall continue to have effect in case IT-05-87-PT

Date	Title
14 April 2005	Decision on defence request for provisional release

V. Previously-granted protective measures in case IT-99-37-PT that shall apply to all Accused in case IT-05-87-PT

Date	Title
30 June 2005	Order on pseudonym change for protected witness
29 June 2005	Decision on Prosecution's motion for reconsideration
19 May 2005	Decision on Prosecution's motion for protective measures and request for joint decision on protective measures
10 February 2005	Order to Prosecution on modification of reporting regime on situation of witness
09 December 2004	Order on Prosecution's fourth motion for variance of prior orders of non-disclosure
23 September 2004	Order on Prosecution's third motion for variance of prior orders on non-disclosure
27 July 2004	Decision on Prosecution's motion for protective measures
04 February 2004	Order on Prosecution's second motion for variance of prior orders on non-disclosure
04 February 2004	Order on Prosecution's motion for variance of prior orders on non-disclosure
14 November 2003	Decision on Prosecution motion for reconsideration and modification of Trial Chamber's decision on protective measures
29 August 2003	Order granting Prosecution request for further partial stay and suspension of time limit for application for certification for appeal and motion for modification
18 July 2003	Decision on Prosecution's motion for protective measures
10 February 2003	Decision on defence motion to require disclosure of Rule 68 material obtained pursuant to Rule 70
20 June 2002	Corrigendum to decision on ex-parte and confidential Prosecution's motion for witness protection measures
07 June 2002	Decision on Ex Parte and confidential Prosecution's motion for witness protection measures
07 June 2002	Decision on Prosecution's motion for order of non-disclosure to public of supporting materials disclosed pursuant to rule 66 (A)(i)

VI. Previously-granted protective measures in case IT-03-70-PT that shall apply to all Accused in case IT-05-87-PT

Date	Title
29 June 2005	Decision on Prosecution's motion for reconsideration and corrigendum to 'Decision on Prosecution's motion for protective measures and request for joint decision on protective measures' of 19 May 2005
29 June 2005	Order changing status of decision on Prosecution's motion for protective measures and request for joint decision on protective measures
19 May 2005	Decision on Prosecution's motion for protective measures and request for joint decision on protective measures