



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: 11 January 2006

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 11 January 2006

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**ORDER ON REQUEST FOR VARIANCE OF PROTECTIVE MEASURES WITH
RESPECT TO CONFIDENTIAL ANNEX FILED WITH TRIAL CHAMBER'S
DECISION OF 13 DECEMBER 2005**

Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused

Mr. Slobodan Milošević

Assigned Counsel

Mr. Steven Kay
Ms. Gillian Higgins

Counsel for Jovica Stanišić

Mr. Geert-Jan Alexander Knoops
Mr. Wayne Jordash

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 SEIZED, pursuant to Rule 75(G)(i) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), of a “Request for Variance of Protective Measures with respect to Confidential Annex Filed with Trial Chamber’s Decision of 13 December 2005”, filed on 21 December 2005 (“Motion”), in which the Defence of Jovica Stanišić (“Applicant”) argues that the requirements for access to confidential material from other proceedings have been met, and requests access to the confidential annex to the “Decision on Application for a Limited Re-Opening of the Bosnia and Kosovo Components of the Prosecution Case”, issued by this Trial Chamber on 13 December 2005 (“Confidential Annex” and “Decision”, respectively);

NOTING that neither the Prosecution nor the Defence filed a response to the Motion;

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; and 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;¹

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 case from which such material is sought,² and therefore that access to material may be granted if the party seeking it demonstrates a “geographical, temporal or otherwise material overlap” between the two proceedings;³

NOTING that the Motion provides two reasons in support of the Applicant’s request: first, it asserts that, since the Applicant “is charged with forming part of a Joint Criminal Enterprise with Slobodan Milošević, the issue of Mr. Milošević’s criminal responsibility is of direct relevance” to his case;⁴ second, it claims that because “the statements and exhibits assessed by

¹ See *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* [Case], 16 May 2002, para. 14.

² See *ibid.*, para. 15.

³ See *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Motion by Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić and Čerkez Case, 23 January 2003, p. 4.

⁴ Motion, para. 5.

the Trial Chamber are listed on the Prosecution's exhibit and witness list in the [*Stanišić*] case, any information pertaining to their lack of probative value is potentially exculpatory in accordance with Rule 68";⁵

NOTING that, as the Decision makes clear, the Trial Chamber's assessment of the probative value of the proposed items of evidence took place in the specific context of an application to re-open the Prosecution's case after its case in chief had already concluded, and was guided by the particular circumstances of the proceedings against the Accused Milošević;⁶

NOTING, moreover, that Rule 68 of the Rules is inapplicable to the Applicant's request, because that Rule governs disclosure of exculpatory and other material to the Defence by the Prosecution;

CONSIDERING, nevertheless, that there is a clear material overlap between the two proceedings, as demonstrated by the allegation that the Applicant and the Accused Slobodan Milošević were participants in the same joint criminal enterprise,⁷ and the fact that some of the proposed items of evidence or witnesses considered by the Trial Chamber in its evaluation of the Prosecution's application for re-opening appear on the Prosecution's exhibit and witness lists for the case against the Applicant;⁸

CONSIDERING that the Applicant has undertaken "to comply with all protective orders issued by the Trial Chamber in relation to the requested material";⁹

⁵ *Ibid.*

⁶ *See Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Application for a Limited Re-Opening of the Bosnia and Kosovo Components of the Prosecution Case, 13 December 2005, para. 37:

Given the concern expressed in the Statute, the Rules, and the jurisprudence of the Tribunal for the Accused's right to a fair and expeditious trial, the Chamber considers that the exceptional measure of re-opening the Prosecution's case in chief for the admission of evidence that is certain to cause delay, at a late stage of a trial that began three and a half years before the Application was submitted, is warranted only where the probative value of the proposed evidence is particularly high. In the particular circumstances of this case, including the forms of responsibility alleged in the indictments and the extensive evidence relating to underlying offences already adduced during the Prosecution's case in chief, the Trial Chamber is of the opinion that, in order to have sufficient probative value to be accepted as an appropriate basis for re-opening, the evidence proposed should have significant bearing on the individual criminal responsibility of the Accused. In addition, since this assessment of probative value occurs in the context of an application to admit new evidence, proposed evidence that is substantially similar in all important respects to evidence already admitted during the Prosecution's case in chief will not warrant re-opening; the delay occasioned by its admission could not be substantially outweighed by whatever probative value such cumulative evidence could present.

(Footnotes omitted.)

⁷ *See Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Second Amended Indictment, 20 December 2005, para. 12; *Milošević*, Amended Indictment (Bosnia), 22 November 2002, para. 7.

⁸ *See Stanišić and Simatović*, Decision on Prosecution Application for Leave to Amend Its Exhibit List and for Protective Measures, 11 May 2005; *Stanišić and Simatović*, Prosecution's List of Witnesses Pursuant to Rule 65 *ter* (E)(ii), filed confidentially on 9 July 2004.

⁹ Motion, para. 8.


PURSUANT TO Rules 54 and 75 of the Rules,

HEREBY GRANTS THE MOTION, AND ORDERS AS FOLLOWS:

- (1) The Registry shall provide the Applicant and/or his defence counsel with a copy of the Confidential Annex; and
- (2) The Applicant and his defence counsel shall not disclose this confidential material to the public, except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the Applicant's case.

For the purposes of this Order, "the public" means and includes all persons, governments, organisations, 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 Applicant and his defence team. "The public" also includes, without limitation, families, friends, and associates of the Applicant; accused and defence counsels in other cases or proceedings before the International Tribunal; the media; and journalists.

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



Judge Robinson
Presiding

Dated this eleventh day of January 2006
At The Hague
The Netherlands

[Seal of the Tribunal]