



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-98-33-A
Date: 25 May 2006
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 25 May 2006

PROSECUTOR

v.

RADISLAV KRSTIĆ

EX PARTE

**DECISION ON PROSECUTION APPLICATION
FOR VARIATION OF PROTECTIVE MEASURES**

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”);

BEING SEIZED, pursuant to an Order of the President,¹ of a “Prosecutor’s Application for Variation of Protective Measures”, filed *ex parte* on 5 April 2006 (“Application”) by the Office of the Prosecutor (“Prosecution”);

NOTING that the Application relates to a request for assistance from the authorities of Bosnia and Herzegovina with respect to disclosure of the identity, contact information, witness statement, and testimony of a protected witness;²

NOTING that similar applications have been made previously by the Prosecution, and have been granted,³ including by a decision of this Trial Chamber in the case of *Prosecutor v. Milošević* (“*Milošević Decision*”);⁴

CONSIDERING that the protected witness in question has already given consent for the disclosure of the witness’ identity, statements, and testimony to the Chief Prosecutor of Bosnia and Herzegovina;⁵

CONSIDERING that Mr. Marinko Jurčević, the Chief Prosecutor of Bosnia and Herzegovina, has undertaken, *inter alia*, to respect “Orders and Decisions ... that concern the Variation of Protective Measures for Protected Witnesses ... whose confidential personal details, information, evidence and testimony is disclosed to this Office”; and that the Government of Bosnia and Herzegovina has made a similar undertaking, as well as a pledge “[t]o take all necessary measures within its authority, both legal and practical, to ensure the safety and security of these witnesses”;⁶

¹ On 11 April 2006, the President of the Tribunal assigned this Application to this Trial Chamber for determination. *Prosecutor v. Krstić*, Case No. IT-98-33-A, Order Assigning a Case to a Trial Chamber, filed confidentially and *ex parte*.

² See Application, paras. 1, 11; *ibid.*, confidential and *ex parte* Annex A. The witness is identified in confidential and *ex parte* Annex B to the Application.

³ See Application, para. 6 nn. 5–7.

⁴ *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Application for Variation of Protective Measures, 18 May 2005 (“*Milošević Decision*”).

⁵ Application, confidential and *ex parte* Annex C.

⁶ Application, *ex parte* Annex D.

CONSIDERING that the additional specific undertakings made by the Chief Prosecutor of Bosnia and Herzegovina are identical to the conditions imposed by the *Milošević* Decision;

CONSIDERING that, in the *Milošević* Decision, this Trial Chamber held:

A Chamber of the International Tribunal that is seised of a proceeding has the inherent authority to modify orders made previously in the proceedings, including orders made pursuant to Rule 75(A) of the Rules. It is thus within the competence of a Chamber of the International Tribunal to vary protective measures in a proceeding of which it is seised upon the request of the party that requested them, provided that the party has demonstrated a legitimate purpose for the variation. In the present case, the Trial Chamber finds that the purpose for variation described in the Motion is legitimate because the Prosecution has a duty to assist the Bosnia Prosecutor, where appropriate. The fact that there is good cause to vary the protective measures ordered at trial 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; these Resolutions also specifically mention the War Crimes Chamber.

It is also within the competence of a Chamber of the International Tribunal to order a State to comply with an order intended to protect the safety of victims and witnesses. States, under Article 29 of the Statute of the International Tribunal, “shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, *including, but not limited to*” a variety of situations as enumerated therein (emphasis added).⁷

CONSIDERING that, for the purposes of determination of the Application, it is this Trial Chamber which is seised of the case of *Prosecutor v. Krstić*, and which has the inherent authority to vary protective measures;

CONSIDERING that, as noted in the *Milošević* Decision,⁸ in the event that the Chief Prosecutor of Bosnia and Herzegovina eventually brings charges stemming from its current investigations, it may become necessary to disclose the confidential information to the accused in that case;

PURSUANT TO Article 29 of the Statute of the International Tribunal and Rules 54 and 75 of the Rules,

HEREBY GRANTS the Motion, **VARIES** the protective measures concerning the witness, and **ORDERS** as follows:

⁷ *Milošević* Decision, *supra* note 4, paras. 6–7 (footnotes omitted).

⁸ *Milošević* Decision, *supra* note 4, para. 8.

- (1) The Prosecution may release the names, contact information, and evidence of the witness referenced herein to the Chief Prosecutor of Bosnia and Herzegovina; and
- (2) Upon release of the requested confidential material, the Chief Prosecutor of Bosnia and Herzegovina and the Government of Bosnia and Herzegovina shall comply with any order or decision of a Chamber of the Tribunal concerning this matter, and shall comply with all the conditions set forth in *ex parte* Annex D to the Application.

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



Judge Robinson
Presiding

Dated this twenty-fifth day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]