



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-00-39-R75H.2
Date: 30 January 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 30 January 2008

THE PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC WITH *CONFIDENTIAL* AND *EX PARTE* APPENDIX

DECISION ON APPLICATION PURSUANT TO RULE 75(H)

The Applicant:

Prosecutor's Office of Bosnia and Herzegovina

The Office of the Prosecutor:

Ms. Shelagh McCall

The Accused:

Mr. Momčilo Krajišnik

Amicus Curiae:

Mr. Colin Nicholls

I, FAUSTO POCAR, President 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"),

NOTING the Urgent Application submitted to me by the Prosecutor's Office of Bosnia and Herzegovina ("Applicant") and received on 11 January 2008,¹ seeking authorization to use confidential witnesses' testimonies from the *Krajišnik* trial ("Confidential Testimonies");²

NOTING that the Applicant indicates that he is already in possession of these Confidential Testimonies, to which access was granted by Order of a Chamber of the Tribunal under strict conditions and for the sole purpose of an investigation concerning another suspect in the custody of the Government of Bosnia and Herzegovina, Miroslav Vještica;³

CONSIDERING that in effect, the Applicant now seeks the variation of the Order of 18 May 2005 in order to use the Confidential Testimonies in the case against Gojko Kličković;⁴

CONSIDERING Rule 75(H) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), as amended on 12 July 2007, pursuant to which:

(H) A Judge or Bench in another jurisdiction or parties in another jurisdiction authorised by an appropriate judicial authority may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

NOTING that the Applicant states that it is "authorized under Articles 35(2)(j) and 408 of the Criminal Procedure Code of BiH to request for legal assistance in criminal matters and is the

¹ *Prosecutor v. Gojko Kličković*, "Urgent Application from The Prosecutor's Office of Bosnia and Herzegovina for Variation of Protective Measures Pursuant to Rule 75(H)", received on 11 January 2008 ("Application"), which is appended to the present Decision.

² Application, paras 4-6, 10 and *Confidential Annex 9* of the Application.

³ Application, paras 3-7, 12; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Order on the Prosecution's Application for Variation of Protective Measures, 18 May 2005 ("Order of 18 May 2005"), para. 1.

⁴ Application, para. 13.

competent authority for the collection of evidence prior to trial and to tender evidence at a criminal trial”;

CONSIDERING that for the purposes of Rule 75(H) of the Rules, the Applicant is clearly a party in another jurisdiction, namely the War Crimes Section of the Court of Bosnia and Herzegovina and must therefore be authorized by an appropriate judicial authority before applying for the variation, rescinding or augmentation of protective measures ordered in proceedings before the Tribunal;

NOTING that the Applicant indicates that it has not been in the position to make an application to the Court of Bosnia and Herzegovina because this would entail disclosing the witnesses’ identities to the Preliminary Proceedings Judge thus possibly exceeding the conditions set out by the Order of 18 May 2005;⁵

CONSIDERING that the Order of 18 May 2005 specifies that “the information disclosed will be treated as confidential and will be released to no one except members of the Special Department for War Crimes and the Courts of Bosnia and Herzegovina as necessary for the purposes of proceedings involving the suspect”;⁶


CONSIDERING however, that the Applicant fails to explain why pseudonyms cannot be used, as was done in the Indictment against Gojko Kličković,⁷ and why protected witnesses’ identities must be disclosed in order to seek authorization from an appropriate judicial authority in accordance with Rule 75(H) of the Rules;

CONSEQUENTLY DISMISS the Application, and

INVITE the Applicant to reapply if authorised to do so by the appropriate judicial authority in the War Crimes Section of the Court of Bosnia-Herzegovina.

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

Done this 30th day of January 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]

⁵ Application, para. 14.

⁶ Order of 18 May 2005, para. 9.

⁷ Application, para. 10.