



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  
IT-99-36-A  
Date: 31 January 2008  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 31 January 2008

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ**

***PUBLIC***

**DECISION ON MIĆO STANIŠIĆ'S  
MOTION TO RESCIND OR VARY THE DELAYED  
DISCLOSURE ORDERS IN *PROSECUTOR V. BRĐANIN***

**The Office of the Prosecutor:**

Ms. Anna Richterova

**Counsel for the Accused:**

Mr. Stevo Bezbradica

**TRIAL CHAMBER II** 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 (“Trial Chamber”);

**BEING SEISED OF** the “Motion by Mićo Stanišić to Rescind or Vary the Delayed Disclosure Orders Pursuant to Rule 75(G)”, filed on 16 August 2007 (“Motion”);

**NOTING** the “Decision on Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brdanin* Case” issued on 24 January 2007 (“Appeals Chamber Decision”), in which the Appeals Chamber decided, *inter alia*, to order the Registry to disclose all *inter partes* confidential materials related to witnesses subject to orders for delayed disclosure in *Prosecutor v. Brdanin*<sup>1</sup> only in accordance with the time frames set out in such orders or upon receiving notice from the Prosecution that it has decided not to call any such witness at the trial of the Accused, unless this order is subsequently modified by the Appeals Chamber or, should the Appeals Chamber no longer be seized of this case, by the Trial Chamber in the Accused’s case;<sup>2</sup>

**NOTING** that in the Motion the Accused requests that the Trial Chamber order:

- (a) that the orders of delayed disclosure in *Prosecutor v. Brdanin* concerning witnesses to be called in *Prosecutor v. Stanišić* should be rescinded and that the Accused be given access to the confidential transcripts and the exhibits related to such witnesses;<sup>3</sup> or
- (b) that such orders be varied and that the Accused be granted access to the confidential transcripts and exhibits related to such witnesses at least 30 days before the commencement of trial.<sup>4</sup>

**NOTING** that the Appeals Chamber has held that Rule 75(F) should be interpreted as including “delayed disclosure” orders as a form of protective measure which continues to have effect *mutatis mutandis* in subsequent proceedings before the Tribunal;<sup>5</sup>

**NOTING** that Rule 75 (G) provides that where protective measures have been ordered in any proceedings before the Tribunal (“first proceedings”), a party to any other proceedings before the Tribunal (“second proceedings”), seeking to rescind, vary or augment such protective measures must apply:

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<sup>1</sup> Case No. IT-99-36-T.

<sup>2</sup> Appeals Chamber Decision, para. 25(c).

<sup>3</sup> Motion, para. 12(a).

<sup>4</sup> Motion, para. 12(b).

<sup>5</sup> Appeals Chamber Decision, para. 17.

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

**NOTING** that no Chamber remains seised of *Prosecutor v. Brdanin*;

**CONSIDERING**, therefore, that this Trial Chamber, being seised of the second proceedings, is competent to determine the request in the Motion to rescind or vary orders of delayed disclosure issued in *Prosecutor v. Brdanin*;

**NOTING** that the Accused submits in support of his request that:

- (a) delayed disclosure “is a measure ordered under the exceptional circumstances of a specific case and because of that delayed disclosure as a protective measure does not need to apply automatically in the second proceedings”;<sup>6</sup>
- (b) the Prosecution has not explained when and why measures of delayed disclosure were ordered in *Prosecutor v. Brdanin* and why they would be warranted in *Prosecutor v. Stanišić*;<sup>7</sup>
- (c) the Prosecutor has not shown that the witnesses who are subject to measures of delayed disclosure will be interfered with or intimidated once their identity is made known to the Accused or his counsel.<sup>8</sup>

**NOTING** that in the “Prosecution’s Response to Mićo Stanišić’s Motion to Rescind or Vary the Delayed Disclosure Orders pursuant to Rule 75(G) – *Brdanin* Case” filed on 27 August 2007 (“Response”) the Prosecution submits that the Motion should be denied on the grounds that the Motion is “nothing more than an attempt to re-litigate issues already resolved by the Appeals Chamber” and, alternatively, to the extent that the Defence Motion is a genuine request to rescind or vary protective measures in force in *Prosecutor v. Brdanin*, it has failed to meet the required standard;<sup>9</sup>

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<sup>6</sup> Motion, para.7. The motion cites in support *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on “Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case”, 21 February 2007, Partially Dissenting Opinion of Judge Pocar, para. 2. Motion, para. 7, n. 9.

<sup>7</sup> Motion, para. 9.

<sup>8</sup> Motion, para. 10.

<sup>9</sup> Response, para. 2.

**NOTING** that the Prosecution submits that the Accused is seeking reconsideration of the Appeals Chamber Decision in regard to orders of delayed disclosure issued in *Prosecutor v. Brdanin*<sup>10</sup> and that because no clear error of reasoning has been demonstrated and reconsideration is not necessary to prevent injustice, reconsideration of the Appeals Chamber Decision in regard to such orders is not justified;<sup>11</sup>

**NOTING** that the Prosecution gives the following reasons in support of its submission that the Accused has not provided the necessary justification for rescinding or varying the measures of delayed disclosure:

- (a) if a witness subject to a measure of delayed disclosure is to testify in another case, the measure of delayed disclosure should continue to apply and the burden is on the Defence to justify the rescission of such a measure;<sup>12</sup>
- (b) the Accused has not established the reasons why the measures of delayed disclosure are no longer justified<sup>13</sup> and the Accused has not provided any reason to vary the date of disclosure given in the measures of delayed disclosure;<sup>14</sup>

**NOTING** the “Defence’s Motion for Leave to Reply and Proposed Reply to Prosecution’s Response to Mićo Stanišić Motion to Rescind or Vary the Delayed Disclosure Orders pursuant to Rule 75(G) - *Brdanin* Case” filed on 3 September 2007 (“Reply”);

**NOTING** that in the Reply the Accused requests pursuant to Rule 126 *bis* leave to file a reply to the Response;<sup>15</sup>

**CONSIDERING** that leave to reply should be granted;

**NOTING** that in the Reply the Accused submits that:

- (a) in the Motion the Accused did not attempt to re-litigate issues, but made a genuine request to rescind or vary the orders of delayed disclosure issued in *Prosecutor v. Brdanin*;<sup>16</sup>

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<sup>10</sup> Response, para. 4.

<sup>11</sup> Response, paras. 5-9.

<sup>12</sup> Response, para. 13.

<sup>13</sup> Response, paras. 10 and 12.

<sup>14</sup> Response, para. 13.

<sup>15</sup> Reply, para.3.

<sup>16</sup> Reply, para. 4.

(b) in the Appeals Chamber Decision the Appeals Chamber did not issue a decision regarding the variation of orders of delayed disclosure and, therefore, there is no need to reconsider any such decision;<sup>17</sup> and

(c) the Trial Chamber in *Prosecutor v. Stanišić* is the only Chamber which should decide whether the orders of delayed disclosure should be maintained in *Prosecutor v. Stanišić*;<sup>18</sup>

**NOTING** that the Prosecution subsequently indicated that it will not call Witnesses BT75 and BT80, who were subject to delayed disclosure orders in *Prosecutor v. Brđanin*, and that it seeks leave to disclose material relevant to Witnesses BT75 and BT80 with redactions necessary for the protection of their identities;<sup>19</sup>

**CONSIDERING** that pursuant to Rule 75(F)(i) the orders of delayed disclosure issued in *Prosecutor v. Brđanin* shall continue to have effect *mutatis mutandis* in *Prosecutor v. Stanišić* unless and until they are rescinded, varied or augmented in accordance with the procedure set forth in Rule 75;

**NOTING** that the Accused did not previously request the Appeals Chamber to “rescind, vary or augment” the orders of delayed disclosure issued in *Prosecutor v. Brđanin*;<sup>20</sup>

**CONSIDERING** that the Accused is, therefore, neither seeking to re-litigate issues already resolved by the Appeals Chamber nor seeking reconsideration of the Appeals Chamber Decision;

**NOTING** that, pursuant to Rule 75(A), a Judge or Chamber may order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused;

**NOTING** that in the Appeals Chamber Decision the Appeals Chamber held that: “if [the sensitive witnesses in *Prosecutor v. Brđanin* protected by orders of delayed disclosure] are going to testify in another case, the information about them from *Prosecutor v. Brđanin* should similarly be subject to

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<sup>17</sup> Reply, para. 7.

<sup>18</sup> Reply, para. 6.

<sup>19</sup> Prosecution’s Notice of Information Requested by the Trial Chamber in relation to the Accused’s Motion to Rescind or Vary Delayed Disclosure Orders Pursuant to Rule 75(G) in *Prosecutor v. Brđanin*, confidential and *ex parte*, 26 October 2007 (“Notice of Information”), paras. 7–8 and 9(b).

<sup>20</sup> Appeals Chamber Decision, para. 17, n. 41 (“[...] [T]he Applicant does not ask the Appeals Chamber to “rescind, vary or augment” [the measures of delayed disclosure] pursuant to Rule 75(G) – a request that, in any event, the Applicant would be better served to raise with his Trial Chamber, assuming the Appeals Chamber is no longer seised of this case, as the time of his trial approaches.”)

delayed disclosure to the defendants in those other cases (unless an order pursuant to Rule 75(G) is made)”;<sup>21</sup>

**CONSIDERING** that the Accused has not submitted either that the specific circumstances in *Prosecutor v. Stanišić* are grounds for the rescission or variation of the measures of delayed disclosure granted in *Prosecutor v. Brđanin* or that the rescission or variation of such measures of delayed disclosure is consistent with the privacy and protection of victims and witnesses or the rights of the accused;

**NOTING** that the witnesses subject to orders for delayed disclosure in *Prosecutor v. Brđanin* who the Prosecution has intended to call in *Prosecutor v. Stanišić* are identified in an *ex parte* and confidential Annex to the “Prosecution’s Response to Mićo Stanišić’s Motion for Access to Confidential Material in the Brđanin Case”, which was filed on 5 December 2006, and that therefore the Accused is not in possession of any information about the identity of such witnesses;

**CONSIDERING** that since the Accused is not in possession of any information about the witnesses subject to orders for delayed disclosure or the grounds on which those orders were issued, he is unable to give any grounds related to the characteristics of the witnesses or their likely testimony that would justify what is sought in the Motion;

**NOTING** that pursuant to Rule 75(I) before determining an application to rescind, vary or augment protective measures ordered in the first proceedings before the Tribunal, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal;

**NOTING** the “Order Regarding Witnesses subject to Mićo Stanišić’s Motion to Rescind or Vary the Delayed Disclosure Orders in *Prosecutor v. Brđanin*”, issued confidentially and *ex parte* on 27 September 2007 (“confidential *ex parte* Order”), in which the Trial Chamber ordered that the Prosecution shall submit any information that would be relevant to the determination of the Motion concerning developments arising after the issuance of the orders for delayed disclosure in *Prosecutor v. Brđanin*, in particular in the circumstances of the witnesses subject to delayed disclosure;<sup>22</sup>

**NOTING** the Notice of Information, in which the Prosecution:

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<sup>21</sup> Appeals Chamber Decision, para. 17.

<sup>22</sup> Confidential *ex parte* Order, p. 3.

- (a) provided information concerning developments arising after the issuance of the orders for delayed disclosure in *Prosecutor v. Brđanin*;<sup>23</sup>
- (b) requested in respect of certain of the witnesses subject to orders for delayed disclosure in *Prosecutor v. Brđanin* that such orders for delayed disclosure remain in force;<sup>24</sup>
- (c) stated, as has already been noted, that it had decided to withdraw from its 65 *ter* list Witnesses BT75 and BT80 and requested that the material relevant to such persons be disclosed with redactions necessary to protect their identities;<sup>25</sup>

**CONSIDERING** that, having obtained all relevant information in relation to *Prosecutor v. Brđanin*, the Trial Chamber has determined that the measures of delayed disclosure granted in *Prosecutor v. Brđanin* in regard to those whom the Prosecution still wishes to call as witnesses in *Prosecutor v. Stanišić* remain justified;

**CONSIDERING** that the request of the Prosecution for the disclosure with redactions of material relevant to Witnesses BT75 and BT80 subject to orders of delayed disclosure in *Prosecutor v. Brđanin*, whom the Prosecution no longer wishes to call as witnesses, falls within the scope of the request contained in the Motion;<sup>26</sup>

**CONSIDERING** that the Accused should have access to material relevant to Witnesses BT75 and BT80 with redactions necessary to protect their identities;

**PURSUANT** to Rules 54, 75 and 126 *bis*,

**GRANTS** leave to reply;

**DENIES** the Motion in part and **ORDERS** that:

- (a) The orders for delayed disclosure issued in *Prosecutor v. Brđanin* in respect of those witnesses whom the Prosecution has identified in the Notice of Information as persons whom it wishes to call as witnesses in *Prosecutor v. Stanišić* shall remain in force; and
- (b) The Prosecution shall disclose immediately all material relevant to Witnesses BT75 and BT80 with redactions necessary to protect their identities.

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<sup>23</sup> Notice of Information, paras. 3–8.

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

Dated this 31<sup>st</sup> day of January 2008,

At The Hague

The Netherlands



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**Kevin Parker**  
**Presiding Judge**

[Seal of the Tribunal]

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<sup>24</sup> Notice of Information, para. 9(a).

<sup>25</sup> Notice of Information, paras. 7–8 and 9(b).

<sup>26</sup> Motion para. 12.