



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-95-9-T

Date: 26 July 2002
English
Original: French

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Claude Jorda, President of the Tribunal
Registrar: Mr. Hans Holthuis
Decision of: 26 July 2002

THE PROSECUTOR

v.

**BLAGOJE SIMIĆ
MILAN SIMIĆ
MIROSLAV TADIĆ
SIMO ZARIĆ**

**ORDER OF THE PRESIDENT ON THE PROSECUTOR'S
REQUEST FOR VARIATION OF WITNESS PROTECTIVE MEASURES**

***In the case The Prosecutor v. Slobodan
Milošević***

The Office of the Prosecutor

Mr. Geoffrey Nice
Mr. Dirk Ryneveld
Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groome

The accused

Mr. Slobodan Milošević

Amici Curiae

Mr. Steven Kay
Mr. Branislav Tapušković
Mr. Michail Wladimiroff

In the case The Prosecutor v. Simić et al.

The Office of the Prosecutor

Mr. Gramsci Di Fazio

Defence Counsel

Mr. Igor Pantelić and Mr. Srđan Vuković for
Blagoje Simić
Mr. Slobodan Zečević and Ms. Catherine
Baen for Milan Simić
Mr. Novak Lukić and Mr. Dragan Krgović
for Miroslav Tadić
Mr. Borislav Pisarević and Mr. Aleksander
Lazerević for Simo Zarić



I, Claude Jorda, 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 (hereinafter "the International Tribunal");

PURSUANT to Rule 75(D) of the Rules of the Procedure and Evidence (hereinafter "the Rules");

NOTING the Prosecutor's Request (hereinafter "the Request") dated 14 May 2002 for variation of protective measures for witnesses who have testified in the case *The Prosecutor v. Simić et al.* in which she requests authorisation to make available to the accused Slobodan Milošević statements, transcripts of prior testimony and the related exhibits of relevant witnesses;

NOTING the Orders for protective measures for victims and witnesses issued by the Trial Chambers in the case *The Prosecutor v. Simić et al.* on 17 February 1998 and 4 December 2001,

CONSIDERING that the Trial Chambers which ordered the protective measures in the case *The Prosecutor v. Simić et al.* can no longer be constituted by the same Judges;

CONSIDERING that, pursuant to Rule 75(D)(ii) of the Rules, the President of the International Tribunal is therefore authorised to rule on this Request;

CONSIDERING that to date the Defence has not responded to the Prosecutor's Request;

CONSIDERING that the Prosecutor maintains that, pursuant to Rules 66(A) and 65 ter(E)(iii) of the Rules, she is obliged to make available to the accused Slobodan Milošević, the *amici curiae* and the appointed Defence counsel the statements, transcripts of prior testimony and related exhibits, to the extent that the events on which the witnesses testified also form the basis for certain charges against Slobodan Milošević listed, in particular, in counts 1 to 22 of the Indictment;

CONSIDERING that the Prosecutor recalls that in its Decision of 17 February 1998, Trial Chamber I ordered that the identity of the witnesses or any information identifying them were not be disclosed to the public or the media,

CONSIDERING that, according to the Prosecutor, the Order of 4 December 2001 provides moreover that the same pseudonyms shall be assigned to the witnesses in all subsequent proceedings before the Tribunal which would, in her opinion, mean revealing to the public that these witnesses were already called to testify before the Tribunal;

CONSIDERING that the Prosecutor also maintains that, on the basis of the Tribunal's case-law¹, it would be inappropriate to mention that a protected witness had already been heard by the Tribunal when protective measures have been accorded to him;

CONSIDERING therefore that the Prosecutor requests authorisation to use other pseudonyms to refer to the witnesses in question so that they cannot be identified as having been protected in other proceedings before the Tribunal;

CONSIDERING that there is geographical, temporal and substantial overlaps between the case *The Prosecutor v. Simić et al.* and the case *The Prosecutor v. Slobodan Milošević*;

CONSIDERING that in order to make available the statements, transcripts of prior testimony and related exhibits of these witnesses to the accused Slobodan Milošević, the appointed Defence counsel and the *amici curiae* it is necessary to vary the protective measures for witnesses ordered in the case *The Prosecutor v. Simić et al.*;

CONSIDERING that the witnesses in question must however continue to enjoy the protection accorded by the Tribunal, in keeping with the aforementioned decisions of the Trial Chambers in the case *The Prosecutor v. Simić et al.*, a principle recognised by the Trial Chamber on 19 February 2002 in the case *The Prosecutor v. Slobodan Milošević*²;

¹ Decision on the Defence Request for Release of Confidential Material, case no. IT-98-30/1, *The Prosecutor v. Kvočka et al.*, 3 October 2000; "Decision on request pursuant to Rule 75(D) by Prosecution in Prosecutor v. Močilo Krajišnik & Biljana Plavšić", case no. IT-99-36-T, *The Prosecutor v. Brđjanin and Talić*, 16 July 2001.

CONSIDERING that the accused, the appointed counsel and the *amici curiae* are obliged by the decisions of Trial Chamber III, in particular those of 19 February 2002, 19 and 21 March 2002 and 16 April 2002, to respect the confidentiality of the documents as well as the protective measures accorded to the victims and witnesses;

CONSIDERING therefore that the protective measures accorded to the witnesses in the case *The Prosecutor v. Simić et al.* must be partially varied in order to allow the Prosecutor to make available the documents requested in the case *The Prosecutor v. Slobodan Milošević*;

FOR THE FOREGOING REASONS,

AUTHORISE the variation of the witness protective measures ordered in the case *The Prosecutor v. Simić et al.* so that the Prosecutor may make available to the accused, Slobodan Milošević, the appointed Defence counsel and the *amici curiae* the statements, transcripts of prior testimony and related exhibits of the relevant witnesses provided that various measures are ordered to ensure an appropriate level of protection and, if necessary, further measures are taken such as the assignment of different pseudonyms and the prohibition on disclosing that these witnesses have already been heard in a previous case;

ORDER the accused, Slobodan Milošević, the appointed Defence counsel and the *amici curiae* to respect the protective measures accorded to the witnesses in question in the case *The Prosecutor v. Simić et al.* and all subsequent protective measures allowing the documents required in this case to be made available by the Prosecutor.

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

Done this twenty-sixth day of July 2002
At The Hague
The Netherlands

(signed)

Claude Jorda

² Decision on Prosecution Motion for Provisional Protective Measures pursuant to Rule 69, *The Prosecutor v. Slobodan Milošević*, case no. IT-02-54-T, 19 February 2002.

President

[Seal of the Tribunal]

