

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, President

Judge Mohamed Shahabuddeen

Judge Mehmet Güney

Judge Amin El Mahdi

Judge Andresia Vaz

Registrar:

Mr. Hans Holthuis

Order of:

12 September 2005

PROSECUTOR

v.

RADOSLAV BRDJANIN

EX PARTE

ORDER TO VARY PROTECTIVE MEASURES

The Office of the Prosecutor:

Ms. Carla Del Ponte

1. The Appeals 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") is seized of the Prosecutor's Application for Variation of Protective Measures ("Application"), filed publicly on 23 August 2005 on an *ex parte* basis, with confidential annexes.
2. The Application seeks to make certain confidential information—the names, contact information, and evidence of several protected witnesses—available to the Government of Bosnia and Herzegovina (BiH). BiH has requested the Prosecutor's help in obtaining this information. It explains that it has in its custody a person suspected of committing crimes related to those of which the Appellant in this case, Radoslav Brdanin, has been convicted. In order to make a case against this suspect and issue an indictment by 17 September 2005, the date on which the current order for his detention expires, BiH states that it needs to speak to and attempt to secure the cooperation of certain protected witnesses in the *Brdanin* case.
3. This is not the first such request made by BiH. In its Order to Vary Protective Measures issued on 13 May 2005 ("13 May Order"), the Appeals Chamber granted an Application of the Prosecution, made pursuant to another BiH request for access to information about certain other protected witnesses in this case. The Appeals Chamber cited Security Council resolutions 1503/2003 and 1534/2004, which emphasize, "as a critical portion of the International Tribunal's Completion Strategy, the need to facilitate efforts to bring war crimes prosecutions in the national judicial systems

within the Former Yugoslavia." It also relied on its "inherent authority, as the Chamber currently seized of proceedings in this case, to modify orders entered earlier in these proceedings, including those issued pursuant to Rule 75(A) of the Rules of Procedure and Evidence (Rules)".

3. The 13 May Order was issued only after the Victims and Witnesses Section of the International Tribunal ("VWS") contacted the protected witnesses in question and ensured their consent to the release of the information. Moreover, the Order made release of the information contingent on the BiH authorities submitting written assurances that they would maintain the confidentiality of the materials and would adopt measures necessary to protect the witnesses. And, rather than merely relying on this BiH assurance, the Appeals Chamber ordered the BiH authorities to comply with these confidentiality measures upon receipt of the information, citing the obligations of member states of the United Nations, under Article 29 of the Statute of the International Tribunal, to comply with orders issued by this Tribunal.

4. The Appeals Chamber considers that the same principles apply to the current request, which simply concerns different protected witnesses and a different suspect in custody. Here, however, the Prosecution has facilitated the faster disposition of the matter in two respects. First, it has already obtained written assurances from the Chief Prosecutor and Minister of Justice of BiH to respect the protective measures ordered in this case, including any orders issued by the Appeals Chamber, to maintain the confidentiality of witnesses, and to ensure their safety and security. Second, it has already obtained the consent of two out of the three relevant protected witnesses in the *Brdanin* case. As to the third, who unlike the others is no longer acting as a witness in any pending trial, the Prosecution requests that VWS be asked to contact the witness.

5. The Appeals Chamber considers that in light of these developments, and for the reasons further explained in the 13 May Order, it is now appropriate to transfer the relevant information and evidence to the BiH government with respect to those witnesses who have already given their consent.

Disposition

The Appeals Chamber hereby **GRANTS** the Prosecutor's Application and **VARIES** the protective measures concerning the protected witnesses in the *Brdanin* case identified in Confidential Annex B to the Application, as follows:

1. The Prosecution may immediately release to BiH authorities the names, contact information, and evidence of the protected witnesses in the *Brdanin* case whose consent it has obtained;
2. The Registry is directed to contact the last witness identified in Confidential Annex B in order to seek his or her consent, ensuring that the witness is informed of the circumstances in a manner similar to that outlined by the Prosecution in Annex C to the Application, and to communicate such consent or lack thereof promptly to the Prosecution;
3. If such consent is given by the last witness, the Prosecution may release the name, contact information, and evidence of that witness to the BiH authorities; and
4. The Government of Bosnia and Herzegovina is ordered to honor the commitments it has made in its written assurances to the International Tribunal, and to comply, upon release of the requested material to it, with the following conditions:
 - a. 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 currently in BiH custody, and to that suspect and his counsel as specified in paragraph (b) below;
 - b. The information disclosed will not be released to the suspect and/or his counsel unless the BiH Prosecutor obtains assurances according to relevant BiH law that the suspect and counsel will strictly maintain the confidentiality of the information; and

- c. The BiH authorities will take all necessary measures, both legal and practical, in order to ensure the safety and security of the witnesses.

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

Judge Theodor Meron
Presiding

Dated 12 September 2005
At The Hague
The Netherlands

[Seal of the International Tribunal]