



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-94-2-R75H.1
Date: 14 February 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 14 February 2008

PROSECUTOR

v.

DRAGAN NIKOLIĆ

PUBLIC WITH *CONFIDENTIAL* APPENDIX

DECISION ON APPLICATION PURSUANT TO RULE 75(H)

The Applicant:

Prosecutor's Office of Bosnia and Herzegovina

The Office of the Prosecutor:

Mr. Serge Brammertz

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 Request of 24 January 2008¹ in which the Prosecutor’s Office of Bosnia and Herzegovina (“Applicant”) seeks authorisation to use confidential witnesses’ testimonies from the *Dragan Nikolić* case (Case No. IT-94-2) (“Confidential Testimonies”);²

CONSIDERING that the Applicant seeks the variation of all of the relevant parts of the Decision on Protective Measures of 22 November 2002³ so that the Confidential Testimonies can be transferred to the Applicant⁴ and be used in a case under investigation;⁵

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

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 “[p]ursuant to Article 35(2)(a)(b) and (j) and Article 408 of the Criminal Procedure Code the Prosecutor’s Office of Bosnia and Herzegovina is authorised to take statements and collect evidence, conduct an investigation, file and defend indictment and draft and submit requests for legal assistance in criminal matters in a form stipulated by this Code”;⁶

CONSIDERING, however, 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 authorised by an appropriate judicial authority within that

¹ Request of the Prosecutor’s Office of Bosnia and Herzegovina Pursuant to Rule 75(H), 24 January 2008, received on 1 February 2008 (“Application”) which is appended to the present Decision.

² Application, para. 8.

³ *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-PT, Decision on “Prosecution Motion for Protective Measures and for the Submission of a Corrigendum to the Rule 65ter(E)(i)(ii)(iii) Filing of 3 October 2002”, 22 November 2002 (“Decision on Protective Measures of 22 November 2002”), para. 8.

⁴ Application, para. 10.

⁵ Application, paras 3, 10.

⁶ Application, para. 2.

jurisdiction before applying for the variation, rescinding or augmentation of protective measures ordered in proceedings before the Tribunal;

CONSIDERING that it does not appear from the Application that the Applicant has been authorised by an appropriate judicial authority to make an application before me, as is required under Rule 75(H) of the Rules;⁷

CONSEQUENTLY DISMISS the Request, 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 and Herzegovina.

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

Done this 14th day of February 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]

⁷ See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-R75H.2, Decision on Application Pursuant to Rule 75(H), 30 January 2008, pp. 2-3; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-R75H.1, Decision on Application Pursuant to Rule 75(H), 30 January 2008, pp. 2-3; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-R75H.1, Decision on Application Pursuant to Rule 75(H), 30 January 2008, pp. 2-3.