



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-03-70-PT
Date: 29 June 2005
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 29 June 2005

PROSECUTOR

v.

**NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ**

PUBLIC VERSION

**DECISION ON PROSECUTION'S MOTION FOR RECONSIDERATION
AND
CORRIGENDUM TO 'DECISION ON PROSECUTION'S MOTION FOR PROTECTIVE
MEASURES AND REQUEST FOR JOINT DECISION ON PROTECTIVE MEASURES'
OF 19 MAY 2005**

The Office of the Prosecutor

Mr. Thomas Hannis
Ms. Christina Moeller
Ms. Carolyn Edgerton

Counsel for the Accused

Mr. Mihajlo Bakrač, for Vladimir Lazarević
Mr. Theodore Scudder, for Sreten Lukić
Mr. John Ackerman and Mr. Aleksander Aleksić, for Nebojša Pavković

THIS TRIAL 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 (“the International Tribunal”);

HAVING ISSUED the “Decision on Prosecution’s Motion for Protective Measures and Request for Joint Decision on Protective Measures” (“Protective Measures Decision”) on 19 May 2005, in which this Chamber ruled on the substantive arguments raised in the “Prosecution’s Motion for Protective Measures” with regard to Accused Lazarević, filed on 29 March 2005 (“Lazarević Protective Measures Motion”), and ordered that, *inter alia*, (1) the Prosecution’s request for relief from an earlier order to disclose witnesses’ whereabouts to the Accused was denied; and (2) the Prosecution should, within seven days of the date of the Protective Measures Decision, “disclose to both Accused the full and unredacted statements of all witnesses, including the names, whereabouts, and other identifying data of the witnesses, except for the thirteen witnesses for whom delayed disclosure under Rule 69(A) has been granted previously by this Chamber”;¹

BEING SEISED of a “Prosecution’s Motion for Reconsideration of Decision on Prosecution’s Motion for Protective Measures”, filed by the Office of the Prosecutor (“Prosecution”) on 26 May 2005 (“Motion for Reconsideration”);

NOTING that the Motion for Reconsideration contains two principal requests for relief:

1. That the Chamber correct its erroneous statement that witness K20 was not subject to delayed disclosure, and therefore vary the disposition of the Protective Measures Decision to reflect the fact that fourteen—not thirteen—witnesses continue to be subject to delayed disclosure orders;² and
2. That the Chamber “clarify its Order on the form of disclosure of material pursuant to Rule 66(A)(i)” by stating clearly whether it considers Rule 66(A)(i)’s reference to supporting material “to mean that, irrespective of the form in which the material was given to the confirming judge ... the Prosecution is under the obligation to disclose the material in unredacted form”,³ and stay the order pending resolution of this request for clarification;⁴

¹ See *Lazarević and Lukić*, “Decision on Prosecution’s Motion for Protective Measures and Request for Joint Decision on Protective Measures”, 19 May 2005 (“Protective Measures Decision”), p. 5. Judge Kwon’s partial dissenting opinion was appended to the Protective Measures Decision, but the two orders mentioned above were issued by unanimous decision of the Chamber.

² Motion for Reconsideration, paras. 4–6.

³ *Id.*, para. 10.

⁴ *Id.*, para. 11.

NOTING that the confidential annex to the Motion for Reconsideration presents a third request for relief related to a protected witness;⁵

NOTING that the Defences of Vladimir Lazarević and Sreten Lukić (collectively, “the Accused”) filed no responses to the Motion for Reconsideration;

CONSIDERING that the witness known as K20 is indeed subject to delayed disclosure in *Prosecutor v. Milutinović, Ojdanić, and Šainović*, and that there are therefore fourteen witnesses for whom delayed disclosure has previously been ordered by this Chamber;⁶

NOTING that the Prosecution’s second request in the Motion for Reconsideration arises from an argument advanced in Lazarević Protective Measures Motion which was not the basis of any request for relief, but which was merely identified by the Prosecution as a “preliminary issue” for the Chamber’s consideration;

CONSIDERING that the Protective Measures Decision clearly holds that the Prosecution’s disclosure obligations under Rule 66(A)(i) require it to disclose unredacted witness statements to the Defence unless it has secured the appropriate protective measures from a Trial Chamber,⁷ and that there is therefore no need to clarify this Chamber’s order in that regard;

CONSIDERING that the Prosecution’s concerns regarding the protected witness discussed in its third request for relief are well-founded;

NOTING that the Pre-Trial Judge issued an “Order Regarding the Service of Rule 66(A)(i) Material” on 9 June 2005, in which he noted that the Prosecution had disclosed supporting material to Accused Pavković personally on 27 May 2005, and ordered that the time for the Defence of Accused Pavković to file preliminary motions pursuant to Rule 70 is extended to 1 July 2005;

NOTING that the additional information which the Prosecution must disclose under Rule 66(A)(i) is not related to any substantive legal issue that could form the basis of a preliminary motion under Rule 72;

⁵ *See id.*, Annex A, paras. 1–4.

⁶ *See Prosecutor v. Ojdanić*, Case No. IT-99-37-PT, “Corrigendum to Decision on *Ex Parte* and Confidential Prosecution’s Motion for Witness Protection Measures”, 20 June 2002; *Prosecutor v. Šainović*, Case No. IT-99-37-PT, “Corrigendum to Decision on *Ex Parte* and Confidential Prosecution’s Motion for Witness Protection Measures”, 20 June 2002.

⁷ *See* Protective Measures Decision, *supra* note 1, pp. 4–5.

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY ORDERS AS FOLLOWS:

1. The second and fourth paragraphs on page 3 are amended to read as follows, with amendments indicated by italics:

CONSIDERING that this Chamber's orders in the *Milutinović, Ojdanić & Šainović* case, granting delayed disclosure for *the fourteen* witnesses for whom the Prosecution seeks this protective measure, are still in effect in that case;

CONSIDERING therefore that pursuant to Rule 75(F)(ii), the appropriate action for the Prosecution to take would have been to disclose the statements of these *fourteen* witnesses to the Accused, with the statements identified by pseudonym and redacted to remove identifying information, and simultaneously inform the Accused of the existence of the protective measures ordered in respect of those witnesses;

2. The last two sentences of footnote 2 of the Protective Measures Decision are deleted, and Orders 1(c), 1(d), and 1(e) of the Protective Measures Decision are amended to read as follows, with amendments indicated by italics:

(c) ...[T]he Prosecution shall, within seven days, disclose to both Accused the full and unredacted statements of all witnesses, including the names, whereabouts, and other identifying data of the witnesses, except for the *fourteen* witnesses for whom delayed disclosure under Rule 69(A) has been granted previously by this Chamber;

(d) With regard to those *fourteen* witnesses, the only redactions the Prosecution may maintain in the statements are those concerning the names and any other identifying data of the witnesses; all other redacted information shall be restored; and

(e) The Prosecution shall disclose the full and unredacted statements of the *fourteen* witnesses subject to delayed disclosure no later than thirty days prior to the anticipated start of trial in this matter, unless otherwise ordered by the Trial Chamber.

3. The Prosecution's request for a stay of Order 1(c) of the Protective Measures Decision is denied as moot, but the time for disclosing supporting material to Accused Pavković, Lazarević, and Lukić pursuant to Rule 66(A)(i) is enlarged, and the Prosecution shall, within seven days, complete disclosure under that Rule to all three Accused in compliance with the amended orders listed above;

4. Such disclosure shall *not* give rise to an additional period for filing preliminary motions under Rule 72;
5. The Prosecution request for clarification of the Chamber's order in the Protective Measures Decision is denied;
6. The Prosecution's request for a change of pseudonym for the protected witness is granted; and
7. The Registrar is ordered to take such measures as are necessary to implement the amendments to the Protective Measures Decision.

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



Judge Patrick Robinson
Presiding

Dated this twenty-ninth day of June 2005
At The Hague
The Netherlands

[Seal of the Tribunal]