



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-04-82-T
Date: 2 May 2007
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: 2 May 2007

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

**DECISION ON PROSECUTION'S MOTION FOR
PROTECTIVE MEASURES**

The Office of the Prosecutor:

Mr. Dan Saxon
Ms. Joanne Motoike
Mr. Matthias Neuner

Counsel for the Accused:

Ms. Edina Rešidović and Mr. Guénaél Mettraux for Ljube Boškosi
Mr. Antonio Apostolski for Johan Tarčulovski

1. This Trial Chamber (“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 (“Tribunal”) is seized of a *confidential* “Prosecution Motion for Protective Measures”, filed on 10 April 2007 (“Motion”). The Prosecution requests that (a) the testimony of a prospective witnesses mentioned in its Motion be given under pseudonym (pseudonym “M-171”) and with image and voice distortion, (b) that the witness be referred to by pseudonym M-171 in all proceedings before the Tribunal, (c) all hearings considering the issue for this specific witness be held in closed session and only be released to the public and media after review by the Prosecution, in consultation with the Victim and Witness Unit of this Tribunal, (d) the redaction of all identifying information concerning the witness from the public records of the Tribunal, (e) the non-disclosure to the public of any identifying records of the witness, and (f) the public and media do not sketch, video-record, or take photographs of the witness while the witness is on the premises of the Tribunal. The Defence for Johan Tarčulosvski (“Tarčulosvski Defence”) filed a response on 17 April 2007, objecting to the protective measures sought by the Prosecutor (“Tarčulosvski Defence Response”).¹ In its submission, the Tarčulosvski Defence contends that the Prosecution has not identified any “concrete danger” to the witness’ security concern, and that the Motion is “vague and unsubstantiated”. The Defence for Ljube Boškoski does not object to the Motion.² On 24 April the Prosecution requested leave to reply to the Tarčulosvski Defence Response, and submitted its reply (“Reply”).³ The Chamber grants leave to reply, and takes note of the content of this Reply.

2. Under Rule 75 of the Rules and Procedure and Evidence (“Rules”), the 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. The Chamber recalls that the burden rests on the party seeking protective measures to justify in each case why the measures requested should be granted.⁴ Not only must the testimony of the witness be central to the Prosecution’s case but the applicant must show that, should it become publicly known that the witness has testified, there is a real risk to his or her security or that of his or her family, rather than a mere general expression of

¹ *Confidential* Johan Tarčulosvski Response to the Prosecution Motion for Protective Measures, 17 April 2007.

² 16 April 2007, T 378-379.

³ *Confidential* Prosecution’s Application for Leave to Reply and Reply to Tarčulosvski Defence Response to “Prosecution Motion for Protective Measures”, 24 April 2007.

⁴ *Prosecutor v. Pavle Strugar, Miodrag Jokić and others*, “Order on Prosecution’s motions for protective measures”, 16 January 2002, page 5; *Prosecutor v. Limaj et al*, Decision on Prosecution’s Motion for Protective Measures at Trial, 22 November 2004, para. 6; *Prosecutor v. Milutinović et al*, Decision on Prosecution’s Sixth Motion for Protective Measures, 1 June 2006.

fear by the witness.⁵ The Chamber must therefore be satisfied, in view of the specific reasons provided, that the fear expressed has an objective foundation.

3. Upon review of the material provided by the Prosecution in support of its submissions,⁶ it is the Chamber's understanding that the testimony of the prospective witness for which the Prosecution seeks protective measures, is anticipated to relate to time and events central to the Prosecution's case. The Chamber also considers that there is a real risk to the security of the witness and that of the witness' family, should the testimony be given publicly before this Tribunal. Thus, the Chamber finds that the protective measures concerning the witness' testimony are, therefore, appropriate and necessary to safeguard the privacy and protection of the prospective witness concerned and further finds them to be consistent with the rights of the Accused in this case. The testimony of this prospective witness will therefore be given under pseudonym "M-171", and with image and voice distortion.

4. The Chamber is also persuaded that all identifying information or material relating to the prospective witness subject of the Motion shall not be disclosed to the public and shall be redacted from the public records of the Tribunal by the competent organs or sections. The Chamber finds that these measures requested by the Prosecution are appropriate and necessary to safeguard the privacy and protection of the prospective witness and the integrity of the evidence and the proceedings, and further finds them to be consistent with the rights of the accused in this case. The Chamber points out that the Defence has an underlying obligation to safeguard this type of identifying information or material of protected witnesses and that any breach of this obligation will be regarded as contempt of the Tribunal pursuant to Rule 77(A)(ii) of the Rules.

5. Based on the foregoing, pursuant to Rule 75 of the Rules, the Chamber **GRANTS THE MOTION** and **ORDERS** as follows:

1. The prospective witness subject of the Motion shall testify with the pseudonym "M-171". This pseudonym shall be used whenever referring to the witness in question in this trial and related proceedings before the Tribunal and in discussions among parties to the trial.
2. Witness M-171 shall also testify with the protective measures of image and voice distortion.

⁵ *Prosecutor v. Duško Tadić*, "Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses", 10 August 1995 (paras 62-66). See also, *The Prosecutor v. Tihomir Blaškić*, "Decision on the application of the Prosecutor dated 17 October 1996 Requesting Protective Measures for Victims and Witnesses", 5 November 1996; *Prosecutor v. Slobodan Milošević*, Decision on Prosecution's Motion for Trial Related Protective measures (Bosnia), 30 July 2002.

⁶ *Confidential Annex A* to the Motion; Reply.

3. The name, address, whereabouts of, and identifying information concerning witness M-171 shall not be disclosed to the public and shall not be included in any public records of the Tribunal.
4. To the extent that the name, address, whereabouts of, or other identifying data of witness M -171 is contained in existing public records of the Tribunal, that information shall be expunged from those documents.
5. All hearings to consider the issue of protective measures for witness M -171 shall be held in closed session and edited records and transcripts of the session(s) shall be released to the public and to the media after review by the Prosecution, in consultation with the Victims and Witnesses Section.
6. The public and the media may not photograph, video-record or sketch or in any manner record or reproduce images of witness M -171 while, the witness is in the precincts of the Tribunal.

For the purposes of this decision:

“The Defence” means and includes the accused Ljube Boškoski and Johan Tarčulosvski (“Accused”), their Defence Counsel and all those approved by the Registry to assist with the defence of the Accused.

“The public” means and includes all persons, governments, organisations, entities, clients, associations, groups and media, other than judges and staff of the Tribunal Chambers and Registry, the Prosecution, and the Defence. “The public” specifically includes, without limitation, family, friends and associates, agents, and representatives of the Accused, the media, the accused in other cases or proceedings before the Tribunal and/or national courts, and defence counsel in other cases or proceedings before the Tribunal and/or national courts.

“The media”, as mentioned above, means and includes all video, film, audio, electronic and print media personnel, including journalists, reporters, authors, television and radio personnel, as well as their agents and representatives.

6. Nothing herein shall preclude any party or person from seeking such other or additional protective measure or measures as may be appropriate.

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

Dated this 2nd day of May 2007
At The Hague
The Netherlands



Judge Kevin Parker

Presiding Judge

[Seal of the Tribunal]