



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-05-87/1-PT
Date: 3 October 2008
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Tsvetana Kamenova
Judge Frederik Harhoff, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 3 October 2008

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

DECISION ON PROSECUTION MOTION FOR PROTECTIVE MEASURES

Office of the Prosecutor

Mr. Chester Stamp
Ms. Daniela Kravetz
Mr. Matthias Neuner
Ms. Priya Gopalan
Ms. Silvia D'Ascoli

Counsel for the Accused

Mr. Dragoljub Đorđević
Mr. Veljko Đurđić

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 (“Tribunal”) is seised of the “Prosecution Motion for Protected Measures with Confidential and *Ex Parte* Annex”, filed on 5 September 2008 (“Motion”), requesting the grant of the protective measures of assignment of a pseudonym, testimony with facial and voice distortion, and delayed disclosure until 30 days prior to the witness’ testimony to a witness identified in the Motion as K-91, and hereby renders its decision thereon.¹

1. The Prosecution files its motion pursuant to Article 20 of the Statute of the Tribunal (“Statute”) and Rules 54, 69, and 75 of the Rules of Procedure and Evidence (“Rules”) and sets forth the grounds for the relief requested in a confidential and *ex parte* annex affixed to the Motion. On 19 September, the Defence filed a response in which it accepted the requested protective measures of pseudonym, and voice and face distortion, but objected to the delayed disclosure of the identity of the witness until 30 days for the testimony of this witness.
2. Under the terms of Rule 69(C), the identity of the victim or witness must be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.
3. Rule 69(A) of the Rules permits the Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until the person is brought under the protection of the Tribunal. In the case of *Prosecutor v. Brđanin and Talić*, that Chamber held that something more than the subjective fear of the witness must be demonstrated; there must be some objective foundation for the fear that the witness may be facing a real risk or danger. The *Brđanin* Chamber also set out three criteria that must be considered when delayed disclosure is requested under Rule 69(A). Those criteria are as follows:
 - (a) the likelihood that the Prosecution witness will be interfered with or intimidated once their identity is made known to the accused and his counsel, but not to the public;
 - (b) the distinction which must be drawn between measures to protect individual victims and witnesses in the particular trial, which are permissible under the Rules, and measures which simply make it easier for the Prosecution to bring cases against other persons in the future; and

¹ Motion, para. 2.

- (c) the length of time before the trial at which the identity of the victims and witnesses must be disclosed to the accused.²

4. In addition to Rule 53(A), Rule 75 permits a Chamber to order appropriate measures for the privacy and protection of victims and witnesses, provided the measures are consistent with the rights of the accused. Moreover, the *Tadić* Chamber has held that a Chamber must ensure that any curtailment of the accused's right to a public hearing is justified by a genuine fear for the safety of the witness and/or members of his or her family.³

5. In the instant request, the Prosecution has met its burden under Rule 69, and has established that there is an objective foundation for the fear that the witness may be facing a real risk or danger to his safety and security. The measures requested strike a fair and appropriate balance between preserving the rights of the accused and ensuring that the legitimate concerns of the witness are addressed. The delayed disclosure requested will not deprive the accused of the right to cross-examine the witness, particularly where, as here, the Prosecution states that a redacted version of the witness' statement has already been provided to the Defence.⁴ Having carefully considered the reasons set out in the Motion, the Chamber is satisfied that the requested protective measures are warranted. The Chamber also finds appropriate the protective measures requested pursuant to Rules 53 and 75 to prevent the disclosure of the witness' identity to the public.

6. Accordingly, the Trial Chamber, pursuant to Rules 53, 54, 69, and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby **GRANTS** the Motion, and **ORDERS** as follows:

- (a) Representatives of the public shall not photograph, video-record, or sketch the witness while the witness is on the premises of the Tribunal.
- (b) The witness described in the confidential and *ex parte* Annex shall be identified by the pseudonym K-91 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witness K-91 shall give testimony with the use of image distortion.
- (d) Witness K-91 shall give testimony with the use of voice distortion.

² *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, paras. 26–38.

³ *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Witness S, 13 August 1996.

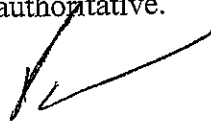
⁴ Motion, para. 17.

- (e) The Prosecution shall provide to the Defence no later than 30 days prior to the anticipated date of the witness' testimony the true identity and unredacted statement(s) of the witness.
- (f) The parties shall not disclose to the public any protected material, including information and documents, pertaining to this witness except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the case or the knowledge of the parties. If the parties find it directly and specifically necessary to make disclosures pursuant to this limited purpose, they shall inform each person among the public to whom non-public material or information is shown or disclosed that such person is not to copy, reproduce, or publicise such material or information, and is not to show, disclose, or convey it to any other person. If provided with the original or any copy or duplicate of such material or information, such person shall return it to the party when continued possession of the material or information is no longer necessary for the preparation and presentation of the case.
- (g) Defence counsel, and their representatives and agents who are acting pursuant to their instructions or requests, shall notify the Prosecution of any requested contact with the witness referred to herein, in order to enable the Prosecution to make the necessary arrangements for such contact, in the event the witness agrees to contact with Defence counsel.
- (h) The name, whereabouts, and other identifying information concerning the witness shall be sealed and not included in any public record of the Tribunal. To the extent that the name and other identifying information concerning the witness are contained in existing public documents of the Tribunal, that information shall be expunged from those documents.
- (i) If a member of the Prosecution or Defence team withdraws from the case, all material in his or her possession shall be returned to the person serving as lead counsel for that party at that time.
- (j) All materials pertaining to this witness, including those materials disclosed under subsection (f) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.

- (k) Except as provided for by subsection (f) above, any person who knowingly and wilfully discloses the identifying information of this witness, or any other information sufficient to identify this witness, shall be in violation of this Order, and may be subject to prosecution for contempt of the Tribunal pursuant to Rule 77 of the Rules.
- (l) For the purposes of this decision, the “public” means all persons, including corporations; governments and organs/departments thereof; organisations; entities; associations; groups; the Accused’s family members, friends, and associates; accused and defence counsel in other proceedings before the Tribunal; and the media. However, for the purposes of this Decision, the “public” does not mean Judges of the International Tribunal; staff of the Registry and the Office of the Prosecutor; the *Amici Curiae* (where necessary); or the Accused and their Defence counsel, co-counsel, and other members of the Defence team.

7. The Chamber hereby **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge Patrick Robinson
Presiding

Dated this third day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]