



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-95-5/18-PT
Date: 26 September 2008
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Order of: 26 September 2008

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PRELIMINARY ORDER ON PROSECUTION MOTION FOR
PROTECTIVE MEASURES FOR WITNESSES**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon

The Accused

Mr. Radovan Karadžić

I, Iain Bonomy, Judge 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”), am seised of the “Prosecution Notification of Protective Measures for Witnesses Currently in Force with Confidential *Ex Parte* Annex”, filed on 15 September 2008 (“Motion”), and hereby issue this preliminary order in relation thereto.

1. In the Motion, the Prosecution, pursuant to Rule 75(F) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), undertakes to notify the Trial Chamber of various protective measures granted to a number of witnesses in other proceedings, and requests the continuation and variation of those measures. The measures requested to be continued include various trial-related measures, as well as delayed disclosure to the Accused of the identity and statements of four of the witnesses until 30 days before trial. The Accused has not yet responded to the Motion.

2. This preliminary order is made in respect of the Prosecution’s request for the continuation under Rule 75(F)(i) of delayed disclosure for two of the four witnesses identified in the Motion and described in the confidential *ex parte* annex thereto. For the purposes of this preliminary order, those witnesses will be referred to, as they are in the Motion, by the pseudonyms KDZ28 and KDZ29, although the Trial Chamber will issue a decision on the matter of pseudonyms for these and other witnesses in due course.

3. The Prosecution asserts that each of the four witnesses for whom delayed disclosure is requested to be continued has been granted delayed disclosure in previous proceedings, and cites the Orders and Decisions in which it submits those previous protective measures were granted. However, upon inspection, the cited Orders and Decisions do not seem to support the assertion that these measures were indeed ordered in prior proceedings before the Tribunal. It is therefore necessary for the Prosecution to clarify this matter before the Trial Chamber can contemplate confirming the continuation of Rule 69 protective measures under Rule 75(F)(i) for these two witnesses.¹

4. The Prosecution submits that Witness KDZ28, under a different pseudonym referred to confidentially in the Motion, was granted delayed disclosure of identity in *Prosecutor v. Vasiljević* (Case No. IT-98-32-T) pursuant to the “Order on Protective Measures for Witnesses at Trial”, filed

¹ See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Confidential Decision on Prosecution Motion for Reconsideration of Decision on Fifth Prosecution Motion for Protective Measures, 21 June 2006, para. 12 (“The Chamber wishes to stress that it is the responsibility of the Prosecution when making a motion for protective measures to comprehensively ascertain all previous protective measures that have been granted to a witness and to include this information in its motion.”).

on 24 July 2001 (“*Vasiljević* Order”), and in *Prosecutor v. Lukić* (Case No. IT-98-2/1-T) pursuant to the “Decision on Prosecution’s Second Motion for Protective Measures”, filed on 10 January 2008 (“*Lukić* Decision”).² In the *Vasiljević* Order, that Trial Chamber ordered pursuant to Rule 75 that the witness in question be referred to by a pseudonym and give testimony screened from the public and with the use of facial distortion.³ In the *Lukić* Decision, that Trial Chamber referred to the protective measures previously granted to the witness in the *Vasiljević* Order, and ordered that the witness should likewise be referred to by a pseudonym and give testimony with screening and voice distortion in the *Lukić* proceedings.⁴ These documents do not contain any grant of delayed disclosure under Rule 69 to the witness in question.

5. The Prosecution submits that Witness KDZ29, under a different pseudonym referred to confidentially in the Motion, was granted delayed disclosure of identity in *Prosecutor v. Šešelj* (Case No. IT-03-67-T) pursuant to the “Decision on Adopting Protective Measures”, filed on 30 August 2007 (“*Šešelj* Decision”).⁵ In that Decision, the Trial Chamber ordered delayed disclosure under Rule 69 to one group of witnesses no later than 30 days before the commencement of the trial, and to a second group of witnesses no later than 30 days before they gave evidence.⁶ However, it is not clear, from the information given by the Prosecution in the Motion and the confidential *ex parte* annex thereto, whether either of these groups included Witness KDZ29.

6. Accordingly, I, pursuant to Rules 54, 69, and 75 of the Rules, hereby ORDER the Prosecution to file a supplement to the Motion, with a confidential *ex parte* annex if necessary, by no later than 3 October 2008, furnishing the Trial Chamber with clear citations of the specific pages or paragraphs in the Decision(s) or Order(s) of previous proceedings where delayed disclosure was granted for both the above witnesses. In relation to Witness KDZ29, this may require clarification

² Motion, para. 2(e)(i).

³ *Vasiljević* Order, at 3.

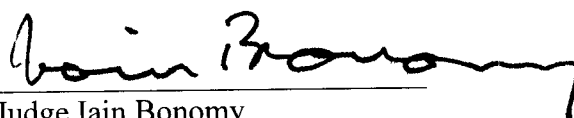
⁴ *Lukić* Decision, at 4.

⁵ Motion, para. 2(f)(i).

⁶ *Šešelj* Decision, at 8.

of the pseudonym by which the witness was referred to in the *Šešelj* Decision.

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



Judge Iain Bony
Pre-Trial Judge

Dated this twenty-sixth day of September 2008
At The Hague
The Netherlands

[Seal of the Tribunal]