



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-98-32/1-T

Date: 23 July 2008

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Christine Van Den Wyngaert
Judge Pedro David

Registrar: Mr. Hans Holthuis

Order of: 23 July 2008

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**ORDER ON MILAN LUKIĆ'S REQUEST FOR
PROTECTIVE MEASURES**

The Office of the Prosecutor

Mr. Dermot Groome
Mr. Frédéric Ossogo
Ms. Laurie Sartorio
Mr. Stevan Cole
Ms. Francesca Mazzocco

Counsel for the Accused

Mr. Jason Alarid for Milan Lukić
Mr. Đuro Čepić and Mr. Jens Dieckmann for Sredoje Lukić

TRIAL CHAMBER III (“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”);

BEING SEISED of “Milan Lukić’s Further Notice of Alibi Witnesses Pursuant to ICTY Rule 67(B)(i)(a) and Request for Protective Measures” filed confidentially on 9 July 2008 (“Defence Request”), wherein the Defence for Milan Lukić (“Defence”) requested, *inter alia*, that protective measures be ordered in respect of ten witnesses to be called in connection with the Defence notice of alibi;

BEING SEISED also of “Milan Lukić’s Further Submissions in Regard to Defence of Alibi” filed confidentially on 18 July 2008 which includes, *inter alia*, a request for protective measures in connection with a further two Defence witnesses;

NOTING that, although the Defence has assigned pseudonyms to its witnesses, unredacted statements including the identities of the witnesses have been disclosed to the Prosecution;

NOTING that the Prosecution has previously given an undertaking to maintain the confidentiality of four of the proposed alibi witnesses from the public;¹

NOTING further that previous applications by the Defence for protective measures for its witnesses have been rejected on the basis that the requests were premature or that they sought blanket measures of protection without identifying either the witnesses for whom protection was sought or the specific nature of the measures sought;²

NOTING that the trial of this matter commenced on 9 July 2008;

NOTING the Defence submission that the said witnesses during their interviews all requested “the protection of the Tribunal in non-disclosure of their identities”;³

NOTING the Defence’s further submission that “upon good faith information and belief” these witnesses “may face serious consequences, such as intimidation, retaliation, threats, injury and/or

¹ Prosecution’s Response to “Milan Lukić’s Motion for Rule 69 Protective Measures for Defense Witnesses in Advance of Clarification of Notice Pursuant to Rule 67(A)(i)(a)”, 21 April 2008, para. 6.

² Decision on Milan Lukić’s Motion for Rule 69 Protective Measures for Defense Witnesses in Advance of Clarification of Notice Pursuant to Rule 67(A)(i)(a), 9 April 2008; Decision on the Prosecution’s Motion for an Order Requiring the Accused Milan Lukić to Clarify Alibi Notice Served Under Rule 67(A)(i)(a) and on the Defence of Milan Lukić’s Second Motion Concerning Protective Measures for Alibi Witnesses, 8 May 2008.

³ Milan Lukić’s Further Notice of Alibi Witnesses Pursuant to ICTY Rule 67(B)(i)(a) and Request for Protective Measures, 9 July 2008 (“Defence Request”), para. 8.

death” stemming from their willingness to testify on behalf of the Accused Milan Lukić before the Tribunal;⁴

NOTING the Defence argument that the absence of protective measures could jeopardise the safety of the said witnesses and in so doing “severely and irrevocably prejudice the Defence” by compromising the ability of those witnesses to testify “now and in the future”;⁵

NOTING that the Defence has requested that the Trial Chamber order “protective measures necessary for these disclosed witnesses”⁶ without indicating the number and specific type of protective measures being sought, that is, for example, whether the measures in question would be restricted to the assignment of a pseudonym to each witness or whether additional protective measures would be necessary;⁷

NOTING that the Defence has requested that protective measures be granted “at this juncture ... and/or [that] oral or written submissions for specific protective measures be heard by the Trial Chamber contemporaneous with the Defence case, in the event these witnesses are called to testify”;⁸

CONSIDERING that the Trial Chamber sees no reason why the Prosecution undertaking to maintain confidentiality of witnesses from the public should not apply to all Defence witnesses in respect of which that undertaking was made, and in respect of other Defence witnesses that will be identified as potentially requiring protective measures as the case progresses, until such time as there is a final determination of any further application for protective measures for such witnesses;

CONSIDERING that, as a general rule, trial proceedings “shall be public”,⁹ and that exception to this overarching principle is made where “appropriate measures for the privacy and protection of victims and witnesses”¹⁰ may be necessary;

CONSIDERING that it is constant in the case law of the Tribunal that a *real* fear for the security of the witness or that of his family must be shown to exist,¹¹ and that the “subjective fears of the

⁴ *Ibid.* para. 7.

⁵ *Ibid.* para. 9.

⁶ *Ibid.* p. 5.

⁷ The Trial Chamber notes that, in previous filings, the Defence has indicated that different witnesses may require less stringent an application of protective measures than others. *See* Milan Lukić’s Response to April 9, 2008 Decision on Motion for Rule 69 Protective Measures for Defence Witnesses in Advance of Clarification of Notice Pursuant to Rule 67(A)(i)(a), 18 April 2008, para.9.

⁸ Request, para. 10.

⁹ Statute of the International Criminal Tribunal for the former Yugoslavia, Article 20(4).

¹⁰ Rules of Procedure and Evidence, Rule 75(A).

¹¹ *Prosecutor v. Duško Tadić*, IT-94-1-T, Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para. 62.

potential witness that he or she may be in danger or at risk are not, *per se*, sufficient to establish any real likelihood that the witness may actually be in danger or at risk from disclosure of his or her identity to the opposing party”;¹²

CONSIDERING that the grounds for such genuine fear can be demonstrated to the Trial Chamber in a number of ways, for example, by the submission to the Chamber of a document setting out the personal circumstances of each witness, including, for example, whether the witness still resides in the area where the alleged events occurred, any family or business connection with or need to return to the area, ethnicity, and details of any specific threats that may have been made to the witness or his or her family as reported to the party making the application and giving the date on, and circumstances in which, the information was obtained from the witness;

CONSIDERING that at this juncture the Trial Chamber has not been supplied with the adequate details necessary for a final decision to be made on the Defence Request, and that the vague submissions filed, indicating a generalised “fear of repercussions”¹³ are insufficient to permit a proper determination to be made regarding an application for protective measures;

CONSIDERING also, that aside from the general request in the current application for use of a pseudonym, it is not evident to the Trial Chamber the exact nature of the relief being sought for these Defence alibi witnesses either: (1) when such witnesses are actually testifying before the Trial Chamber, or (2) with regard to regulating any public disclosures by the Prosecution, the Defence for Sredoje Lukić or persons acting on their behalf in the investigation and preparation of their respective cases in the period leading up to the alibi witnesses’ testimony;

¹² *Prosecutor v. Radoslav Brđjanin*, IT-99-36-T, Decision on Prosecution’s Twelfth Motion for Protective Measures for

FOR THE FOREGOING REASONS;

HEREBY ORDERS the Defence to file by Friday 8 August 2008 further submissions providing the Trial Chamber with:

1. additional information specifying the circumstances of each witness as would illustrate the need for the ordering of protective measures in each witness's case; and
2. clarification as to the specific protective measures sought for each witness and at which stage of the proceedings such measures are intended to apply.

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



Judge Robinson
Presiding Judge

Dated this twenty-third day of July 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

Victims and Witnesses, 12 December 2002, para. 8.

¹³ Defence Request, para. 8.