



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-T
Date: 28 November 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 28 November 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON LAZAREVIĆ MOTION FOR PROTECTIVE MEASURES
FOR WITNESS SD3**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 partly confidential “Vladimir Lazarević’s Motion for Protective Measures with Confidential Annex”, filed on 12 November 2007 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Lazarević Defence requests certain trial-related protective measures, including closed session testimony, for a witness identified in the confidential annex to the Motion. It is submitted that, due to the nature of his testimony and the positions he held and currently holds, the protective measures sought are necessary and appropriate to protect the witness and his family and avoid any hardship they are likely to suffer should his identity become known to the public.¹

2. On 26 November 2007, the Prosecution filed its public “Prosecution’s Response to Partly Confidential Motion by Vladimir Lazarević for Protective Measures with Confidential Annex” (“Response”), in which it opposes the Motion in part.² The Prosecution does not oppose the protective measures requested for the witness, save the request that the witness be permitted to testify in closed session.³ In respect to the testimony in closed session, the Prosecution submits that such testimony is excessive and unnecessary for the witness.⁴ It argues that the Lazarević Defence has failed to explain why closed session testimony is “the only means” to protect the witness and why other forms of protection, such as a combination of pseudonym and voice and/or image distortion, would be inadequate.⁵ The Prosecution further asserts that the Lazarević Defence has failed to show “an objectively grounded risk that could only be circumvented by allowing the entirety of the testimony be heard in closed session.”⁶

3. It is important that proceedings before the Tribunal be public as far as possible and that non-public proceedings should be the exception and only allowed in certain limited instances.⁷ Furthermore, the more extreme the protection sought for a witness, the more onerous the obligation upon the applicant to establish the risk asserted.⁸ It has also been recognised that the party requesting protective measures must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness’s family, should it become publicly known that

¹ Motion, paras. 1–5, confidential annex.

² Response, para. 3

³ Response, paras. 3–7.

⁴ Response, para. 3.

⁵ Response, paras. 4–5.

⁶ Response, para. 7.

⁷ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case No. IT-96-23&23/1, Order on Defence Motion Pursuant to Rule 79, 22 March 2000, para. 5.

⁸ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Motion for Protective Measures, 12 February 2007, paras. 10–11.

he or she testified before the Tribunal.⁹ On the basis of an assessment of the circumstances surrounding the witness, the Trial Chamber considers that the Defence request for some protective measures is warranted. The Trial Chamber however considers that the circumstances of the witness do not justify the extraordinary level of protection that testimony in closed session affords. Rather, the Trial Chamber finds that the other protective measures sought, including the use of pseudonym and voice and image distortion, would provide adequate protection for the witness. If portions of the testimony of the witness relate to sensitive information that might identify him or other protected witnesses, the parties may request that these parts of his testimony be heard in private session.

4. For these reasons, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54, 75, and 79 of the Rules of Procedure and Evidence of the Tribunal, hereby **GRANTS** the Motion, in part, and **ORDERS** as follows:

- (a) Representatives of the public shall not photograph, video-record, or sketch the witness while he is on the premises of the Tribunal.
- (b) The witness described in the confidential annex to the Motion shall be identified by the pseudonym SD3 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witness SD3 shall give his testimony with the use of image distortion.
- (d) Witness SD3 shall give his testimony with the use of voice distortion.
- (e) The parties shall not disclose to the public any protected material, including information and documents, pertaining to SD3 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

⁹ *Prosecution v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-90, 18 August 2006, pp. 2–3; *Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

possession of the material or information is no longer necessary for the preparation and presentation of the case.

- (f) The Prosecution and the other five Accused, and their representatives and agents who are acting pursuant to their instructions or requests, shall notify the Defence of any requested contact with the witness referred to herein, in order to enable the Defence to make the necessary arrangements for such contact, in the event the witness agrees to contact with the Prosecution or counsel for the other Accused.
- (g) The names, 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.
- (h) If a member of the Prosecution or any of the Defence teams 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.
- (i) All materials pertaining to SD3, including those materials disclosed under subsection (e) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.
- (j) Except as provided for by subsection (e) above, any person who knowingly and wilfully discloses the identifying information of SD3, 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.
- (k) All provisions of this Decision shall apply equally to the Prosecution; the *Amici Curiae* (where necessary); the six accused and their Defence counsel, co-counsel, and other members of the Defence teams; and the public.
- (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*; or the Accused and their Defence counsel, co-counsel, and other members of the Defence team.

5. 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 Iain Bony
Presiding

Dated this twenty-eight of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]