



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-98-34-PT

Date 12 November 1999

English  
Original: French

**IN THE TRIAL CHAMBER**

**Before:** Judge Claude Jorda, Presiding  
Judge Fouad Riad  
Judge Almiro Simões Rodrigues

**Registrar:** Mr. Jean-Jacques Heintz, Deputy Registrar

**Decision of:** 12 November 1999

**THE PROSECUTOR**

v.

**MLADEN NALETILIĆ  
VINKO MARTINOVIĆ**

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**ORDER IN RESPECT OF THE PROSECUTION  
MOTION FOR PROTECTIVE MEASURES**

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**The Office of the Prosecutor:**

**Mr. Franck Terrier**

**Defence Counsel:**

**Mr. Branko Šerić**

**TRIAL CHAMBER I** 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 (hereinafter the "Tribunal");

**NOTING** the "Amended Motion for Protective Measures" filed by the Prosecutor on 27 October 1999 (hereinafter the "Motion") superseding the "Motion for Protective Measures" filed by the Prosecutor on 16 August 1999;

**PURSUANT** to Articles 20 and 22 of the Statute;

**PURSUANT** to Rules 54, 66, 68, 69 and 75 of the Rules of Procedure and Evidence (hereinafter the "Rules");

**CONSIDERING** that, in her Motion, the Prosecutor informed the Trial Chamber that nearly all the witness contacted in Bosnia-Herzegovina are able to testify at The Hague and are willing to do so; that virtually all of the witnesses have agreed to disclosure of their names to the Defence but that many of them will request to testify under a pseudonym with image or voice distortion;

**CONSIDERING** that the Prosecutor has informed the Trial Chamber that she has satisfied her disclosure obligation as set forth in Sub-rule 66(A)(i) of the Rules, except for the names of the witnesses contained in the materials which must yet be disclosed to the Defence; but that the Prosecutor does not intend to disclose to the Defence of the accused, Martinović, the identities or prior statements of confidential witnesses "B" and "M" since their testimony would relate solely to the conduct of the co-accused M. Naletilić;

**CONSIDERING** that Sub-rule 66(A)(i) of the Rules requires that all supporting materials which accompanied the indictment when confirmation was sought be disclosed to the Defence and that the Trial Chamber is of the view that, where the Prosecutor has chosen to indict several persons in a single indictment, each accused has the right to all the materials in order to prepare his defence;

**CONSIDERING** that, as regards Sub-rule 66(A)(ii) of the Rules, the Prosecutor has informed the Trial Chamber that she has identified approximately one hundred and twenty

(120) confirmed or potential witnesses for the trial and that the statements of about sixty (60) of them have been translated into the language of the accused; that she reportedly began to disclose these statements during the week of 25 to 29 October 1999 and that she will continue to disclose additional statements as they are translated into the language of the accused or when the final decision is made to call certain Prosecution witnesses;

**CONSIDERING** that, in her Motion, the Prosecutor requests that the Trial Chamber order protective measures in respect of the witness statements and materials which must be disclosed to the Defence in accordance with Rules 66 and 68 of the Rules;

**CONSIDERING** that at the status conference of 20 October 1999 the Defence indicated that it did not object to the Motion of 16 August 1999 in which the Prosecutor requested protective measures which were in fact more far-reaching than those requested in the Motion of 27 October 1999;

**CONSIDERING** that the Trial Chamber deems that the concerns expressed by the Prosecutor as to the safety of the prosecution witnesses are legitimate and that it is incumbent upon the Trial Chamber to take the appropriate measures necessary to ensure their protection whilst enabling the Defence to prepare for the trial;

**FOR THE FOREGOING REASONS,**

**ORDERS** that the Defence not divulge any non-public documents provided by the Prosecutor to the media, including the witness statements or any other materials disclosed to the Defence pursuant to Rules 66 and 68 of the Rules;

**ORDERS** that, unless it proves directly necessary in order to prepare and present its case, the Defence not disclose to the public:

- i) any name or information enabling the witnesses to be identified, or the whereabouts of the confirmed or potential witnesses disclosed by the Prosecutor;
- ii) any documentary evidence, physical or otherwise, or any written statement of a confirmed or potential witness or the contents, in whole or in part, of any non-public evidence, statement or prior testimony;

**ORDERS** that, if the Defence deems it necessary to disclose such information in order to prepare and present its case, it inform each recipient of the non-public information (witness statements, prior testimony, videos and the respective contents thereof) that he or she is forbidden to copy, reproduce or publicise them, in whole or in part, or to disclose or show them to any other person; that a person who has been provided with such information be required to return it to the Defence as soon as it is no longer needed for preparing and presenting the case;

**ORDERS** that, in this respect, the Defence keep a log of the name, address and function of any person or entity receiving the information in question as well as the date of disclosure;

**ORDERS** that, if a member of the Defence team withdraws from the case, any confidential material in his or her possession be returned to the lead Defence Counsel and that, upon the conclusion of this case, the Defence return to the Registry all disclosed materials and copies thereof which are not included in the public record;

**ORDERS** that the Prosecutor disclose to the Defence the identity of the witnesses contained in the material supporting the indictment and that she also disclose the identity and prior statements of witnesses "B" and "M";

**ORDERS** that the Prosecutor inform the Defence which witnesses she intends to call at this stage and disclose to the Defence all the translated statements of the witnesses by 30 November 1999 at the latest.

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

Done this twelfth day of November 1999,  
At The Hague,  
The Netherlands.

(signed)

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Claude Jorda

Presiding Judge, Trial Chamber I

**(Seal of the Tribunal)**