

**UNITED  
NATIONS**



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-96-21-T

Date: 28 April 1997

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Adolphus G. Karibi-Whyte, Presiding  
Judge Elizabeth Odio Benito  
Judge Saad Saood Jan

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Decision of:** 28 April 1997

**PROSECUTOR**

v.

**ZEJNIL DELALIĆ  
ZDRAVKO MUCIĆ also known as "PAVO"  
HAZIM DELIĆ  
ESAD LANDŽO also known as "ZENGA"**

**DECISION ON THE MOTION BY THE PROSECUTION FOR PROTECTIVE  
MEASURES FOR THE WITNESS DESIGNATED BY THE PSEUDONYM "N"**

**The Office of the Prosecutor**

**Mr. Eric Ostberg  
Ms. Teresa McHenry**

**Mr. Guiliano Turone  
Ms. Elles van Duschotten**

**Counsel for the Accused**

**Ms. Edina Residović, Mr Ekrem Galiatović, Mr. Eugene O'Sullivan, for Zejnil Delalić  
Mr. Branislav Tapusković, Mr. Micheal Greaves for Zdravko Mucić  
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić  
Mr. Mustafa Bračković, Ms. Cynthia McMurrey, for Esad Landžo**

## I. INTRODUCTION

Before 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 (“International Tribunal”) is a motion filed by the Office of the Prosecutor (“Prosecution”) on 25 March 1997, (“Motion”), (Official Record at Registry Page (“RP”) D 3163 - D 3166) seeking protective measures for a witness in this case, designated by the pseudonym “N”.

On 1 April 1997, the Trial Chamber heard oral arguments on the Motion from both the Prosecution and the Defence on behalf of the four accused persons (the “Parties”). On the same date, the Trial Chamber issued an oral decision granting the Motion, reserving the written decision to a later date.

**THE TRIAL CHAMBER, HAVING CONSIDERED** the written submissions and oral arguments of the parties,

**HEREBY ISSUES ITS WRITTEN DECISION.**

## II. DISCUSSION

### A. Background

1. Before the present Motion, the Prosecution made six separate applications to the Trial Chamber seeking protective measures for twelve of its witnesses. According to the Prosecution, witness “N” did not initially seek to be protected and so the Prosecution did not request any form of protection for him at the time it made its prior applications. However, on arrival in the Hague, the seat of the International Tribunal, the witness expressed a wish to be protected. He is the thirteenth witness in respect of whom the Prosecution has sought protection.

### B. Applicable Provisions

2. The power of the Trial Chamber to provide protection for victims and witnesses is derived from the provisions of Articles 20 and 22 of the Statute of the International Tribunal (“Statute”) and Rules 69, 75 and 79 of the Rules of Procedure and Evidence (“Rules”). These provisions oblige the Trial Chamber to provide protection to victims and witnesses in appropriate circumstances (see generally, *Prosecutor v Zejnil Delalić et al*, Decision on the Motions by the Prosecution for Protective Measures for the Prosecution Witnesses Pseudonymed “B” Through to “M” IT-96-21-T, T.Ch. II, 28 April 1997 (“The Delalić *et at* Protection Decision”).

### C. Pleadings

#### The Prosecution

3. The Prosecution seeks eleven separate protective measures for witness “N” in the following terms:

(1) the name, address, whereabouts and other identifying data concerning the person given the pseudonym “N” shall not be disclosed to the public or to the media:

(2) all hearings to consider the issue of protective measures for witness N shall be in closed session, however, edited recordings or transcripts of the session(s) shall, if possible, be released to the public and to the media after review by the Office of the Prosecutor in consultation with the Victims and Witnesses Unit to ensure that no information leading to the possible identification of the witness is disclosed;

- (3) the name, address, whereabouts of, and identifying information concerning witness N shall be sealed and not included in any of the public records of the International Tribunal;
- (4) to the extent the name, address, whereabouts of, or other identifying information concerning the status of witness N as a witness is [sic] contained in existing public documents of the International Tribunal, that information shall be expunged from those documents;
- (5) documents of the International tribunal identifying witness N shall not be disclosed to the public or to the media;
- (6) the pseudonym "N" shall be used whenever referring to this witness in his capacity as a witness in Tribunal proceedings and in discussions among parties to the trial;
- (7) the testimony of witness N may be given using image and voice altering devices to the extent necessary to prevent his identity from becoming known to the public or the media, and if necessary there will be a private session;
- (8) if part of witness N's testimony is given in private session, edited recordings and transcripts of the private session(s) shall be released to the public and to the media after review by the Office of the Prosecutor in consultation with the Victims and Witnesses Unit to ensure that no information leading to the possible identification of the witness is disclosed;
- (9) the accused, the Defence Counsel and their representatives who are acting pursuant to their instructions or request, shall not disclose the name of witness N, or other identifying data concerning witness N, to the public or to the media, except to the limited extent such disclosure to members of the public is necessary to investigate the witness adequately. Any such disclosure shall be made in such way as to minimise the risk of the witness's name being divulged to the public at large or to the media;
- (10) the accused, the Defence Counsel and their representatives who are acting pursuant to their instructions or request, shall notify the Office of the Prosecutor of any requested contact with witness N or the relatives of witness N, and the Office of the Prosecutor shall make arrangements for such contact as may be determined necessary; and
- (11) the public and the media shall not photograph, video-record or sketch witness N while he is in the precincts of the International Tribunal.

4. In sum, the Prosecution's prayer is that the Trial Chamber should order, by a variety of means, the non-disclosure to the public and the media of the identity of witness "N". This is on account of the witness's fears for the safety of members of his family if his participation as a witness in this case becomes public knowledge. The witness's family members are resident in Konjic municipality which is the area of the Republic of Bosnia and Herzegovina in which the Čelebići facility, the place in which the crimes charged in the indictment are alleged to have occurred, is located.

#### The Defence

5. During the oral argument, Defence Counsel for each of the four accused persons all opposed the Motion. Defence Counsel stated that they found no objective grounds to justify the grant of protective measures in respect of the witness. Urging the Trial Chamber to deny the Motion, they declared that the Defence had been aware of witness "N"'s status as a witness in this case for over a year. They submitted that during this period of their knowledge, no harm had befallen the witness's family and that there is no showing that his testimony will change this state of affairs.

#### D. Findings

6. The International Tribunal operates within the framework of its Statute and Rules which mandate its Trial Chambers not only to guarantee the rights of the accused but also to provide protection for victims and witnesses in appropriate circumstances. There is no doubt that the subject matter of this Motion falls within the ambit of protection that the relevant provisions of the Statute and the Rules empower the Trial Chamber to provide. Rule 75(A) provides that the Trial Chamber may "order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused." Rule 75(B) goes on to prescribe a number of measures that may be ordered, including but not limited to expunging names and identifying information from the Trial Chamber's public records and non-disclosure to the public of any records identifying the victim. The only question that remains to be decided is, therefore, whether, in the situation of witness "N", it is appropriate for the Trial Chamber to exercise its powers.

7. The reason put forth by the Prosecution for requesting these protective measures is that witness "N" fears for the safety of his family. The Trial Chamber considers that fear is a

sufficient ground on which to base a decision in favor of the Prosecution. In *The Prosecutor v Duško Tadić*, (Decision on the Prosecutor's Motion Requesting Protective Measures for Witness R, IT-94-1-T, T.Ch. II, 31 July 1996 at para. 6), Trial Chamber II, (Judges McDonald, presiding, Stephen and Vohrah) stated that in reaching a decision on whether to grant protective measures, the Trial Chamber "must take into account witness R's fear of the serious consequences to members of his family if information about his identity is made known to the public or the media." Likewise, this Trial Chamber believes that it cannot ignore witness "N"'s fears.

8. Although, as the Defence contends, witness "N"'s fears have not been substantiated by objective evidence, they cannot be disregarded as irrational. They must be seen in the light of the normal tensions that exist in the aftermath of events as unfortunate as those which recently occurred in the Republic of Bosnia and Herzegovina. It is not unusual for people to take the law into their own hands against their enemies, real or imagined, in such situations, and in the circumstances, fear of probable attacks is not an abnormal reaction. The Trial Chamber cannot, therefore, summarily dismiss the personal fears of a witness it is mandated to protect under Article 22 of the Statute.

9. The Defence submission that the witness's family has been safe until the present time even though his status as a witness was disclosed to the Defence about a year ago misses the object of the witness's fear. It is the general public that the witness requests protection from, not the Defence Counsel and the accused persons. The lack of a police force hinders the International Tribunal from acting to protect witness "N"'s family against ill-motivated members of the general public in the event that some danger does materialise.

10. More important than the inability of the Trial Chamber to offer police protection is the fact that the measures sought do not unduly implicate the substantive rights of the accused, to which the Trial Chamber must give full respect (Article 20(1)). It is significant that the Prosecution is not seeking to deny the accused persons any of the minimum guarantees of a fair trial prescribed in Article 21(4) of the Statute or the right to a public trial as provided in Article 21(2). All the measures requested are sought *vis a vis* the public and the media and not the accused.

11. The Motion does, however, implicate a legitimate interest of the public to information about the activities and events occurring within the International Tribunal. This is an important interest, but it cannot be elevated to the level of a right. It is an interest which can yield, in germane instances, to others which are statutory mandated (see generally, *The Delalić et al Protection Decision* at paragraphs 33-38). In this instance, however, this interest is affected but not abrogated because the witness shall testify in open session, the public may attend the trial when witness “N” is giving evidence and edited versions of his testimony shall, subsequently, be made available to the public.

### III. DISPOSITION

For the foregoing reasons, **THE TRIAL CHAMBER**, being seised of the Motion filed by the Prosecution, and

**PURSUANT TO RULE 75,**

**HEREBY ORDERS AS FOLLOWS:**

- (1) the name, address, whereabouts and other identifying information concerning the person designated the pseudonym “N” shall not be disclosed to the public or the media;
- (2) the name, address, whereabouts of, or other identifying information concerning the status of witness “N” shall be sealed and not included in any of the public documents of the International Tribunal;
- (3) to the extent that the name, address, whereabouts of or other identifying information concerning the status of witness “N” as a witness are contained in existing public documents of the International Tribunal, that information shall be expunged from those documents;
- (4) documents of the International tribunal identifying witness “N” shall not be disclosed to the public or to the media;
- (5) the pseudonym “N” shall be used whenever this witness is referred to in his capacity as a witness in the present proceedings before this Trial Chamber and in discussions among parties to the trial;
- (6) the testimony of witness “N” shall be given in open session(s) at which image altering devices will be employed to prevent his visual image from being seen by the public or the media;
- (7) the Trial Chamber may determine that any part of the testimony of witnesses “N”, including evidence relating to his identity, should be heard in private session(s);



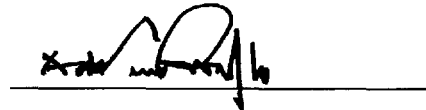
(8) if pursuant to a determination of the Trial Chamber, any part of the testimony of witness "N" is heard in private session(s), edited recordings and transcripts of the private session(s) shall be released to the public and the media after review by the Prosecution and the Victims and Witnesses Unit to ensure that no information leading to the possible identification of the witness is disclosed;

(9) the accused, the Defence Counsel and their representatives who are acting pursuant to their instructions or request, shall not disclose the name of witness "N", or other identifying data concerning witness "N", to the public or to the media, except to the limited extent such disclosure to members of the public is necessary to investigate the witness adequately. Any such disclosure shall be made in such way as to minimise the risk of the witness's name being divulged to the public at large or to the media;

(10) the public and the media shall not photograph, video-record or sketch witness "N" while he is in the precincts of the International Tribunal.

All other prayers, requested of the **TRIAL CHAMBER**, but not hereinbefore specifically granted, are hereby **DENIED**.

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



Adolphus Godwin Karibi-Whyte  
Presiding Judge

Dated this twenty-eighth day of April 1997  
At The Hague  
the Netherlands.

**[Seal of the Tribunal]**