



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-95-17/1-PT  
Date: 29 April 1998  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Antonio Cassese  
Judge Richard May

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

**Decision of:** 29 April 1998

**PROSECUTOR**

v.

**ANTO FURUNDŽIJA**

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**DECISION ON THE PROSECUTOR'S MOTION FOR SPECIAL PROTECTIVE  
MEASURES FOR WITNESSES UNDER TRIBUNAL ORDERED  
CONFIDENTIALITY AND THE PROSECUTOR'S MOTION TO PROTECT  
VICTIMS AND WITNESSES**

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**The Office of the Prosecutor:**

Mr. Michael Blaxill  
Ms. Patricia Viseur-Sellers

**Counsel for the Accused:**

Mr. Luka Misetić

## THE TRIAL CHAMBER

NOTING the Confidential and Under Seal *Ex Parte* Prosecutor's Motion For Special Protective Measures For Witnesses Under Tribunal Ordered Confidentiality ("*Ex Parte* Motion") filed by the Office of the Prosecutor ("Prosecution") on 24 April 1998 seeking Orders from the Trial Chamber authorising the Prosecution to disclose to the Defence witness statements and transcripts of closed session proceedings in another case before the International Tribunal, which statements and transcripts are subject to an order for protective measures entered in that case,

NOTING the Confidential Prosecutor's Motion To Protect Victims and Witnesses ("Motion for Pre-trial Protective Measures") filed by the Prosecution on 29 April 1998, in which the Prosecutor seeks protective measures in the pre-trial phase only pursuant to Rule 75 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"),

NOTING that, at the time of filing the *Ex Parte* Motion, the Prosecution was already in breach of its discovery obligations pursuant to Rule 66 of the Rules,

NOTING FURTHER that the Defence will not be served with a copy of the *Ex Parte* Motion and therefore will not be filing a response to that Motion,

CONSIDERING THAT the grant of the relief sought by the Prosecution in the *Ex Parte* Motion is essential for the proper administration of justice and will expedite the discovery procedure in this case,

CONSIDERING FURTHER THAT the relief sought by the Prosecution in the Motion for Pre-trial Protective Measures is of a temporary nature and, if granted, will not affect the right of the accused to a fair and public hearing pursuant to Article 21, paragraph 2, of the Statute of the International Tribunal, so that it is not necessary for the Trial Chamber to receive the response of the Defence to the Motion for Pre-trial Protective Measures before ruling on the requests contained therein,

PURSUANT TO RULE 75 of the Rules

HEREBY GRANTS THE *EX PARTE* MOTION AND THE MOTION FOR PRE-TRIAL PROTECTIVE MEASURES and ORDERS as follows:

- (1) With respect to the witnesses identified in the Annex to the *Ex Parte* Motion, the accused, his defence counsel and his representatives who are acting pursuant to instructions or requests, shall not disclose to the public individually or at large or to the media the substance of witness statements or transcripts of witness testimony given before the International Tribunal under a protective measures order;
- (2) With respect to those same witnesses, the accused, his defence counsel and his representatives who are acting pursuant to instructions or requests, shall not disclose to the public individually or at large or to the media the identity of a pseudonymed witness from a previous proceeding or the link between the pseudonym of any such witness and the identity of that witness in the present case insofar as it may be revealed or discerned from any other statements or materials served by the Prosecution;
- (3) until further order the name, address, whereabouts and other identifying data of the persons listed in the confidential Annex to the Motion for Pre-trial Protective Measures shall not be disclosed to the public or to the media;
- (4) until further order the name, address, whereabouts and other identifying information concerning the persons listed in the confidential Annex to the Motion for Pre-trial Protective Measures shall be sealed and not included in any of the public records of the International Tribunal;
- (5) until further order, to the extent that the name of, or other identifying data concerning the persons listed in the confidential Annex to the Motion for Pre-trial Protective Measures is contained in existing public documents of the International Tribunal, that name and other identifying data shall be expunged from those documents;

- (6) until further order, documents of the International Tribunal identifying these witnesses shall not be disclosed to the public or the media;
- (7) pseudonyms shall be assigned to each of the persons listed in the confidential Annex to the Motion for Pre-trial Protective Measures and used whenever referring to these witnesses in pre-trial proceedings before the International Tribunal and in discussions among parties to the trial;
- (8) until further order, the accused, the defence counsel and their representatives who are acting pursuant to their instructions or requests shall not disclose the name of or other identifying data concerning these witnesses to the public or to the media, except to the limited extent such disclosure to members of the public is necessary to investigate the witnesses adequately;
- (9) any such disclosure shall be done in such a way as to minimise the risk of the witnesses' names being divulged to the public at large or to the media;
- (10) the public and the media shall not photograph, video-record or sketch any of the protected witnesses while the witness is in the precincts of the International Tribunal;
- (11) the Prosecution and the Defence shall each maintain a log indicating the name, address and position of each person or entity which receives a copy of a witness statement, as well as the date of disclosure. If there is a perceived violation of the orders described herein, either the Prosecution or the Defence shall notify the Trial Chamber which may either review the alleged violations or may refer the matter to a designee, such as the duty Judge. If the Trial Chamber refers the matter to a duty Judge, the duty Judge shall review the disclosure logs, make factual determinations, and report back to the Trial Chamber with a recommendation as to whatever action seems appropriate;
- (12) the Prosecution and the Defence shall instruct those persons who have received a copy of the statements not to reproduce them, under pain of sanction for contempt of the

International Tribunal, and to return the said documents as soon as they are no longer required;

- (13) the Prosecution and the Defence shall verify that those individuals who have received a copy of the statements comply strictly with their obligations not to reproduce them, and to return them as soon as they are no longer required; and
- (14) the Prosecution is at liberty to apply to the Trial Chamber prior to the commencement of the trial for the extension of all or some of these measures to the trial proceedings.

For the purposes of this Decision, the term "public" does not include those entities or persons who are assisting the accused, his counsel or the Prosecution in the preparation of their cases.

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



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Florence Ndepele Mwachande Mumba  
Presiding Judge

Dated this twenty-ninth day of April 1998  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**