



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-95-8-PT

Date: 11 May 2000

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Mohamed Bennouna, Pre-trial Judge

Registrar: Dorothee de Sampayo Garrido-Nijgh

Order of: 11 May 2000

PROSECUTOR

v.

**DAMIR DOŠEN
DRAGAN KOLUNDŽIJA**

ORDER ON PROSECUTOR'S MOTION FOR PROTECTIVE MEASURES

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Michael J. Keegan
Mr. Kapila Waidyaratne

Counsel for the Accused:

Mr. Vladimir Petrović, for Damir Došen
Mr. Dušan Vučićević, for Dragan Kolundžija

I, MOHAMED BENNOUNA, Judge 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 (“the International Tribunal”),

HAVING BEEN APPOINTED as pre-trial Judge in this matter by virtue of an Order of the Trial Chamber dated 3 February 2000,

BEING SEISED of a Motion for protective measures (“the Motion”) filed by the Office of the Prosecutor (“the Prosecution”) on 24 March 2000, in which the Prosecution requests protective measures in respect of two witnesses, Witness N and Witness J, whose statements were part of the supporting material submitted when confirmation of the Indictment was sought, including the redaction of and delayed disclosure to the Defence of the identifying data of the witnesses until 30 or 21 days prior to the commencement of trial,

NOTING the “Prosecution’s Submission of Witness Statements” filed by the Prosecution on 13 April 2000, which provided the pre-trial Judge with a copy of the two witness statements sought to be redacted, together with the proposed redactions,

NOTING the “Defence Response to the Motion for Protective Measures” filed by the Defence for Damir Došen (“the Došen Defence”) on 14 April 2000, which does not object to the requested relief set out in measures 3, 4, 8, 10-14 in the Motion, but opposes non-disclosure of the whereabouts of the witnesses to the accused, and submits that the time-period for disclosure of the information should be at least 60 days before commencement of trial,

NOTING the “Defence Response in Opposition to Prosecutor’s Motion for Protective Measures” (“the Kolundžija Response”) filed by the Defence for Dragan Kolundžija (“the Kolundžija Defence”) on 14 April 2000, in which it is argued that

- (1) the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) do not provide for non-disclosure to the accused of the identifying data of witnesses;

(2) that such information is essential to the preparation of the defence, in particular to corroborate statements of witnesses interviewed by the Defence; and requests a closed session hearing to determine whether the protection requested for Witnesses J and N is needed,

NOTING further that the Kolundžija Response does not oppose the other protective measures requested by the Prosecution,

HAVING REVIEWED the proposed redactions submitted by the Prosecution,

CONSIDERING Article 22 of the Statute of the International Tribunal (“the Statute”), and Rules 69 and 75 of the Rules concerning the protection of victims and witnesses,

CONSIDERING the specific reasons given in support of the Motion in relation to Witnesses J and N,

CONSIDERING that the redactions made by the Prosecution to the statements of Witnesses J and N are intended to protect their identity and whereabouts until a date closer to commencement of trial and do not go beyond this,

CONSIDERING the rights of the accused as set forth in Article 21 of the Statute, and, in particular, the right of the accused to have adequate time and facilities for the preparation of their defence,

CONSIDERING that the Došen and Kolundžija Defence may commence the preparation of their case and will be in a position to further investigate the statements of the two witnesses concerned at a reasonable time prior to the commencement of trial,

CONSIDERING the existing Order for Protective Measures in this case issued by the Trial Chamber on 19 October 1999, as extended to both accused on 10 March 2000, which remains in full force and effect, and applies to the disclosure of the statements of Witnesses J and N,

PURSUANT TO Articles 20 and 22 of the Statute, and Rules 66 (A)(i), 69, 75 and 79 of the Rules,


HEREBY GRANT the Motion and **ORDER**

(1) the Prosecution to disclose immediately to the Došen Defence and the Kolundžija Defence the redacted statements of Witnesses J and N as disclosed to the pre-trial Judge; and

(2) the Prosecution to disclose to the Došen Defence and the Kolundžija Defence the statements of Witnesses J and N in full, without redaction other than as to their current whereabouts, not less than thirty days prior to the date set for commencement of trial.

The Prosecution may apply for further protective orders measures as may be viewed appropriate in relation to the testimony of Witnesses J and N at trial in due course.

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


Mohamed Bennouna
Pre-trial Judge

Dated this eleventh day of May 2000
At The Hague
The Netherlands

[Seal of the Tribunal]