



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: 29 June 2000

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

**Before:** Judge Richard May, presiding  
Judge Mohamed Bennouna,  
Judge Patrick Robinson

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

**Order of:** 29 June 2000

**PROSECUTOR**

v.

**DAMIR DOŠEN  
DRAGAN KOLUNDŽIJA**

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**ORDER**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Kapila Waidyaratne  
Mr. Daniel Saxon

**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 request for protective measures in respect of twelve witnesses, contained in a confidential “Prosecution’s Compliance with Trial Chamber’s 11 May 2000 ‘Decision on Defence Motion to Compel Discovery’ and the Pre-trial Judge’s ‘Order Granting an Extension of Time’ Dated 18 May 2000” (“the Request”), filed by the Office of the Prosecutor (“the Prosecution”) on 1 June 2000,

**NOTING** the “Decision on Defence Motion to Compel Discovery” issued by the Trial Chamber on 11 May 2000, which ordered the Prosecution to disclose to the Defence an unredacted copy of the “Extracts of Evidence” that accompanied the Indictment or the Amended Indictment when confirmation was sought, unless the Prosecution files a motion for specific protective measures for the individual witnesses named therein,

**NOTING** that the Prosecution requests the following protective measures in respect of witnesses referred to as Witness AC and witnesses Keraterm 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28: that they be referred to by the pseudonym listed, that their names be redacted from the “Extracts of Evidence”, that their names and identifying data not be disclosed to the public, and not be disclosed to the Defence until thirty days prior to the commencement of trial, that, to the extent their identities and whereabouts are known to the Defence, they not be disclosed to the public, and that they testify with facial distortion at trial,

**NOTING** the “Defence Response to the Request for Protective Measures” filed by Defence Counsel for Damir Došen on 15 June 2000, which

(1) does not object to the protective measures sought, provided that the time-limit for disclosure of the name and identifying data to the Defence be

extended to sixty days prior to the commencement of trial, as agreed by the parties on 5 June 2000,

(2) objects to non-disclosure of the witnesses' current whereabouts,

**NOTING** that the Defence for Dragan Kolundžija did not file a response to the Request,

**NOTING** the Scheduling Order issued by the pre-trial Judge on 9 June 2000 in which the pre-trial Judge took note of the agreement reached by the Prosecution and the Defence for Dragan Kolundžija and Damir Došen concerning the disclosure of the names of protected witnesses sixty days before the commencement of trial, and accordingly varied the "Order on Prosecutor's Motion for Protective Measures", and the confidential "Order for Disclosure of Prosecution Witness Statements", both issued on 11 May 2000,

**NOTING** the existing Order granting protective measures in this case issued on 19 October 1999, as extended to both accused on 10 March 2000 ("the Order for Protective Measures"),

**NOTING** that Witness AC and witnesses Keraterm 18, 19, 20, 21, 22, 23 and 24 have all expressed concerns for their safety and that of their families,

**NOTING** that the Prosecution has not been able to contact witnesses Keraterm 25, 26, 27 and 28 but nonetheless requests the same protective measures for these witnesses as a precautionary measure,

**NOTING** that Witness AC has been granted the same protective measures as those now requested, in the case of *Prosecutor v. Kvočka, et al.* (Case IT-98-30/1-T) on 3 May 2000, with the exception of the delayed disclosure to the Defence of his or her name and identifying data until thirty days prior to commencement of trial,

**NOTING** that the Prosecution has already disclosed redacted portions of the "Extracts of Evidence" concerning nine witnesses (N, X, Y, and Keraterm 4, 6, 7, 10, 11 and 12) who were granted protective measures in an Order dated 11 May 2000,

**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 of Procedure and Evidence of the International Tribunal (“the Rules”) concerning the protection of victims and witnesses,

**CONSIDERING** the specific reasons given in support of the Request in relation to Witness AC and witnesses Keraterm 18, 19, 20, 21, 22, 23, and 24,

**CONSIDERING** that the redactions made by the Prosecution to the extracts of the statements of the witnesses 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 witnesses concerned at a reasonable time prior to the commencement of trial,

**CONSIDERING** that 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, remains in full force and effect, and applies to the disclosure of the statements of Witnesses AC, and Keraterm 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28,

**CONSIDERING** that, in the *Kvočka* case, Trial Chamber I of the International Tribunal granted Witness AC similar protective measures to those presently sought by the Prosecution, which protective measures continue in full force and effect,

**CONSIDERING** that the Prosecution is still attempting to locate and contact witnesses Keraterm 25, 26, 27 and 28,

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

**HEREBY APPROVE** the redactions made by the Prosecution, **GRANT** the Request and **ORDER** as follows:

(1) the Prosecution shall, not less than sixty days prior to the date set for commencement of trial, disclose to the Defence for Dragan Kolundžija and Damir Došen the "Extracts of Evidence", without redaction other than as to the current whereabouts of Witness AC and witnesses Keraterm 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, and


(2) in respect of witnesses Keraterm 25, 26, 27 and 28:

(i) the Prosecution shall notify the pre-trial Judge immediately of any successful attempts to contact them, and at the same time file a request for protective measures in respect of the individual witness with whom contact has been made,

(ii) if no protective measures are sought in respect of the individual witness with whom contact has been made, the Prosecution shall within seven days of the date of the notification disclose to the Defence for each accused the information redacted from the "Extracts of Evidence".

The Prosecution may apply for further protective orders measures as may be viewed appropriate in relation to the testimony of the above mentioned witnesses at trial in due course.

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

  
Mohamed Bennouna  
Pre-trial Judge

Dated this twenty-ninth day of June 2000  
At The Hague  
The Netherlands

[Seal of the Tribunal]