



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-95-9-T  
Date: 14 June 2002  
Original: English

**IN TRIAL CHAMBER II B**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Sharon A. Williams  
Judge Per-Johan Viktor Lindholm

**Registrar:** Mr. Hans Holthuis

**Decision of:** 14 June 2002

**PROSECUTOR**

v.

**BLAGOJE SIMIĆ  
MIROSLAV TADIĆ  
SIMO ZARIĆ**

**ORDER FOR "CLOSED SESSION" TESTIMONY**

**The Office of the Prosecutor:**

Mr. Gramsci Di Fazio  
Mr. Phillip Weiner  
Ms. Aisling Reidy

**Counsel for the Accused:**

Mr. Igor Pantelić and Mr. Srdjan Vuković for  
Blagoje Simić  
Mr. Novak Lukić and Mr. Dragan Krgović for  
Miroslav Tadić  
Mr. Borislav Pisarević and Mr. Aleksandar  
Lazarević for Simo Zarić

**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 (“Tribunal”),

**HAVING GIVEN** its oral decision on 10 June 2002<sup>1</sup> that the remainder of the Prosecution witness Stevan Todorović’s (“Witness”) evidence shall be given in closed session, **STATED** that it will issue reasons in writing for the decision;

**NOTING** the proceedings and the submissions made by the parties together with the decision of this Trial Chamber during closed session on 6 June 2002 and subsequently thereto, the Witness commenced giving his evidence in open session;

**NOTING** the submissions made by the parties and the Witness in closed session during the hearing on 10 June 2002 (“Hearing”);

**NOTING** the provisions of Articles 20(1), 21(2) and 22 of the Statute of the Tribunal (“Statute”) and Rule 75(A) and (B)(ii) and Rule 79 (iii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

**NOTING** that although particularities are not relevant for the present purposes, the jurisprudence of the Tribunal on the question of protective measures provides, *inter alia*, that:

- (i) “any fears expressed by potential witnesses themselves that they may be in danger or at risk are *not in themselves* sufficient to establish any real *likelihood* that they may be in danger or at risk. Something more than that must be demonstrated to warrant an interference with the rights of the accused”;<sup>2</sup> and
- (ii) “Article 20.1 of the Tribunal’s Statute makes the rights of the accused the first consideration, and the need to protect victims and witnesses the secondary consideration. A balancing exercise is required in each case”<sup>3</sup>;

**CONSIDERING** that the Witness’ submissions constitute an objective foundation for the concerns expressed by the Witness at the Hearing;

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<sup>1</sup> T. 9202.

<sup>2</sup> *Prosecutor v. Brđanin & Talić*, Case No. IT-99-36-PT, Decision on Motion by the Prosecution for Protective Measures, 3 July 2000, para. 26.

<sup>3</sup> *Prosecutor v. Brđanin & Talić*, Case No. IT-99-36-PT, Decision on Second Motion by Prosecution for Protective Measures, 27 October 2000, para. 18.

**CONSIDERING** the special circumstances of the Witness in that he was a co-accused in the present case<sup>4</sup> and that he agreed to plead guilty to certain charges against him and a condition of his guilty plea was that he would co-operate with the Prosecution;<sup>5</sup>

**CONSIDERING** that in view of the Witness' special circumstances, the general considerations in relation to the grant of protective measures for a witness must be applied in the light of such special circumstances;

**OBSERVING** that during the Hearing, the Witness appeared anxious at the prospect of continuing his testimony in open session;

**CONSIDERING** that the purpose of the present proceedings is the determination of the truth and that the Witness has indicated a genuine desire to co-operate and therefore, proceeding in closed session with the remainder of his testimony would ensure that such co-operation will not be affected by concerns that have been demonstrated to have an objective foundation;

**CONSIDERING** that Article 21(2) of the Statute makes express provision that the right of the accused to a fair and public hearing is subject to the consideration of matters dealing with the protection of victims and witnesses and therefore, a balancing exercise is required in each case between the rights of the accused with that of a particular witness;

**CONSIDERING FURTHER** that receiving the remainder of this Witness' evidence in closed session will not cause prejudice to the accused;

**FOR THE FOREGOING REASONS** and

**PURSUANT TO** Rule 75 and 79 of the Rules;

**HEREBY CONFIRMS** its oral decision of 10 June 2002, that the remainder of the Witness' evidence shall given in closed session, in the interest of justice.

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<sup>4</sup> *Prosecutor v Blagoje Simić et al.*, Case No. It-95-9-PT, Order Separating Proceedings and Scheduling Order, 24 January 2001.

<sup>5</sup> *Prosecutor v Stevan Todorović*, Case No. IT-95-9/1-S, Sentencing Judgement, para. 10.

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



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Florence Ndepele Mwachande Mumba  
Presiding Judge

Done this fourteenth day of June 2002,  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]