



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-02-61-PT

Date: 26 July 2002

Original: English

IN TRIAL CHAMBER II

Before: Judge Florence Ndepele Mwachande Mumba
Pre Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 26 July 2002

PROSECUTOR

v.

MIROSLAV DERONJIĆ

ORDER ON PROSECUTION'S MOTION FOR PROTECTIVE MEASURES

Counsel for the Prosecutor:

Mr. Mark Harmon

Counsel for the Accused:

Mr. Slobodan Cvijetić

I, Florence Ndepele Mwachande Mumba, Judge of Trial Chamber II 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 BEEN APPOINTED Pre-Trial Judge in this case,

BEING SEISED OF the “Prosecution’s Motion For Protective Measures For Victims And Witnesses” (“Motion”), filed by the Office of the Prosecutor (“Prosecution”) on 11 July 2002,

NOTING that no response to the Motion has been filed to date by the defence of Miroslav Deronjić (“Defence”),

NOTING that in the Motion, the Prosecution requests protective measures with respect to material that the Prosecution is obliged to disclose under Rule 66 (A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), *inter alia*, measures to ensure that witnesses, individuals named in witness statements and non-public materials are not endangered,

NOTING that the relief sought by the Prosecution in relation to her obligations under Rule 66 (A) of the Rules appears to envisage not only information concerning the current whereabouts of witnesses the Prosecution intends to call but includes the indeterminate reference to “other individuals” and that there are no submissions to justify this,

NOTING that the reasons submitted by the Prosecution for requesting the return of all non-public materials are the asserted limited purpose for disclosure, the ongoing security and privacy concerns of victims and witnesses and the concern that non-public materials may be used to undermine the course of justice if disclosed to the public,

CONSIDERING that the Prosecution has formulated its Motion in general terms and has not put forward any detailed reasons in relation to specific witnesses or material, justifying why the protective measures sought should be granted,

CONSIDERING that the burden rests on the party seeking protective measures to justify in each case why the measures requested should be granted,

CONSIDERING that Article 20 of the Statute of the Tribunal requires a Trial Chamber to ensure that proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses,

CONSIDERING that the Prosecution has made no submissions nor demonstrated that a likely risk of either deliberate or unintentional disclosure after the conclusion of the case, if any, is of such significance as to justify the unwieldy and possibly unfair consequences of an order that the non-public materials be returned,

CONSIDERING that it appears from the content of the Motion that the Prosecution has not yet redacted from the materials to be disclosed to the Defence, information concerning the identity of witnesses,

CONSIDERING HOWEVER that the requests in the Motion concerning the non-disclosure of non-public information and/or material by the Defence may nevertheless be granted at this stage of the proceedings,

CONSIDERING FURTHER, that in view of the observations made above concerning the generality of the requests contained in the Motion, that these findings are without prejudice to any future application which may be made by any party or person seeking such other or additional protective orders or measures or a variation of the terms of this Order, as may be viewed as appropriate concerning a particular witness or other evidence or seeking any changes in the terms of all or some of this Order,

PURSUANT TO Rules 53(A), 54, 66, 69 and 75 of the Rules,

HEREBY ORDERS as follow:

1. For the purposes of this Order:

- (a) the “Prosecutor” or “the Prosecution” means the Prosecutor of the Tribunal and her staff;
- (b) the “Deronjić Defence” means only the accused Miroslav DERONJIĆ, his defence counsel and his immediate legal assistance and staff, and others specifically assigned by the Tribunal to the Deronjić Defence team;
- (c) the “public” means all persons, governments, organisations, entities, clients, associations and groups, other than the judges of the Tribunal and the staff of the Registry (assigned to either Chambers or Registry), and the Prosecutor, the Deronjić Defence, as defined in paragraph 1(b). The “public” specifically includes, without limitation, family, friends and associates of the accused Miroslav Deronjić, the

accused in other cases or proceedings before the Tribunal and defence counsel in other cases or proceedings before the Tribunal; and

- (d) the “media” means all video the, audio and print media personnel, including journalists, authors, television and radio personnel, their agents and representatives.

2. The Prosecution must comply with its obligation under Rule 66(A)(i) of the Rules to supply to the Deronjić Defence copies of the supporting material which accompanied the indictment when confirmation was sought as well as prior statements obtained, such materials to contain no redaction save for any information concerning the current whereabouts of witnesses the Prosecution proposes to call to give evidence in this case, for which leave is granted at this stage.
3. The Prosecution is granted leave to redact from the statements of all witnesses whom it proposes to call to give evidence in this case any information concerning the current whereabouts of each witness.
4. The Deronjić Defence shall not disclose to the media any confidential or non-public materials provided by the Prosecution.
5. Save as is directly and specifically necessary for the preparation and presentation of this case, the Prosecution and the Deronjić Defence shall not disclose to the public:
 - (a) the names, identifying information or whereabouts of any witness or potential witness identified to them by the Prosecution;
 - (b) any evidence (including documentary, physical or other evidence) or any written statement of a witness or potential witness, or the substance, in whole or in part, of any such non-public evidence, statement or prior testimony.
6. If the Deronjić Defence find it directly and specifically necessary to disclose such information for the preparation and presentation of this case, they shall inform each person among the public to whom non-public material or information (such as witness statements, prior testimony, or videos, or the contents thereof), is shown or disclosed, that such a person is not to copy, reproduce or publicise such statement or evidence, and is not to show or disclose it to any other person. If provided with the original or any copy or duplicate of such material, such person shall return it to the Deronjić Defence when such material is no longer necessary for the preparation and presentation of the case.

7. If a member of the Deronjić Defence team withdraws from the case, all material in his/her possession shall be returned to their lead defence Counsel.
8. If the Deronjić Defence becomes aware of Prosecution witnesses' current whereabouts, no approach and/or contact is to be made without prior notification, in a timely manner, to the Prosecution.
9. The remaining Orders sought by the Motion are refused.
10. Nothing herein shall preclude any party or person from seeking such other or additional protective measures or measures or a variation of the terms of this Order as may be viewed appropriate concerning a particular witness or other evidence.

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

Dated this twenty sixth day of July 2002

At The Hague,
The Netherlands.



Florence Ndepele Mwachande Mumba
Pre-Trial Judge

[Seal of the Tribunal]