



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-00-39 & 40-PT

Date: 26 July 2002

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 26 July 2002

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

**DECISION ON PROSECUTION'S SECOND MOTION FOR
PROTECTIVE MEASURES FOR SENSITIVE SOURCE WITNESSES**

Office of the Prosecutor:

Mr. Mark Harmon
Mr. Alan Tieger

Accused:

Mr. Deyan Brashich and Mr. Nikola P. Kostich, for Momčilo Krajišnik
Mr. Robert J. Pavich, Mr. Eugene O'Sullivan and Mr. Peter Murphy, for Biljana
Plavšić

I. BACKGROUND

1. The Office of the Prosecutor (“Prosecution”) filed a confidential and *ex parte* “Prosecution’s Second Motion for Protective Measures for Sensitive Source Witnesses” on 19 June 2002 (“Motion”). The Motion seeks:
 - (a) for the Trial Chamber to reconsider its ruling in a prior Decision (“First Decision”)¹ to deny extraordinary protective measures for a witness defined by the Prosecution as a sensitive source witness (T8-40) on the basis of new information now provided by the Prosecution concerning the threat to the witness and his family;
 - (b) for the unredacted statements and related exhibits of witness T8-40 to be disclosed to the Defence not less than 30 days before the witness is expected to testify;
 - (c) leave to add the names and details of the three other witnesses denied extraordinary protective measures in the First Decision, T8-68, T8-69 and T8-70 to the list of Prosecution witnesses; and
 - (d) for witnesses T8-68, T8-69 and T8-70 to be identified and referred to by those pseudonyms until such time as it becomes appropriate to make an application for protective measures concerning their testimony.

¹ “First Decision on Prosecution’s Motion for Protective Measures for Sensitive Source Witnesses”, 24 May 2002.

II. DECISION ON THE PROSECUTION'S MOTION

2. The Prosecution relies upon Rules 69, 75 and 54 of the Rules of Procedure and Evidence of the Tribunal ("Rules").
3. The Prosecution seeks to have the Chamber reconsider its order denying the witness identified as T8-40 extraordinary protective measures in the First Decision. The Chamber has already set out the test to be satisfied in this respect in its First Decision and there is no need to reiterate it again here. In that Decision the Chamber considered that the information concerning the security risk to that witness and his family set out in the Prosecution Motion insufficiently justified the extraordinary measures sought. The Prosecution now provides, in Annex A to this Motion, a very different picture to that initially provided. The security risks now asserted are plainly considerable and had the Trial Chamber been properly advised of these at the time of the first application it would have granted the measures sought. The Trial Chamber finds, on the basis of the supporting information in Annex A, that exceptional circumstances exist warranting the extraordinary measures sought on the basis of the extreme risk the witness and/or his family faces should it become known that he will testify in these proceedings, and that he will testify in relation to important matters in these proceedings.
4. The Prosecution also seeks relief in respect of the three other witnesses the subject of their first Motion who were not granted the extraordinary protective measures sought (T8-68, T8-69 and T8-70). As measures for these witnesses were sought on the same day as the Prosecution filed its Rule 65 *ter* witness list, they were not included in its list of witnesses, although their statements and names were disclosed to the Defence on 31 May 2002. The Prosecution now requests that the information set out in Annex B to the Motion (setting out the information required by Rule 65 *ter* (E)(ii)) be considered to form part of the Prosecution's witness list. The Trial Chamber notes that the Prosecution has made all reasonable efforts to ensure compliance with its disclosure obligations concerning these witnesses and that the witnesses do not form part of the current Rule 65 *ter* witness list only because the motion concerning their


protected status was outstanding at the deadline for the filing of that list. The Trial Chamber will accordingly allow this request.

5. Finally, the Prosecution indicates that it intends to apply closer to trial for protective measures for the witnesses T8-68, T8-69 and T8-70 concerning their testimony and requests in the meantime for these witnesses to be referred to by pseudonym in all public filings and public proceedings before the Tribunal. The Trial Chamber will grant this request on the basis that, whilst the circumstances of the witnesses do not give rise to the extraordinary measures previously sought as sensitive source witnesses, they do give rise to the prospect of protective measures at trial under Rule 75. The names and statements of the witnesses have been disclosed to the Defence already and no prejudice to them will flow from such an order.

IV. DISPOSITION

6. For the foregoing reasons, the Trial Chamber **ORDERS** as follows:
- (1) The witness identified as **T8-40** is granted protective measures in accordance with Rules 69 and 75 of the Rules as follows:
 - (a) the witness shall be identified and referred to by the pseudonym mentioned in Annex A until such time as it becomes appropriate to make applications for protective measures concerning their testimony; and
 - (b) the unredacted statements and related exhibits of the witness shall be disclosed to the defence not less than 30 days before the witness is expected to testify;
 - (2) The witnesses identified as **T8-69**, **T8-70** and **T8-71** shall be identified and referred to by these pseudonyms until such time as it becomes appropriate to make applications for protective measures concerning their testimony;
 - (3) The witnesses identified as **T8-69**, **T8-70** and **T8-71** shall be added to the Prosecution's list of witnesses, the material in Annex B of the Motion forming part of that list.

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


Richard May
Presiding

Dated this twenty-sixth day of July 2002
At The Hague
The Netherlands

[Seal of the Tribunal]