

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-60-PT
Date: 18 February 2003
Original: English

IN TRIAL CHAMBER II

Before: Judge Wolfgang Schomburg, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Carmel Agius

Registrar: Mr. Hans Holthuis

Order of: 18 February 2003

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN OBRENOVIĆ
DRAGAN JOKIĆ
MOMIR NIKOLIĆ**

**ORDER FOR PROTECTIVE MEASURES
AND NON-DISCLOSURE TO THE PUBLIC**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. David Wilson and Mr. Dušan Slijepčević for Dragan Obrenović
Mr. Miodrag Stojanović and Ms. Cynthia Sinatra for Dragan Jokić
Mr. Veselin Londrović and Mr. Stefan Kirsch for Momir Nikolić

TRIAL CHAMBER II ("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"),

NOTING the "Prosecution's Motion for Order of Protection," ("Motion") filed confidentially on 13 December 2002, and the decision rendered on that Motion issued by this Trial Chamber on 18 February 2003,

NOTING that the Prosecution filed a public version of witness list pursuant to Rule 65*ter* on 8 November 2002 ("Witness List"),¹ in which 43 witnesses are publicly identified, and that the remaining 80 witnesses have been provisionally assigned pseudonyms by the Prosecution,²

NOTING that the Prosecution and Defence have entered into confidentiality agreements in relation to the non-disclosure of confidential and non-public material to the public,

RECALLING that seventeen witnesses have previously been granted protective measures in the case *Prosecutor v. Radislav Krstić* (Case No. IT-98-33-T) and that, pursuant to Rule 75(E) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), those protective measures apply *mutatis mutandis* in these proceedings, pending an application by any party to these proceedings to rescind, vary or augment those protective measures pursuant to Rule 75(F),

CONSIDERING that this is the first Motion by any party for any form of protective measures for victims or witnesses in this case,

CONSIDERING the right of the accused under Article 21(2) of the Statute of the Tribunal to a fair and public hearing, subject to Article 22 of the Statute,

CONSIDERING that Article 22 of the Statute requires the Tribunal to provide in its Rules of Procedure and Evidence for the protection of victims and witnesses,

CONSIDERING that that until the Prosecution seeks specific measures in relation to specific victims or witnesses not currently enjoying protective measures and the Trial Chamber decides on whether any protective measures will be granted for specific witnesses, it is in the interest of justice at this stage of the proceedings that the identity of those persons who may require protective measures not be revealed to the public,

¹ Prosecution's Amended, Redacted Witness Summaries Pursuant to Rule 65 *ter* (E)(ii), 8 November 2002.

² Decision on Prosecution's Motion to File List of Pseudonyms Assigned to Protected Witnesses, 19 November 2002; Prosecution's Notice of Filing revised Pseudonym List, filed confidentially on 30 January 2003.

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

HEREBY ORDERS as follow:

1. For the purposes of protective measures decisions rendered pursuant to Rule 53, Rule 69, Rule 75 or Rule 79, the Trial Chamber defines:

- (a) "Prosecution" shall mean the Prosecutor of the Tribunal and her staff;
- (b) "Accused" shall mean Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and/or Momir Nikolić;
- (c) "Blagojević, Obrenović, Jokić and/or Nikolić Defence" shall mean only the Accused, and such defence counsel and their immediate legal assistants and staff, and others specifically assigned by the Tribunal to Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić's trial defence teams, and specifically identified in a list to be maintained by each lead counsel and filed with the Trial Chamber *ex parte* and under seal within ten days of the entry of this order. Any and all deletions to the initial list in respect of any of the above categories of persons who are necessarily and properly involved in the preparation of the defence shall be notified to the Trial Chamber in similar fashion within seven days of such additions and deletions;
- (d) "the public" shall mean 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 the Registry), and the Prosecutor, and the Blagojević, Obrenović, Jokić and Nikolić Defence, as defined above. The "public" specifically includes, without limitation, family, friends and associates of the Accused; the Accused in other cases or proceedings before the Tribunal; Defence Counsel in other cases or proceedings before the Tribunal;
- (e) "the media" shall mean all video, audio and print media personnel, including journalists, authors, television and radio personnel, their agents and representatives.

2. The Blagojević, Obrenović, Jokić and/or Nikolić Defence shall not disclose to the media any confidential or non-public materials provided by the Prosecution.
3. Unless directly and specifically necessary for the preparation and presentation of this case, the Prosecution and the Blagojević, Obrenović, Jokić and/or Nikolić Defence shall not disclose to the public:

- (a) the names identifying information or whereabouts of any witness, potential witness, or relatives of a witness or a potential witness identified to the Blagojević, Obrenović, Jokić and/or Nikolić Defence by the Prosecution until such time as the witness's name is disclosed to the public by the Prosecution or until such time as the witness testifies in open session, subject to further protective measures indicated during such session; and
- (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 evidence or statements that has not already been made public, except such as has been presented in the course of public trial and other proceedings before the Tribunal where no further protective measures were imposed,

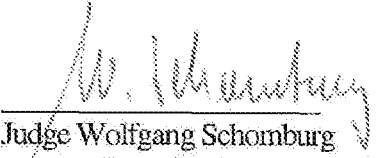
4. If the Blagojević, Obrenović, Jokić and/or Nikolić Defence find it directly and specifically necessary to disclose such information for the preparation and presentation of this case to a member of the public, they shall inform each person among the public to whom non-public material or information (such as witness statements, prior testimony, or videos, or the contents thereof), is shown or disclosed, that he or she shall not copy, reproduce or publicise such material or information, in whole or in part, 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 Blagojević, Obrenović, Jokić and/or Nikolić Defence when such material is no longer necessary for the preparation and presentation of this case.
5. If a member of the Blagojević, Obrenović, Jokić and/or Nikolić Defence team withdraws from the case, any confidential or non-public material in his or her possession shall be returned to the lead Defence counsel and, upon the conclusion of the case or upon lead Defence counsel ceasing to represent the accused, the Defence shall return to the Registry of the Tribunal all disclosed materials and copies thereof which are not included in the public record.
6. The Blagojević, Obrenović, Jokić and/or Nikolić Defence may contact a Prosecution witness only after the Prosecution has been informed in writing 10 days prior to the envisaged contact and subsequently secured the consent of the witness to such contact; subject to this procedure, no contact with Prosecution witnesses or potential witnesses or their relatives may be made by the families, friends or associates of the Accused other than the Defence; if the consent of a witness or potential witness has been secured, any member of the Blagojević, Obrenović, Jokić and/or Nikolić Defence must identify him or her self as working for the Blagojević, Obrenović, Jokić and/or Nikolić Defence.

7. 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.
8. For all future decisions for protective measures, the Trial Chamber reserves its right to reverse or vary its decision *proprio motu* or upon a reasoned request by one of the parties, due to new facts or a change in circumstances for the affected witness or witnesses, after having heard the parties.

STATES that any breach of the protective measures ordered will be dealt with in accordance with Rule 77 ("Contempt of the Tribunal"), and

FURTHER ORDERS the Prosecution to file any requests for protective measures under Rule 75 in relation to specific persons on the Witness List, or for any additional witnesses added to the Witness List, by 31 March 2003,

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


Judge Wolfgang Schomburg
Presiding Judge

Dated this eighteenth day of February 2003
At The Hague,
The Netherlands.

[Seal of the Tribunal]