

IT-95-12-PT
J 1477- J 1473
24 JULY 2003

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**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-95-12-PT
Date: 24 July 2003
Original: English

BEFORE THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassilenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Order of: 24 July 2003

PROSECUTOR

v.

IVICA RAJIĆ

**ORDER ON PROSECUTION'S MOTION FOR PROTECTIVE
MEASURES FOR VICTIMS AND WITNESSES AND MOTION
TO AMEND PROSECUTION'S MOTION**

The Office of the Prosecutor:

Mr. Kenneth Scott
Ms. Josee D'Aoust
Mr. Roeland Bos

Counsel for the Accused:

Mr. Željko Olujić

TRIAL CHAMBER I ("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 Protective Measures for Victims and Witnesses", filed confidentially by the Office of the Prosecutor ("Prosecution") on 4 July 2003 ("Motion"),

NOTING the "Motion to Amend Prosecution's Motion for Protective Measures for Victims and Witnesses", filed confidentially by the Prosecution on 15 July 2003 ("Second Motion"), in which it withdraws one of the requests for protective measures,

NOTING that no Response was filed by the Defence of Ivica Rajić in regard to the Motion,

NOTING the "Decision on the Prosecutor's Motion Requesting Protective Measures for Victims", issued on 2 April 1996 in this case,

NOTING that the Motion requests various protective measures concerning *inter alia* the disclosure of whereabouts "of the maker of any such document and/or his or her family ... of other individuals named with them ... of other individuals who are named in such documents, ... other than those individuals who are described in any document as having been present at any of those events referred to in the documents" included in material disclosed to the defence pursuant to Rule 66 of the Rules of Procedure and Evidence ("Rules"),

CONSIDERING that pursuant to Article 20 of the Statute of the Tribunal ("Statute") the Trial Chamber shall ensure that the proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses,

CONSIDERING the right of the accused under Article 21 (2) of the Statute 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 for the protection of victims and witnesses,

CONSIDERING that pursuant to Rule 75 of the Rules a Chamber may at the request of either party order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused,

CONSIDERING that the Prosecution is under an obligation to comply with the requirements of Rule 66 (A) and to supply to the Defence, copies in unredacted form of the material to be disclosed provided that in the event that the Prosecution files a motion for protective measures in relation to

particular statements or other material or particular victims or witnesses (which shall be identified in such Motion), it need not supply unredacted copies of those statements or that other material identified in that motion until that motion had been disposed of by the Trial Chamber, and subject to the terms of any order made upon that motion,

CONSIDERING that the present submissions made in the Motion amended through the second Motion do not enable the Trial Chamber to make a determination as to whether the redactions sought are consistent with the rights of the accused,

CONSIDERING that until the Prosecution seeks specific protective measures in relation to the identity of specific victims or witnesses and the Trial Chamber decides on whether such 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,

CONSIDERING that there is no justification for filing the Motion and the Second Motion on a confidential basis when they do not disclose the identity of specific persons for whom protective measures are sought,

PURSUANT to Rules 53 (A), 54, 66 (A) (i) and 75 (A) of the Rules,

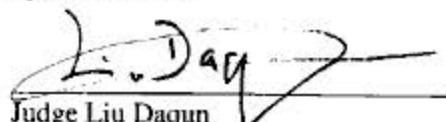
HEREBY ORDERS as follow:

1. For the purposes of protective measures decisions rendered pursuant to Rules 53, 69, 75 or 79, The Trial Chamber defines:
 - a) "Prosecution" shall mean the Prosecutor of the tribunal and her staff;
 - b) "Accused" shall mean Ivica Rajić;
 - c) "Rajić 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 Ivica Rajić's trial defence team and specifically identified in a list to be maintained by the 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 additions and 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 or 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 Prosecution, and the Rajić 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 and national courts and defence counsel in other cases or proceedings before the Tribunal and national courts;
- 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 Rajić 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 Rajić Defence shall not disclose to the public:
- a) the names, identifying information or whereabouts of any witness or potential witness or relatives of a witness or a potential witness identified to the Rajić 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 part, of any evidence, statement or prior testimony, 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 Rajić 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 she or he shall not copy, reproduce or publicise such material or information, 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 Rajić Defence when such material is no longer necessary for the preparation and presentation of this case.

5. The Rajić 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; if the consent of a witness or potential witness has been secured, any member of the Rajić Defence team must identify him or her self as working for the Rajić Defence.
6. If a member of the Rajić 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 case the Rajić Defence shall return to the Registry all disclosed materials and copies thereof which are not included in the public record.
7. The Prosecution shall disclose to the defence all copies in unredacted form of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; or the Prosecution may file a fresh motion seeking a non-disclosure order in relation to particular victims and witnesses showing good cause for redactions sought,
8. 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.
9. 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.
10. The confidentiality of the Motion and the Second Motion is lifted.

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


Judge Liu Daqun
Presiding Judge, Trial Chamber I

Dated this twenty-fourth day of July 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]