

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-03-73-PT
Date: 1 April 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Order of: 1 April 2004

PROSECUTOR

v.

**IVAN ČERMAK
MLADEN MARKAČ**

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

The Office of the Prosecutor:

Mr. Mark Ierace
Ms. Laurie Sartorio

Counsel for the Accused:

Mr. Čedo Prodanović for Ivan Čermak
Mr. Miroslav Šeparović and Goran Mikuličić for Mladen Markač

IT-03-73-PT
D 5527 - D 5522
01 April 2004

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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”),

BEING SEISED OF the “Prosecution’s Motion for Protective Measures for Victims and Witnesses”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 15 March 2004 (“Motion for Protective Measures”), and of the “Prosecution’s Motion to Lift the Seal of Confidentiality on the Prosecution’s Motion for Protective Measures for Victims and Witnesses”, filed by the Prosecution on 1 April 2004 (“Motion to Lift Confidentiality”);

NOTING that, in the Motion for Protective Measures, the Prosecution seeks an order from the Trial Chamber to protect the confidentiality of materials disclosed to the Accused Ivan Čermak and Mladen Markač (collectively, “Accused”), including statements taken from victims and potential witnesses, in order to “safeguard the security and privacy of victims and witnesses and the integrity of evidence and these proceedings”;¹

NOTING further that, in the Motion to Lift Confidentiality, the Prosecution seeks an order from the Trial Chamber that the Motion for Protective Measures, which the Prosecution filed confidentially, be made public, since it does not identify, by name or otherwise, any victim, witness or potential witness;

CONSIDERING that Article 20 of the Statute of the Tribunal (“Statute”) requires the Trial Chamber to ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence (“Rules”), with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

CONSIDERING the rights of the accused as set forth in Article 21 of the Statute, and in particular, the right of the accused to have adequate time and facilities for the preparation of their defence;

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

CONSIDERING the provisions in the Rules concerning the protection of victims and witnesses;

CONSIDERING that until the Prosecution seeks specific measures in relation to specific victims, witnesses or potential witnesses not currently enjoying protective measures and the Trial Chamber decides on whether any protective measures will be granted for specific victims, witnesses or

¹ Motion for Protective Measures, para. 1.

potential 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 the obligations imposed by the Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal;

CONSIDERING that there is no reason why the Motion for Protective Measures should have been filed confidentially;

FOR THE FOREGOING REASONS

PURSUANT TO Articles 20 and 22 of the Statute and Rules 53, 54, 69 and 75 of the Rules,

HEREBY GRANTS the Motion for Protective Measures and the Motion to Lift Confidentiality **AND ORDERS** as follows:

1. For the purposes of this Decision and Order:
 - (a) “the Prosecution” means the Prosecutor of the Tribunal and her staff;
 - (b) “the ČERMAK Defence” means only the accused, Ivan ČERMAK, and his defence counsel and immediate legal assistants and staff, and such other specific persons assigned by or listed with the Registry as part of his defence;
 - (c) “the MARKAČ Defence” means only the accused, Mladen MARKAČ, and his defence counsel and immediate legal assistants and staff, and such other specific persons assigned by or listed with the Registry as part of his defence;
 - (d) “the media” means all video, audio, electronic and print media personnel, including journalists, reporters, authors, television and radio personnel, their agents and representatives; and
 - (e) “the public” means and includes all persons, governments, organisations, entities, clients, associations, groups and media, other than the judges and staff of the Tribunal Chambers and Registry, the Prosecutor, the ČERMAK Defence and the MARKAČ Defence, as defined above. “The public” specifically includes, without limitation, family, friends and associates of each accused, the media, the accused in other cases or proceedings before the Tribunal and/or national courts, and defence counsel in other cases or proceedings before the Tribunal and/or national courts.

2. For the purposes of this case and compliance with this Order, the Registry shall maintain a list identifying each person who is part of or who represents either the ČERMAK Defence or MARKAČ Defence. Each Defence shall file the initial listing of its members within ten days of the date of this order, and the Registry shall be notified in writing of all changes to each list within ten days of such change occurring.

3. The ČERMAK Defence and MARKAČ Defence may not in any way, either directly or indirectly, disclose to the public (including the media) any of the material (including, without limitation, witness testimony or statements) provided to them by the Prosecution, except as reasonably necessary to allow them to prepare for and participate in these proceedings and present a defence or as such material may become public in the course of public and open session proceedings in this case or as it may be disclosed to the public by the Prosecution.

4. If the ČERMAK Defence and/or MARKAČ Defence find it directly and specifically necessary to disclose any of such material for the purposes outlined in ¶ 3, they shall inform each person among the public to whom such material is shown or disclosed, that he or she shall not copy, reproduce or publicise such material, 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 ČERMAK Defence and/or MARKAČ Defence when such material is no longer necessary for the purposes outlined in ¶ 3.

5. Should a situation arise where any lawyer or staff withdraws from or otherwise leaves the ČERMAK Defence and/or the MARKAČ Defence, all of the material disclosed or provided to that Defence by the Prosecution, together with all copies of such material, held or possessed by that person will be transmitted or returned, without exception, to the person serving as Lead Counsel for that Defence at that time. The ČERMAK Defence and MARKAČ Defence, after the conclusion of all proceedings in this case, including any appeal, remain bound by the obligation spelled out in ¶ 3.

6. As a general protective measure for the purpose of disclosure to the ČERMAK Defence and MARKAČ Defence, the Prosecution may, in fulfilling its disclosure obligations under Rules 66 and 68, redact from the statements, affidavits and formal statements of victims, witnesses and potential witnesses:

- (a) all information which discloses, or might lead to the disclosure of, the current whereabouts of the maker of any such document and/or his or her family;

(b) all information contained within such documents which discloses, or might lead to the disclosure of, the current whereabouts of other individuals named within them who have made witness statements which the Prosecution has already disclosed or which it intends to disclose; and

(c) all information contained within such documents which discloses, or might lead to the disclosure of, the current whereabouts 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 which are or which may be relevant to the issues in the trial;

7. If the ČERMAK Defence or MARKAČ Defence is aware or becomes aware of the current whereabouts of a witness or potential witness identified by the Prosecution, this information shall not be disclosed to the public (including the media), except to the limited extent reasonably necessary for the preparation and presentation of this case (as discussed above at ¶ 3), and neither Defence, nor anyone acting on their behalf, will approach a witness or potential witness identified by the Prosecution without prior written notice to the Prosecution, in such time and circumstances as will allow the Prosecution to take steps as may be necessary and appropriate to protect the security and privacy of the witness or potential witness. When contacting a witness or potential witness identified by the Prosecution, any member of the Defence must identify him or herself as working for the ČERMAK Defence or for the MARKAČ Defence, as applicable.

8. To the extent reasonably necessary to allow the ČERMAK Defence or MARKAČ Defence to prepare for and participate in these proceedings and present a defence, the Defence may seek to obtain from the Prosecution the current whereabouts of a witness or potential witness;

9. 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 Decision and Order, or from the Trial Chamber doing so *proprio motu*, as may be viewed appropriate concerning a specific witness or potential witness, or other evidence.

10. The confidentiality of the Motion for Protective Measures is hereby lifted.

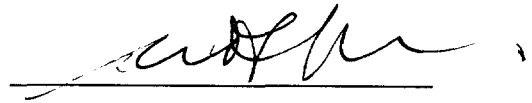
STATES that any breach of this Decision and Order will be dealt with in accordance with Rule 77 (“Contempt of the Tribunal”).

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

Dated this first day of April 2004

At The Hague

The Netherlands



Judge Carmel Agius

Presiding Judge

[Seal of the Tribunal]