



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-04-79-PT
Date: 1 July 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Order of: 1 July 2005

PROSECUTOR

v.

MIĆO STANIŠIĆ

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

The Office of the Prosecutor:

Mr. Alan Tieger

Counsel for the Accused:

Mr. Branko Lukić

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 (“Chamber”);

NOTING the “Prosecution’s Motion for Protective Measures for Victims and Witnesses”, filed on 24 March 2005 (“First Motion”), requesting, *inter alia*, leave to redact identifying information of victims and witnesses (i.e. information regarding the current whereabouts of victims and witnesses and the personal identification numbers which appear on statements of victims and witnesses that are taken by the Bosnian authorities), when fulfilling its disclosure obligations to the defence for Mićo Stanišić (“Defence”) pursuant to Rule 66(A)(i) of the of the Rules of Procedure and Evidence (“Rules”);¹

NOTING the “Decision on Prosecution’s Motions for Protective Measures for Victims and Witnesses”, filed on 6 June 2005 (“Decision”), whereby the Chamber, while granting the motion in part, did not consider the Prosecution’s request to redact identifying information of victims and witnesses when fulfilling its disclosure obligations to the Defence pursuant to Rule 66(A)(i), as, on 18 April 2005, the Prosecution had notified the Chamber that it had fulfilled its disclosure obligations pursuant to Rule 66(A)(i) of the Rules;²

NOTING that, while it is not permissible for the Prosecution to redact material it it must disclose to the Defence under Rule 66(A)(i) of the Rules, without having prior authorization of a chamber, it now appears that the material disclosed by the Prosecution pursuant to that Rule was in a redacted form;³

NOTING the “Prosecution’s Third Motion for Protective Measures for Victims and Witnesses”, filed on 16 June 2005 (“Third Motion”), requesting *de novo* leave to redact identifying information of victims and witnesses (i.e. personal identification number and current whereabouts of victims and witnesses) from (a) supporting material to the Indictment (“Rule 66(A)(i) material”) and from (b) statements, affidavits of victims and witness or potential witnesses, when fulfilling its disclosure obligations to the Defence;

NOTING the “Motion Objecting to the Prosecution’s Third Motion for Protective Measures for Victims and Witnesses”, filed on 27 June 2005 (“Response”), by which the Defence objects to the

¹ First Motion, para. 6.

² Decision, para. 13.

³ Decision, para. 13.

Third Motion, as the Prosecution (a) has not demonstrated exceptional circumstances justifying an order for non-disclosure as is required by Rule 69(A) of the Rules,⁴ and (b) is trying to obtain retroactive authorization from the Chamber to redact identifying information of victims and witnesses from material it has already disclosed to the Defence;⁵

NOTING that, in the Third Motion, the Prosecution submits that the unauthorized redactions it made of identifying information of victims and witnesses from the material it disclosed pursuant to Rule 66(A)(i) was to ensure the continued protection of potential witnesses in the case, pending the outcome of its motions on protective measures, while enabling the Accused to have the supporting materials within the time specified by Rule 66(A)(i) of the Rules;⁶

NOTING that Rule 69(A) of the Rules provides that, in exceptional circumstances, the Prosecutor may apply to a Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal;

NOTING that Rule 75(A) of the Rules, provides that, a Chamber may at the request of either party, order appropriate measures for the privacy and protection of victims and witnesses, provided that the rights are consistent with the rights of the accused;

NOTING that, in the Third Motion, the Prosecution submits that it is in the interest of justice to maintain the safety and security of the victims and witnesses by redacting information relating to their current whereabouts and their identity numbers, and that the requested redactions are the minimum protective measures required to address the legitimate fears and concerns of the witnesses;⁷

CONSIDERING that the redactions sought in the Third Motion will not preclude the Defence from requesting disclosure of the redacted information upon a reasonable showing;

CONSIDERING that the situation in the former Yugoslavia, including Bosnia and Herzegovina, remains a hostile and difficult environment for potential witnesses;⁸

⁴ Response, para. 6.

⁵ Response, para. 8.

⁶ Third Motion, para. 4.

⁷ Third Motion, paras 6-7.

⁸ See Decision, para. 17.

CONSIDERING therefore that, in accordance with Rule 69(A) of the Rules, exceptional circumstances have been shown;

ORDERS pursuant to Rules 54, 69(A) and 75(A) of the Rules that:

1) in respect of the material already disclosed by the Prosecution, the disclosure be accepted as a sufficient compliance with Rule 66(A)(i), notwithstanding the unauthorised redaction of identifying information from the material disclosed,

2) the Prosecution may redact from statements, affidavits of potential witnesses or other documents which are to be disclosed to the Defence:

- (a) any information which discloses the current whereabouts of the maker of any such document and/or his or her family;
- (b) any information contained within such documents which discloses the current whereabouts of other individuals named within them who have made witness statements which the Prosecution intends to disclose;
- (c) any information contained within such documents which discloses 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; and
- (d) the personal identification number given to citizens of the former Yugoslavia which appears on statements taken by the Bosnian authorities.

3) nothing herein shall preclude the Defence from requesting full disclosure of the material mentioned above, including Rule 66(A)(i) material, upon a reasonable showing.

4) nothing herein shall preclude any party or person from seeking such other or additional protective measures or measures as may be appropriate concerning a potential witness, or other evidence.

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

Dated this first day of July 2005,

At The Hague

The Netherlands



Kevin Parker
Presiding Judge

[Seal of the Tribunal]