



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-03-67-PT  
Date: 6 July 2005  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 6 July 2005

**PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

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**DECISION ON PROSECUTION'S FIFTH MOTION FOR  
PROTECTIVE MEASURES FOR WITNESSES DURING THE  
PRE-TRIAL AND TRIAL PHASES**

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**The Office of the Prosecutor:**

Ms. Hildegard Uertz-Retzlaff  
Mr. Ulrich Mussemeyer  
Mr. Daniel Saxon

**The Accused:**

Mr. Vojislav Šešelj

**Standby counsel:**

Mr. Tjarda Eduard van der Spoel

**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 Fifth Motion for Protective Measures for Witnesses During the pre-Trial and Trial Phases” (“Fifth Motion”), filed by the Office of the Prosecutor (“Prosecution”) confidentially and partially *ex parte* on 26 May 2005, including confidential and *ex parte* Annex A, wherein the Prosecution requests that the Trial Chamber

- (1) assign the pseudonym VS-054 to a potential witness in the proceedings against Vojislav Šešelj (“Accused” and “First Request”);
- (2) grant delayed disclosure of the identity of VS-054 to the Accused and Standby Counsel until thirty (30) days prior to the commencement of the trial (“Second Request”);
- (3) permit VS-054 to give evidence in closed session, alternatively, that the Trial Chamber permit the parts of VS-054’s testimony that would identify VS-054 or VS-054’s family to take place in private session, and to grant image and voice alteration for the remainder of the testimony (“Third Request”);

**NOTING** the Trial Chamber’s previous decisions dealing with protective measures for witnesses during the pre-trial phase;<sup>1</sup>

**NOTING** that the Accused has not responded to the Fifth Motion, but orally objected to the substance of the requests contained therein on earlier occasions;<sup>2</sup>

**CONSIDERING** Rule 69(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), which provides that “[s]ubject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence”;

**CONSIDERING** Rule 75 of the Rules, which provides that “(A) A Judge or a Chamber may [...] order appropriate measures for the [...] protection of victims and witnesses, provided that the measures are consistent with the rights of the accused. [...]”;

<sup>1</sup> Decision on “Prosecution’s Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66(A)(ii) and 68 and for Protective Measures for Witnesses During the Pre-Trial Phase”, 11 February 2004; Decision on the Prosecution’s Motion for Protective Measures for Witnesses During the Pre-Trial Phase, 16 December 2004; Decision on Prosecution’s Third and Fourth Motion for Protective Measures for Witnesses During the Pre-Trial Phase, 27 May 2005.

<sup>2</sup> Status Conference of 29 October 2003, T. 125-135; Status Conference of 31 January 2005, T. 320-321; Status Conference of 30 May 2005, T. 364-365.

**CONSIDERING** that the Trial Chamber has a duty to strike a fair balance between the protection of victims and witnesses on the one side, and the right of the public to access of information and the right of the Accused to a fair trial on the other side, the latter encompassing, in particular, the Accused's right to be allowed adequate time for the preparation of his defence, and to cross-examine witnesses testifying against him;

**CONSIDERING** that any curtailment of the Accused's right to a fair trial must be justified by a genuine fear for the safety of the witness or the members of his family;<sup>3</sup>

**HAVING REVIEWED** the circumstances of VS-054, as specified in confidential and *ex parte* Annex A,

- (1) with regard to the First Request, the Trial Chamber is satisfied that the fears expressed by this witness as to his/her personal safety and/or the safety of his/her relatives are legitimate and justified, and believes that the assignment of a pseudonym is warranted in order to protect the privacy and security of this witness and his/her relatives;
- (2) with regard to the Second Request, the Trial Chamber is satisfied that the strict requirements of Rule 69(A) of the Rules have been met in relation to this witness, and that delayed disclosure of identifying information of this witness to the Accused and Standby Counsel is warranted;
- (3) with regard to the Third Request, the Trial Chamber considers it premature at this phase of the proceedings, when a date for the start of the trial has not yet been set, to put in place protective measures which would affect the conduct of trial proceedings. Such consideration notwithstanding, the Prosecution may at a later stage apply for these protective measures based on an updated security assessment;

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<sup>3</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Witness R, 31 July 1996, para. 6; *Prosecutor v. Mrkšić, Radić & Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Confidential Prosecution Motions for Protective Measures and Non-Disclosure and Confidential Annex A, 9 March 2005, pp. 4 and 5.

**FOR THE FOREGOING REASONS**, pursuant to Articles 21 and 22 of the Statute and Rules 54, 69 and 75 of the Rules

**THE TRIAL CHAMBER GRANTS THE FIFTH MOTION IN PART** and **ORDERS** as follows:

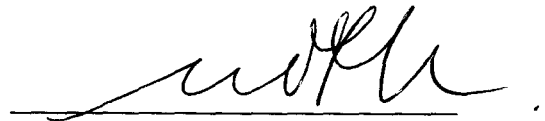
1. The potential witness mentioned in confidential and *ex parte* Annex A to the Fifth Motion is assigned the pseudonym VS-054 for use when referring to the protected witness in public until such time when the witness is called to testify and the protection set out in the present Decision shall apply to the protected witness until further Order.
2. The Prosecution shall disclose to the Accused and to the Standby Counsel the identifying information regarding VS-054 no later than thirty (30) days before the commencement of trial, or unless otherwise ordered by the Trial Chamber.
3. The remainder of the Fifth Motion is rejected.

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

Dated this sixth day of July 2005

At The Hague

The Netherlands



**Judge Carmel Agius**

**Presiding**

**[Seal of the Tribunal]**