



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

Case No.: IT-05-87-T
Date: 30 November 2006
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 30 November 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

**ORDER ON PROSECUTION MOTION FOR LEAVE TO AMEND
ITS RULE 65 TER WITNESS LIST AND FOR PROTECTIVE MEASURES WITH
CONFIDENTIAL AND EX PARTE ANNEX A AND CONFIDENTIAL ANNEX B**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS 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”) is seised of the Prosecution’s confidential and partially *ex parte* “Motion for Leave to Amend its Rule 65 *ter* Witness List and For Protective Measures with Confidential and *Ex Parte* Annex A and Confidential Annex B,” filed on 10 November 2006 (“Motion”), requesting, *inter alia*, certain protective measures for three potential witnesses.

1. The Trial Chamber notes that the Motion includes a confidential and *ex parte* Annex A. The Chamber has on previous occasions ordered a change in the status of material supporting an application for protective measures from *ex parte* to *inter partes* where there was no basis upon which the material should remain *ex parte* in fairness to the Defence.¹ Material should be presented on an *ex parte* basis only where good cause has been demonstrated. The Chamber considers that the reasons given by the Prosecution in its confidential and *ex parte* Annex A for filing it in such a manner are inadequate and do not justify withholding this information from the Accused. In addition, for two of the three witnesses, although the Prosecution says that it “has not disclosed any information to the Defence regarding the reasons why this witness is requesting protective measures, as he has not yet been included on the witness list,” it is not clear whether this is being advanced as a basis for the filing of the annex in an *ex parte* manner. It is imperative that the Prosecution state with precision the basis for presenting material in an *ex parte* manner.

2. Furthermore, based upon a reading of paragraphs 37–39 of the Motion, in combination with paragraphs 1, 3, and 5, of the confidential and *ex parte* Annex A, it is unclear to the Chamber precisely which protective measures the Prosecution is seeking at this time.²

3. The Chamber, pursuant to Rules 54 and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby **ORDERS** as follows:

- a. The Prosecution, by Friday, 1 December 2006, shall (i) refile Annex A in a confidential and *inter partes* manner (or provide a further, adequate justification for

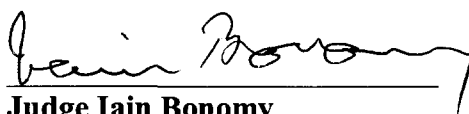
¹ Decision on Prosecution Motion for Reconsideration of Decision on Prosecution Motion for Additional Trial-Related Protective Measures for Witness K56, 9 November 2006; Confidential Order Lifting *Ex Parte* Status of Prosecution Ninth Motion for Protective Measures, 19 October 2006; *see also* *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision Regarding the Prosecution Motion for Protective Measures and Delayed Disclosure, 8 November 2006; *Prosecutor v. Perišić*, Decision on Prosecution’s Motion for Protective Measures, 10 October 2006; Rule 78 (“All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”).

² The Chamber also notes the Prosecution’s confusion as to the composition of the Chamber noted on the cover page of the annexes.

filing the Annex, or any portion thereof, in a confidential and *ex parte* manner) and (ii) specify precisely which protective measures it seeks at this time for each of the three potential witnesses.

- b. The Defence, by Wednesday, 6 December 2006, shall file any further response to the Prosecution's request for protective measures for the three potential witnesses.

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


Judge Iain Bonomy
Presiding

Dated this thirtieth day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]