



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: 5 December 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: 5 December 2006

PROSECUTOR

v.

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

**ORDER ON SUBMISSIONS IN RELATION TO PROPOSED ORDER
FOR PROTECTIVE MEASURES**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

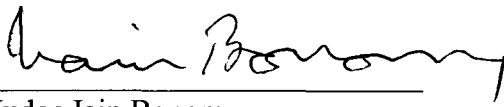
Counsel for the Accused

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”), having, *ex proprio motu*, reviewed various orders granting protective measures that continue to apply in this case, is considering revising them to ensure clarity and specificity among the various orders thus ensuring the fair and expeditious conduct of the trial and the protection of victims and witnesses pursuant to Article 20 of the Statute of the Tribunal.

1. Having reviewed various orders granting protective measures, the Trial Chamber has drafted the attached proposed “Order Regarding Protective Measures.”
2. Prior to deciding whether to make such an Order, the Chamber gives the opportunity to the parties to make any submissions they wish in relation to the proposed Order.
3. Pursuant to Rules 54, 75, and 79 of the Rules of Procedure and Evidence of the Tribunal, the Chamber hereby **ORDERS** that the parties shall file submissions (if any) in relation to the proposed order by no later than Monday, 11 December 2006.

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



Judge Iain Bony
Presiding

Dated this fifth day of December 2006
At The Hague
The Netherlands

[Seal of the Tribunal]



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VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

(PROPOSED)

ORDER REGARDING PROTECTIVE MEASURES

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
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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”), *ex proprio motu*, hereby renders this order to clarify prior protective measures relevant to the instant case.

1. Over the course of the proceedings, over thirty decisions have been issued in relation to protective measures for witnesses in this case.¹ The Chamber notes the importance of clarity and

¹ See *Prosecutor v. Milošević*, Case No. IT-99-37-PT, Order Granting Protective Measures, 16 November 2001; *Milošević*, Case No. IT-99-37-PT, Decision on Prosecution’s Motion for Protective Measures, 4 January 2002; *Milošević*, Case No. IT-02-54-T, Decision Granting Protective Measures for Individual Witnesses, 19 February 2002; *Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Second Motion for Specific Protective Measures for Individual Witnesses Testifying During the Kosovo Phase of the Trial, 22 March 2002; *Prosecutor v. Šainović*, Case No. IT-99-37-PT, Decision on Ex Parte and Confidential Prosecution’s Motion for Witness Protection Measures, 7 June 2002; *Prosecutor v. Ojdanić*, Case No. IT-99-37-PT, Decision on Ex Parte and Confidential Prosecution’s Motion for Witness Protection Measures, 7 June 2002; *Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motions to Call Additional Witnesses and for Orders for Protective Measures, 21 June 2002; *Prosecutor v. Milutinović, Ojdanić, and Šainović*, Case No. IT-99-37-PT, Decision on Prosecution’s Motion for Protective Measures, 17 July 2003; *Milutinović et al.*, Case No. IT-99-37-PT, Decision on Prosecution’s Motion for Protective Measures, 27 June 2004; *Prosecutor v. Lazarević and Lukić*, Case No. IT-03-70-PT, Decision on Prosecution’s Motion for Protective Measures and Request for Joint Decision on Protective Measures, 19 May 2005; *Prosecutor v. Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-03-70-PT, Decision on Prosecution’s Motion for Reconsideration and Corrigendum to “Decision on Prosecution’s Motion for Protective Measures and Request for Joint Decision on Protective Measures” of 19 May 2005, 29 June 2005; *Milutinović et al.*, Case No. IT-99-37-PT, Order on Pseudonym Change for Protected Witness, 29 June 2005; *Prosecutor v. Martić*, Case No. IT-95-11-T, Decision on Prosecution’s Second Motion for Protective Measures with Confidential Annexes A, C and E, and Confidential and *Ex-Parte* Annexes B, D and F, 13 January 2006; *Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Renewed Fifth Motion for Protective Measures, 24 May 2006; *Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Sixth Motion for Protective Measures, 1 June 2006; *Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Motion for Reconsideration of Decision on Fifth Prosecution Motion for Protective Measures, 21 June 2006; *Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Motion for Reconsideration of Decision on Sixth Motion for Protective Measures, 27 June 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Seventh Motion on Protective Measures, 11 July 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Prosecution’s Eighth Motion for Protective Measures, 10 August 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Protective Measures and for Testimony to be Heard via Video-Link Conference, 15 August 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K73, 17 August 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Prosecution Motion for Additional Trial-Related Protective Measures for Witnesses K62 and K63, 17 August 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Rescission of Protective Measures in Relation to Witness Dren Caka, 31 August 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Leave to Call Witness K54 and for Protective Measures, 8 September 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K73, 15 September 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Additional Protective Measure for Witness K82, 22 September 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Rescission of Protective Measures in Relation to Witness Luzlim Vejsa, 27 September 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on (1) Prosecution Motion for Additional Protective Measures for Witness K83 and (2) Request that Material Relating to K83 be Placed Under Seal and that Transcript Page be Redacted, 28 September 2006; *Milutinović et al.*, Case No. IT-05-87-T, Order on Variation of Protective Measures in Relation to K25, 11 October 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Protective Measures for Witness K84, 19 October 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Testimony of K58 to be Heard via Video-Link Conference, 1 November 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K56 and Decision on Defence Motion for Exclusion of Evidence of Witness K65, 2 November 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Urgent Prosecution Motion for Protective Measures for Witness Ratimir Tanić, 6 November 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Reconsideration of Decision on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K56, 9 November 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Renewed Motion for Additional Trial-Related Protective Measures for Witness K56, 22 November 2006; *Milutinović et al.*, Case No. IT-05-87-T, Decision on Case No. IT-05-87-T

specificity in orders concerning protective measures and considers it appropriate to hereby clarify and harmonise prior orders concerning protective measures. However, based upon the fact that all materials granted delayed disclosure have now been disclosed to the Defence, it is not necessary for the Chamber to deal with those orders herein.

2. Pursuant to Rule 75(F) of the Rules of Procedure and Evidence of the Tribunal, the protective measures previously granted in connection with these witnesses shall remain in force to the extent they are not inconsistent with this Order.

3. The Trial Chamber, pursuant to Rules 53, 54, 69, and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

- (a) Representatives of the public shall not photograph, video-record, or sketch the witnesses while they are on the premises of the Tribunal.
- (b) The following witnesses shall be identified by the pseudonyms K5, K6, K14, K15, K20, K21, K24, K25, K31, K50, K54, K55, K56, K57, K58, K59, K62, K63, K64, K65, K67, K68, K69, K70, K71, K72, K73, K74, K75, K77, K78, K79, K80, K81, K82, K83, K84, and K86 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witnesses K14, K15, K20, K24, K65, K73, K84, and K86 shall give evidence in closed session.
- (d) Witnesses K25, K54, K59, K62, K63, K64, K80, K82, K83, and Ratimir Tanić shall give their testimony with the use of image distortion.
- (e) Witnesses K25, K59, K62, K63, K64, K82, K83, and Ratimir Tanić shall give their testimony with the use of voice distortion.
- (f) The parties shall not disclose to the public any protected material, including information and documents, pertaining to these witnesses except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the case or the knowledge of the parties. If the parties find it directly and specifically necessary to make disclosures pursuant to this limited purpose, they shall inform each person among the public to whom non-public material or information is shown or disclosed, that such person is not to copy, reproduce, or publicise such material or information, and is not to show, disclose, or

convey it to any other person. If provided with the original or any copy or duplicate of such material or information, such person shall return it to the party when continued possession of the material or information is no longer necessary for the preparation and presentation of the case. For witnesses K68, K69, K70, K73, and K83, the parties shall keep a log of all disclosures made pursuant to this limited purpose, including to whom the information was disclosed, on what date, and for what purpose. This log shall be made available to the Chamber upon order.²

- (g) The names, whereabouts, and other identifying information concerning the witnesses K5, K6, K14, K15, K20, K21, K24, K25, K31, K50, K54, K55, K56, K57, K58, K59, K62, K63, K64, K65, K67, K68, K69, K70, K71, K72, K73, K74, K75, K77, K78, K79, K80, K81, K82, K83, K84, and K86 shall be sealed and not included in any public record of the Tribunal. To the extent that the names and other identifying information concerning the witnesses are contained in existing public documents of the Tribunal, that information shall be expunged from those documents.
- (h) The address and whereabouts of witness Ratomir Tanić shall be sealed and not included in any public record of the Tribunal. To the extent that the address and whereabouts of the witness are contained in existing public documents of the Tribunal, that information shall be expunged from those documents.
- (i) Defence counsel, and their representatives and agents who are acting pursuant to their instructions or requests, shall notify the Prosecution of any requested contact with any of the witnesses referred to herein, in order to enable the Prosecution to make the necessary arrangements for such contact, in the event the witnesses agree to contact with Defence counsel.
- (j) If a member of the Prosecution or Defence team withdraws from the case, all material in his or her possession shall be returned to the person serving as lead counsel for that party at that time.
- (k) All materials pertaining to these witnesses, including those materials disclosed under subsection (f) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.

Decision on Prosecution Motion for Trial-Related Protective Measures for K64, 1 December 2006.

² The Chamber is aware that requiring the Prosecution, in addition to the Defence, to keep a disclosure log is a break with the general practice of the Tribunal, but considers it appropriate in the interest of justice. Thus, this order will apply prospectively to the Prosecution.

- (l) Except as provided for by subsection (f) above, any person who knowingly and wilfully discloses the identifying information of these witnesses, or any other information sufficient to identify these witnesses, shall be in violation of this Order, and may be subject to prosecution for contempt of the Tribunal pursuant to Rule 77 of the Rules.
- (m) All provisions of this Decision shall apply equally to the Prosecution; the *Amici Curiae* (where necessary); the Accused and their Defence counsel, co-counsel, and other members of the Defence team; and the public.
- (n) For the purposes of this decision, the “public” means all persons, including corporations; governments and organs/departments thereof; organisations; entities; associations; groups; the Accused’s family members, friends, and associates; accused and defence counsel in other proceedings before the Tribunal; and the media. However, for purposes of this decision, the “public” does not mean Judges of the International Tribunal; staff of the Registry and the Office of the Prosecutor; the *Amici Curiae*; or the Accused and their Defence counsel, co-counsel, and other members of the Defence team.

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

Judge Iain Bonomy
Presiding

Dated this _____ day of December 2006
At The Hague
The Netherlands

[Seal of the Tribunal]