



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-04-83-PT

Date: 8 December 2006

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Krister Thelin  
Judge Frank Höpfel

**Registrar:** Mr. Hans Holthuis

**Decision of:** 8 December 2006

**PROSECUTOR**

**v.**

**RASIM DELIĆ**

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**DECISION**

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**Office of the Prosecutor**

**Mr. Daryl Mundis**

**Ms. Tecla Henry-Benjamin**

**Counsel for the Accused**

**Mrs. Vasvija Vidović**

**Ms. Quincy Whitaker**

**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”);

**PROPRIO MOTU,**

**NOTING** the Decision on the Prosecution Motion for protective measures, rendered on 1 December 2006 (“Decision”), granting the Prosecution Motion for protective measures, filed on 13 November 2006 (“Prosecution Motion”),

**NOTING** that the Prosecution Motion was filed on 13 November 2006, whereas the confidential “Defence Response to the Partly *ex Parte* and Confidential Prosecution Motion for Protective Measures” (“Defence Response”) was filed on 29 November 2006,

**NOTING** the Trial Chamber, in its Decision, found that the Defence had not responded to the Prosecution Motion within the 14 days prescribed by Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), that it had not sought leave for an extension of time to respond to the Prosecution Motion and that the Trial Chamber would not therefore accept the Defence Response as validly filed,

**NOTING HOWEVER** that, during the Status Conference held in this case on 15 November 2006, the Pre-trial Judge ordered the Prosecution to disclose to the Defence the redacted version of the statement of witness PW1, whereby he clarified that the deadline for the Defence to respond to the Prosecution Motion would run from the date that the redacted statement was handed over to the Defence,<sup>1</sup>

**CONSIDERING** that the said redacted statement was handed over by the Prosecution to the Defence on 22 November 2006<sup>2</sup>, wherefore the Trial Chamber erred in not accepting the Response as validly filed,

**CONSIDERING** therefore that the Trial Chamber, *proprio motu*, will reconsider its Decision in light of the Defence Response,

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<sup>1</sup> Status conference held on 15 November 2006, T. 88, 89.

<sup>2</sup> Rule 65 *ter* conference held on 30 November 2006, page 70.

**RECALLING** that the Trial Chamber in its Decision had granted the Prosecution's request to delay the disclosure to the Defence of the identity, the unredacted statement, and related documents of witness PW1 until 30 days before the witness will appear for trial,

**CONSIDERING** that the Defence Response recalls the rights of the Defence as set out in Article 20 and 21 of the Statute of the Tribunal ("Statute"), as well as a Decision of the *Limaj* Trial Chamber of 22 November 2004<sup>3</sup> regarding delayed disclosure pursuant to Rule 69 of the Rules, both of which were explicitly considered by the Trial Chamber when it reached its final decision to grant the measures requested in the Prosecution Motion,<sup>4</sup>

**CONSIDERING** that the main allegations raised by the Defence in its Response are that the Prosecution (1) did not provide information that was sufficiently *specific* with regard to the fears expressed by witness PW1, (2) has failed to examine the credibility, veracity and genuineness of the fears expressed by witness PW1 and lastly, (3) has failed to address the specific importance of this witness to the Prosecution case such that a request for delayed disclosure pursuant to Rule 69 of the Rules is necessary,

**CONSIDERING**, with regard to the first and the second allegation, that the Trial Chamber has reconsidered its decision regarding the fears of the witness as explained by the Prosecution in light the Defence Response, and has come to the same conclusion as before, namely that Prosecution has, with due diligence, demonstrated the existence of a real risk to safety and security of the witness and of his/her family should it become publicly known that the witness has testified before the Tribunal and that the factors establishing a risk to his security mainly concern the nature of his evidence and various circumstances, including the position he held during the relevant events, the role and the duties performed, threats to his security, the current residence of the witness's family in the respective area, and the fact that his cooperation might be described as an act of treason as described in the Motion and Annex;<sup>5</sup>

<sup>3</sup> *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on the Prosecution's Motion for Protective Measures at Trial, 22 November 2004.

<sup>4</sup> Decision, page 3; Decision, pages 4 and 5; Decision, footnote 6.

<sup>5</sup> Decision, page 5.

**CONSIDERING**, with the regard to the third allegation, that the possible specific importance to the Prosecution case is apparent from the Prosecution Motion and the testimony of witness PW1, and that the Trial Chamber finds no reason to alter its previous conclusions on that basis,

**CONSIDERING FURTHER** the Defence submission with regard to a *Brđanin* Trial Chamber decision of 3 July 2000, which states *inter alia* that disclosure of witness statements and identifying information should take place prior to trial,<sup>6</sup>

**CONSIDERING** however that the *Brđanin* Trial Chamber also considered that “the greater the length of time between the disclosure of the identity of a witness and the time when the witness is to give evidence, the greater the potential for interference with that witness, and, once the Defence commences (quite properly) to investigate the background of the witness whose identity has been disclosed to them, there is a risk that those to whom the Defence have spoken may reveal to others the identity of that witness, with the consequential risk that the witness will be interfered with”,<sup>7</sup> and that exactly for this reason it later concluded that delayed disclosure of the identity and statement of a witness until 30 days prior to his testimony *can* constitute a necessary measure,<sup>8</sup>

**CONSIDERING** that the Pre-trial Judge has ordered the Prosecution to disclose a redacted version of the statement of witness PW1 to the Defence,<sup>9</sup> which the Defence received on 22 November 2006,<sup>10</sup> and that the Chamber in its Decision only ordered the delayed disclosure of the identity, his unredacted statement, and related documents of witness PW1 30 days before the witness will appear for trial,<sup>11</sup>

**CONSIDERING** that this measure strikes an appropriate balance between the rights of the Defence and the need to ensure the security and safety of witness PW1,

<sup>6</sup> Defence Response, para. 26.

<sup>7</sup> *Prosecutor v. Brđanin & Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective measures, 3 July 2000, para. 28.

<sup>8</sup> *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on Prosecution’s Twelfth Motion for Protective Measures, 12 December 2002, para. 13, disposition; *Prosecutor v. Brđanin & Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective measures, 3 July 2000, para. 28.

<sup>9</sup> Status conference held on 15 November 2006, T. 88.

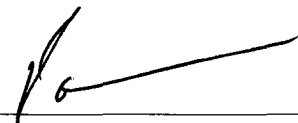
<sup>10</sup> Rule 65 *ter* conference held on 30 November 2006, page 70.

<sup>11</sup> Decision, page 6.

**CONSIDERING** therefore that there is no need for this Trial Chamber to change its findings set out in the Decision,

**PURSUANT** to Articles 20, 21, and 22 of the Statute and Rules 54, 69, and 75 of the Rules, the Trial Chamber **ADOPTS** its previous findings set out in its Decision of 1 December 2006 in light of the Defence Response.

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

A handwritten signature in black ink, appearing to be 'P. Robinson', is written over a horizontal line.

Judge Patrick Robinson  
Presiding

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

**[Seal of the Tribunal]**