



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: 8 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

Decision of: 8 December 2006

PROSECUTOR

v.

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

**DECISION ON THE PROSECUTION MOTION FOR
PROTECTIVE MEASURES FOR WITNESS K88**

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 confidential and partially *ex parte* “Prosecution’s Motion for Leave to Amend its Rule 65 *ter* 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*, the grant of the protective measures of pseudonym and image- and voice-distortion to witness K88, and hereby renders its decision thereon.

1. On 30 November 2006, the Trial Chamber issued its “Order on Prosecution Motion for Leave to Amend its Rule 65 *ter* List and for Protective Measures with Confidential and *Ex Parte* Annex A and Confidential Annex B” (“Order”), whereby it instructed the Prosecution to refile Annex A to the Motion in a confidential and *inter partes* manner, or to provide adequate reasons for filing this, or a portion thereof, in a confidential and *ex parte* manner. The Trial Chamber also requested the Prosecution to clarify the protective measures it was seeking for each witness.

2. On 1 December 2006, the Prosecution filed the confidential “Prosecution’s Submission Pursuant to the Trial Chamber’s Order of 30 November 2006” (“Submission”), in which the Prosecution explained the reasons for requesting the protective measures of pseudonym and image- and voice-distortion for the witness.

3. Pursuant to Rule 75(A), the Chamber may “order appropriate measures for the privacy and protective of victims and witnesses, provided that the measures are consistent with the rights of the accused.” With respect to granting a measure of anonymity, the jurisprudence of the Tribunal requires that “not only must the testimony of the witness be important to the Prosecution’s case but the applicant must show that, should it become publicly known that the witness has testified, there is a real risk to her/his security or that of his/her family, rather than a general expression of fear by the witness.”¹

4. The Trial Chamber notes that the circumstances of this witness as set forth in Annex A establish a reasonable basis for his fear for himself and his family. This fear also has led him to refuse to testify unless subpoenaed. The Chamber notes that the Defence has no opposition to the Motion.² In all the circumstances, the Trial Chamber is satisfied that there is a real risk to the

¹ *Prosecutor v. Limaj, Bala, and Musliu*, Case No. IT-03-66-T, Decision on the Prosecution’s Motion for Protective Measures at Trial, 22 November 2004, p. 3, para. 6 (citing *Prosecutor v. Duško Tadić*, Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, paras. 62–66; *Prosecutor v. Blaškić*, Case No. IT-95-14, Decision on the Application of the Prosecutor dated 17 October 1996 Requesting Protective Measures for Victims and Witnesses, 5 November 1996, para. 41; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses (Bosnia), 30 July 2002, para. 5).

² No response was filed by the Defence teams within the time period set by the Chamber’s Order.

witness' security and that of his family and that the protective measures of pseudonym, voice distortion, and image distortion are necessary and appropriate.

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

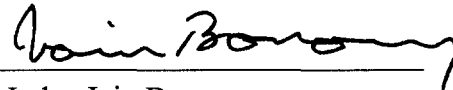
- (a) Representatives of the public shall not photograph, video-record, or sketch the witness while he is on the premises of the Tribunal.
- (b) The witness described in the Annex shall be identified by the pseudonym K88 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witness K88 shall give his testimony with the use of image distortion.
- (d) Witness K88 shall give his testimony with the use of voice distortion.
- (e) The parties shall not disclose to the public any protected material, including information and documents, pertaining to this witness 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.
- (f) 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.
- (g) The names, whereabouts, and other identifying information concerning the witness 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 witness are

contained in existing public documents of the Tribunal, that information shall be expunged from those documents.

- (h) 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.
- (i) All materials pertaining to this witness, including those materials disclosed under subsection (e) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.
- (j) Except as provided for by subsection (e) above, any person who knowingly and wilfully discloses the identifying information of this witness, or any other information sufficient to identify this witness, 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.
- (k) 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.
- (l) 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 the 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.

6. The Chamber hereby INSTRUCTS the Registry to take all necessary measures to implement this Decision.

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



Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]