



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-98-29/1-T

Date: 12 February 2007

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Frederik Harhoff

**Registrar:** Mr. Hans Holthuis

**Decision of:** 12 February 2007

**PROSECUTOR**

**v.**

**DRAGOMIR MILOŠEVIĆ**

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**DECISION ON PROSECUTION'S MOTION FOR  
PROTECTIVE MEASURES**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Mr. Stefan Waespi  
Ms. Carolyn Edgerton  
Mr. John Docherty

**Counsel for the Accused:**

Mr. Branislav Tapušković  
Ms. Branislava Isailović

## I. INTRODUCTION

1. Trial Chamber III (“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 Motion for Protective Measures (“Motion”) filed partly confidentially on 9 January 2007, with a confidential Annex.

2. In the Motion the Office of the Prosecutor (“Prosecution”) requests the Trial Chamber to order that:

- a. Witnesses W-12, W-39, W-50, W-91, W-107, W-137, W-138 be assigned pseudonyms and be referred to by these pseudonyms for all proceedings before the Tribunal and in discussions among the parties and be granted image distortion and voice distortion during their testimony (“First Request”);<sup>1</sup>
- b. Witness W-150 be assigned a pseudonym and be allowed to testify in closed session (“Second Request”);<sup>2</sup>
- c. Protective measures, namely image distortion, granted earlier to Witnesses W-14 and W-114 in previous testimony before the Tribunal, be extended *mutatis mutandis* to the current proceedings (“Third Request”);<sup>3</sup> and
- d. Protective measures granted earlier to Witness W-158, namely pseudonym and closed session, be extended *mutatis mutandis* to the current proceedings and that the witness be referred to by the pseudonym W-158 (“Fourth Request”).<sup>4</sup>

3. In support of these requests, the Prosecution submits, in a confidential Annex to the Motion, details of the safety and security concerns of these individuals and their families.

4. The Defence did not respond to the Motion.

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<sup>1</sup> Motion, para. 9.

<sup>2</sup> Motion, para. 10.

<sup>3</sup> Motion, para. 20. In respect of W-14, *Prosecutor v. Stanislav Galić*, see the oral decision of the Trial Chamber on 26 February 2002, T. 4489-4490. In respect of W-114, *Prosecutor v. Stanislav Galić*, see the oral decision of the Trial Chamber on 4 March 2002, T. 4784-4785, and T. 4807-4808. In the Annex to the Motion the name of Witness W-114 and the witness in *Prosecutor v. Stanislav Galić* were not identical. However, the Prosecution, in communication with the Trial Chamber, clarified that the Motion contained an error, and the witness in the *Galić* proceedings and W-114 are indeed the same person.

<sup>4</sup> Motion, para. 20. See the oral decision of the Trial Chamber in *Prosecutor v. Momčilo Krajišnik* on 21 June 2005, T.14959-14960 (closed session).

5. The Trial Chamber, in its oral decision on 29 January 2007, granted the Prosecution's request for protective measures pursuant to Rule 75 (i) of the Rules of Procedure and Evidence ("Rules") of the Tribunal in relation to Witness W-138.<sup>5</sup> Witness W-138 has since testified in the proceedings.

## II. THE APPLICABLE LAW

6. Article 20 (1) of the Statute of the Tribunal ("Statute") reads:

The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

7. Article 22 of the Statute reads:

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

8. Rule 75 of the Rules concerns measures for the protection of victims and witnesses in proceedings before Trial Chambers. It reads, in its relevant parts:

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

[...]

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but

[...]

9. Pursuant to Rule 79 (A) of the Rules, the Trial Chamber may order hearings in closed session for reasons of:

(i) public order or morality;

(ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75;  
or

(iii) the protection of the interests of justice.

<sup>5</sup> Hearing, 29 January 2007, T. 1151-1152, where the Trial Chamber granted the requested protective measures pursuant to Rule 75 (F) (i).

10. When determining requests for protective measures the Trial Chamber has a duty to strike a fair balance between, on the one hand, the protection of victims and witnesses, and on the other hand, the right of an accused to a fair and public trial: “[w]hilst it is extremely important to provide adequately for the protection of victims and witnesses, the requirement that the accused be given a fair trial dictates that Trial Chambers only grant protective measures where it is properly shown in the circumstances of each such witness that the protective measures sought meet the standards set out in the Statute and Rules of the Tribunal, and expanded in its jurisprudence”.<sup>6</sup> A party seeking protective measures “must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness’ family, should it become publicly known that the witness gave evidence”.<sup>7</sup>

11. The more extreme the protection sought for a witness, the more onerous the obligation upon the applicant to establish the risk asserted.<sup>8</sup> Furthermore, the minimum measure required to protect the witness’s legitimate fears should be utilised.<sup>9</sup> Thus, a Trial Chamber will only order closed session under Rule 79 of the Rules in circumstances where it is shown that the risk to the witness is sufficiently founded and that no other less restrictive protective measure can adequately deal with that risk.<sup>10</sup>

### III. DISCUSSION

12. The circumstances of each particular witness are detailed in the confidential Annex to the Motion. The information provided in the Annex is based on meetings between investigators of the Prosecution and witnesses, conducted in the spring and summer of 2006.

#### A. First Request

13. The Prosecution requests that Witnesses W-12, W-39, W-50, W-91, W-107 and W-137 be assigned pseudonyms and give their testimony with image distortion and voice distortion.

<sup>6</sup> *Prosecutor v. Slobodan Milošević*, Decision on Prosecution Motion for Provisional Protective Measures Pursuant to Rule 69, 19 February 2002, paras 28 and 32; *Prosecutor v. Milan Milutinović et al.*, Decision on Prosecution Sixth Motion for Protective Measures, 1 June 2006, para. 22.

<sup>7</sup> *Prosecutor v. Milan Martić*, Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-090, 18 August 2006, p.2; *Prosecutor v. Tihomir Blaškić*, Decision on Application for Protective Measures and Motion to Enlarge Time, 8 November 2005, p.5; *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Decision on Prosecution’s Additional Motion for Protective Measures of Sensitive Witnesses, 26 October 2005, para. 5; *Prosecutor v. Dario Kordić and Mario Čerkez*, Decision on Motion for Clarification and Motions for Protective Measures, 13 October 2003, para. 23; *Prosecutor v. Slobodan Milošević*, Decision on Prosecution’s Motion for Trial Related Protective Measures (Bosnia), 30 July 2002, para. 5; *Prosecutor v. Duško Tadić*, Decision on Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para.62.

<sup>8</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Motion for Trial Related Protective Measures (Bosnia), 30 July 2002, para. 5; *Prosecutor v. Vojislav Šešelj*, Decision on the Prosecution’s Motion for Protective Measures for Witnesses during the Pre-Trial Phase, 16 December 2004, para. 16.

14. Having reviewed the circumstances of Witnesses W-12, W-39, W-91, W-107 and W-137, the Trial Chamber is satisfied that the Prosecution has shown that there is an objectively grounded risk to the security or welfare of the witnesses, or the witnesses' family and that granting the protective measures of a pseudonym, image distortion and voice distortion is necessary and consistent with the rights of the Accused.

15. As to the request for protective measures for Witness W-50, the Trial Chamber notes that the Prosecution's submissions show that the witness has some concerns as to the possible consequences of providing testimony in this case. However, the submissions are insufficiently detailed on the reasons for and nature of the witness's concern. In addition, the witness indicated to the Prosecution a desire for protective measures in May 2006 for the reason that it might jeopardise the witness's social relations. The Trial Chamber does not regard this as necessarily amounting to sufficient reasons for the granting of protective measures. The Trial Chamber will defer its decision on the request for protective measures for this witness until such time that it receives further and more recent information on this witness's circumstances and the reasons for requesting protective measures.

### **B. Second Request**

16. The Prosecution requests that Witness W-150 be granted the protective measure of a pseudonym and closed session under Rule 79 of the Rules. The Trial Chamber finds that the Prosecution has shown an objectively grounded risk to the security or welfare of the witness, or the witness's family. However, the Trial Chamber is not convinced that the circumstances of Witness W-150 justify the high level of protection that closed session provides. Rather, the Trial Chamber finds that the protective measures of pseudonym, image distortion and voice distortion would provide sufficient protection to the witness and finds that these measures are consistent with the rights of the Accused. In addition, the Trial Chamber will hear from Witness W-150 in private session on their concerns for their security or welfare in order to make a final determination on the necessity of the witness testifying in closed session.

### **C. Third Request**

17. Witnesses W-14 and W-114 testified in *Prosecutor v. Stanislav Galić* with the protective measure of image distortion. Given that Rule 75 (F) of the Rules provides that the protective measures that applied to W-14 and W-114 in previous proceedings shall apply *mutatis*

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

*mutandis* to these proceedings, the Prosecution need not request an order for the same protective measure from this Trial Chamber. The Prosecution is only required to notify the Defence and the Trial Chamber of the nature of the protective measures that were granted in those previous proceedings, which it has done so in this instance by way of the Motion.<sup>11</sup>

#### **D. Fourth Request**

18. Witness W-158 testified previously in *Prosecutor v. Momčilo Krajišnik* with the protective measure of pseudonym, albeit a different pseudonym than W-158, and in closed session. Pursuant to Rule 75 (F) of the Rules, the Prosecution need only request a variation of the pseudonym by which W-158 would be referred to in these proceedings. The Trial Chamber grants the Prosecution's request and orders that the witness will henceforth be referred to as W-158.

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<sup>11</sup> *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Confidential Decision on Prosecution's Extremely Urgent Request for Variation of Orders Regarding Private Session Testimony, 14 November 2003, p. 3.

#### IV. DISPOSITION

19. For the foregoing reasons, and pursuant to Articles 20 and 22 of the Statute and Rules 54, 75 and 79 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART** and **ORDERS** as follows:

1. Witnesses W-12, W-39, W-91, W-107 and W-137, shall testify with image distortion and voice distortion and be assigned these pseudonyms, and be referred to as such throughout these proceedings;
2. Witness W-150 shall be assigned a pseudonym and testify with image distortion and voice distortion;
3. Witnesses W-14 and W-114 shall testify with image distortion;
4. Witness W-158 shall be assigned the pseudonym W-158 and shall testify in closed session; and

**REQUIRES** the Prosecution to provide further and recent information on Witness W-50's circumstances and reasons for requesting protective measures.

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



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Judge Patrick Robinson  
Presiding

Dated this twelfth day of February 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**